2011 FAI 14

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT DUMFRIES

DETERMINATION

by

SHERIFF KENNETH A ROSS

Sheriff of South Strathclyde, Dumfries and Galloway at Dumfries

in

an Inquiry into the circumstances of the death of

NASRULLAH KHALID

held under

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

DUMFRIES: 9 March 2011

1. Place and time of death

Nasrullah Khalid died within cell B/17 at H M Prison, Terregles Street, Dumfries on 23 November 2009 between the hours of 15.15 p.m. and 16.55 p.m.

2. Cause of death

His death was caused by 1(a) Ischaemic Heart Disease (b) Coronary Artery Thrombosis and (c) Coronary Artery atherosclorosis.

3. Reasonable precautions whereby the death of Nasrullah Khalid might have been avoided

(a) that, in the examination of Mr. Khalid at the Prison gym, it should have been established if the chest pain of which he had complained had disappeared completely;
(b) that, in the absence of such a finding, the prison doctor should have been contacted and an ambulance called.

4. Defects in the system of working which contributed to the death of Nasrullah Khalid

None

5. Other facts relevant to the circumstances of the death

None

6. Recommendations

None

Note:

Introduction

[1]. This Inquiry was into the death of Nasrullah Khalid who died in a cell in B Hall in H M Prison Dumfries on 23 November 2009 after exercising at the gym there. It was held in terms of section 1(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 and so was a mandatory Inquiry into the death of a person who was in legal custody at the date of his death. The parties represented at the Inquiry were the family of Mr. Khalid (by Mr. Skinner, Advocate), the Scottish Prison Service (by Mr. Mawby, Solicitor) and Nurse Charlotte Williams-Martin, an employee of the Scottish Prison Service who had attended on Mr. Khalid on the day of his death (by Mrs. Watt, Solicitor). I heard evidence over five days. Parties sought the opportunity to lodge written submissions. A timetable for the lodging and adjustment of these was agreed and a hearing for any additional oral submissions was fixed. In the end of the day no party wished to make further oral submissions and the hearing was unnecessary. The written submissions are with the Inquiry process.

[2]. The following witnesses gave evidence at the Inquiry at the instance of the Crown:

1. Gary Moore, a police constable who had assisted in the investigation into Mr. Khalid's death and who had prepared a video presentation of the cell area where Mr. Khalid died.
2. Robert Stitt, a prison officer who was supervising the prison gym on the day of Mr. Khalid's death.
3. Charlotte Williams-Martin.
4. Stewart McIntosh, a prison officer who accompanied Mr. Khalid back to his cell after Miss Williams-Martin had seen him at the gym.
5. Dr. Riyaz Sabur, a general practitioner in Dumfries whose practice provides general medical cover for H M Prison, Dumfries and, in effect, acts as general medical practitioners to the prisoners held there.
6. Kerry Borthwick, a prison officer who was on duty on B Hall on the date of Mr. Khalid's death.
7. Mary Rzebecki, a prison officer who responded to an emergency call after Mr. Khalid was discovered in his cell on B Hall and who assisted in attempts to resuscitate him.
8. Dr. John Amuesi, consultant pathologist at Dumfries and Galloway Royal Infirmary. (An affidavit by Dr. Amuesi was also read before he gave evidence.)
9. Jennifer Irving, a paramedic called to the prison after the discovery of Mr. Khalid in his cell and who assisted in attempts to resuscitate him.
10. Joseph Allan, the health care manager at Dumfries Prison and the line manager for Nurse Williams-Martin.

The following witnesses were called on behalf of the family of Mr. Khalid:

1. Mohammed Ullah a prisoner in Dumfries Prison who was with Mr. Khalid in the gym on the date of his death and who, later that day, discovered him in his cell in B Hall and alerted prison staff that he appeared unwell or dead.
2. Dr. Graham Tait, a consultant cardiologist at Dumfries and Galloway Royal Infirmary.

3. Julie McKay, a police officer who assisted in the investigation into Mr. Khalid's death and who took a statement from Nurse Williams-Martin.

4. Dr. Rudy Crawford, a consultant in accident and emergency medicine at Glasgow Royal Infirmary.

5. No witnesses were called on behalf of the Scottish Prison Service or Nurse Williams-Martin.

In addition there was evidence in the form of affidavits at the instance of the Crown from:

1. Stephen Craighead, the Head of Operations at Dumfries Prison.

2. Richard Mellor, an ambulance technician who attended with Jennifer Irving and assisted in attempts to resuscitate Mr. Khalid.

3. Michael McGauchey, a detective sergeant who had co-coordinated the police investigation into Mr. Khalid's death.

[1]. Various issues surrounding the death of Mr. Khalid, and its circumstances, arose in the course of the evidence and I will discuss some of these briefly. But the only issue where I was asked to make a finding in terms of section 6(1)(c) of the 1976 Act (the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided) was in relation to the treatment of Mr. Khalid shortly before his death by Nurse Charlotte Williams-Martin.

The Factual Background

[2]. Mr. Khalid was a prisoner in H M Prison in Dumfries. He had been sentenced to thirteen years imprisonment in 2003 and had been transferred to Dumfries in 2008. He had suffered from a heart condition since 1996 when he had had a myocardial infarction (heart attack). The symptoms of that were stable angina, hypertension and atherosclerosis.

[3]. The opportunity for physical exercise in a gymnasium exists in Dumfries Prison. It was entirely voluntary. Mr. Khalid had attended gyms in other prisons before his transfer to Dumfries. There was no indication that this had caused any medical

difficulties or that he had experienced any problems while exercising. Prisoners wishing to participate in activity at the gym are asked to complete an induction form. When he first indicated a wish to use the Dumfries gym Mr. Khalid completed such a form in August 2006. He disclosed his heart condition. Answers to questions in the form confirmed that he had not been advised by a doctor not to participate in exercise, that he did not suffer from shortness of breath, that he exercised regularly and that he could walk at a brisk pace for four miles without getting tired. Nothing in the answers which Mr. Khalid gave the gym staff any cause for concern. The form was retained by the gym staff. It was not copied to the prison medical centre. Before he started in the gym a fitness test was carried out. He was started off in a remedial class and his progress was monitored (including with a heart monitor). He progressed to the intermediate class. By the time of his death he had been exercising regularly at the Dumfries gym for about three years. He had reported no problems while, or as a result of, his exercise; nor were the gym staff aware of any. He appeared to enjoy his attendance at the gym and appeared to be fit. He took pride in completing the exercise programmes and did not like to be seen to lose face by failing to do so.

[4]. There was no medical reason why Mr. Khalid should not have participated in the exercise regime at the gym. It is entirely normal for persons with heart conditions such as he had to do so subject to adequate monitoring and control of high blood pressure.

[5]. At about 13.50 on 23 November 2009 Mr. Khalid attended the prison gym as usual and commenced an exercise routine which was designed to last about forty to fifty minutes. About five minutes before the end of the routine one of the supervising officers, Robert Stitt, saw that he was hunched and stooped over the piece of exercise apparatus he was exercising on. He had his hand on his chest. This was most unusual and Mr. Stitt asked him if he was OK. Mr. Khalid replied that he did not feel right and said, in response to Mr. Stitt's questions, that he had pains in the centre of his chest and that he felt sick but that he did not have pins and needles down his arm. Mr. Stitt told him to change and that he would contact the duty nurse. Mr. Stitt observed that he looked normal though he was perspiring but said that this was normal after exercise.

[6]. Mr. Stitt contacted Charlotte Williams-Martin, the duty nurse. He told her that Mr. Khalid was having chest pains. She arrived about five minutes later. He told her that he had seen Mr. Khalid stooped over the exercise machine and that he was complaining of chest pains. By then Mr. Khalid had taken a shower. After that he mentioned to Mr. Stitt that he thought he had a touch of indigestion (he had also said that before). Mr. Stitt was unsure whether Miss Williams-Martin heard that. He felt that Mr. Khalid looked a touch better. After that Miss Williams-Martin examined Mr. Khalid in Mr. Stitt's office. Mr. Stitt then left to deal with other prisoners.

[7]. Miss Williams-Martin was aware of Mr. Khalid's medical history. She knew of his heart attack in 1996 and the ongoing angina and that he suffered from atherosclerosis. She was aware he would have attended the prison hypertension clinic and that he was on medication consisting of beta blockers, aspirin and a statin for cholesterol. He also had a GTN spray to relieve the effects of angina pain. Miss Williams-Martin suspected, because of his medical history, that Mr. Khalid might be having a heart attack and said that her first task was to rule that out. She examined him. She observed that he was walking normally and did not think that he looked pale or clammy. Mr. Khalid indicated that he thought that he had pulled a muscle in his chest. She took his blood pressure (120/80) and his pulse (80 beats per minute). His hand felt normal and not clammy. His respirations were normal (16). He said he had had a dull pain but that had eased off. She asked if he had any pain in his left arm, shoulder neck or jaw and he said that he did not. She asked where his GTN spray was and he responded that it was in his cell. She was concerned that over exertion in the gym might have brought on an angina attack. She asked him to wipe his forehead to check if he had been sweating and formed that impression that he was not. She then asked again if the pain had gone and he responded that it had eased off. What Miss Williams-Martin then did is a matter of factual dispute which I will deal with at greater length.

[8]. Miss Williams-Martin advised Mr. Khalid to return to his cell and rest. She told him to rest and take his GTN spray as a precaution. In answer to his question about going back to work she said that she wished him to rest to dissipate the pain of his angina. She said to take GTN spray and if there was any more pain to contact the officer at his cell. She said that she would pop in to see him later. At about 15.10 she phoned Kerry

Borthwick to arrange for her to escort Mr. Khalid back to his cell. She told her that Mr. Khalid had been experiencing chest pains and that he was to lie down and take his spray and was not to attend work. Before Kerry Borthwick could go to collect Mr. Khalid, Stewart McIntosh arrived (he had met Mr. Stitt). When he reached the gym he heard Miss Williams-Martin tell Mr. Khalid to lie low and take his medication and that she would see him later. Mr. Khalid told him that he felt not too bad and that he suspected he had pulled a muscle in his chest. Mr. Khalid had no obvious difficulty in walking to his cell, including climbing a set of stairs. The journey took about a minute. They met Miss Borthwick. He entered his cell about 15.15 and Mr. McIntosh reminded him to do what the nurse had said. The cell was then locked.

[9]. At about 16.55 Miss Borthwick opened the cells in the Hall including that of Mr. Khalid. As she did so another prisoner, Mr. Ullah went into Mr. Khalid's cell. Within a few seconds he had shouted "Kerry, it's Naz, he's dead". Miss Borthwick returned to the cell and saw that Mr. Khalid was lying on his bed with his eyes open and with vomit on his face. An alert was put out. Other officers arrived almost immediately. Two of them removed Mr. Khalid from the cell onto the landing and commenced CPR. That continued until paramedics arrived about ten to fifteen minutes later. They took over the attempts to resuscitate Mr. Khalid which continued for a further twelve minutes. Throughout the procedure there was no response from Mr. Khalid. He was pronounced dead when Dr. Sabur arrived at 17.45.

Issues Arising in the Course of the Inquiry

[10]. The evidence in the Inquiry raised several issues which might have been relevant to Mr. Khalid's death but, in the end of the day, only one – the treatment of Mr. Khalid by Miss Williams-Martin – was suggested by any of the parties as giving rise to the possibility of any finding in terms of section 6(1)(c) (reasonable precautions whereby the death may have been avoided) or section 6(1)(d) (any defects in any system of working which contributed to the death). So, in a sense, there is no need to review the evidence about the other issues raised. But Mr. Mawby provided, in his written submissions, a very helpful analysis of some of these issues. They were also touched on briefly by the other parties. So I will deal with them briefly.

(a) Prisoners' Medical Records

[11]. When prisoners enter the Prison Estate their medical care is the responsibility of the Prison Service. Discussions are, I was told, well advanced about a change in that arrangement and that it is envisaged that the National Health Service will be taking over the responsibility in the not too distant future. At present the nursing care is provided by nurses employed by the Prison Service. They are generally akin to nurses who would be attached to a GP practice. Medical care is provided by doctors in general practice contracted to provide that care. The previous medical records of prisoners do not follow them, as might be the case in civilian life if they transferred to another National Health Service doctor, for example on moving house or for any other reason. For short term prisoners, serving a few months, that seems unremarkable. But for men such as Mr. Khalid, likely to spend many years in prison it seemed surprising. In fairness, the provision of such records, if required, did seem possible on request but it rarely happened. The question was whether the unavailability of such records, either to the prison nursing staff or the contracted doctors was relevant to Mr. Khalid's death.

[12]. There was no evidence that it was. The SPS prison records fully recorded Mr. Khalid's heart condition and the treatment he had received and the medication he was receiving. In particular Miss Williams-Martin was aware of these. While the records might have had relevance at the time of a prisoner's admission it was unlikely that they would be so six and a half years later.

(b) Cardiac Management of Mr. Khalid while a Prisoner

[13]. This might have been relevant to any finding in terms of section 6(1)(d) if it had been shown that the system of working had caused or contributed to his death. That cannot be said and, in the submission on behalf of Mr. Khalid's family, it was accepted such a direct causal connection had not been established.

[14]. That is not to say, however, that the management of Mr. Khalid was all that it might have been. It was criticised by Dr. Tait. His examination of the medical records indicated that an episode of chest pain of Mr. Khalid in December 2002, whilst in the care of the SPS, had not been followed up or investigated further. In addition, Mr. Khalid had not been prescribed an ACE inhibitor, and his blood pressure and cholesterol

monitoring having not always been carried out regularly or followed up. On that basis he regarded Mr. Khalid's cardiac treatment as being less than optimal. Dr. Tait confirmed that Mr. Khalid had been prescribed a statin, aspirin and beta blockers. He also commented that Mr. Khalid's cardiac management had not been significantly worse than if he had attended a cardiac physician. He confirmed that he did not believe there had been systemic neglect and having seen a full set of medical records he was reassured that Mr. Khalid appeared to be having fairly regular checks of both his cholesterol and blood pressure. But he felt that Mr. Khalid's cardiac management was still sub-optimal. He described it as systemic failing, because Mr. Khalid had been given less than ideal follow up. His view was that this sub-optimal treatment might have contributed to the event on 23 November but he said that he could not guarantee that the fatal event would have been averted. He could only say that it might have made a difference.

[15]. Dr. Tait's evidence suggests that there may have been a systemic failing on the part of the SPS in relation to Mr. Khalid's overall cardiac management. Any sub-optimal treatment was a result of failings over a number of years at Health Centres at a number of different SPS prisons including HMP Peterhead and HMP Edinburgh as well as HMP Dumfries. That points to a failure in relation to a combination of factors rather than any isolated or individual failing and so is indicative of a defective way of working of the type envisaged by Section 6 (1) (d). But Dr. Tait's evidence did not suggest on the balance of probabilities that any defect in the system of working caused or contributed to the death.

[16]. There was also evidence about the CTN spray which Mr. Khalid had to relieve his angina. This was out of date (it expired in February 2009). There was some evidence that the potency of the spray declined with age but none which established that it was ineffective at the time of Mr. Khalid's death. Nor was there any evidence about what normal practice might have been about its prescription in circumstances where a previously prescribed spray was out of date. In any event, as I will discuss, its purpose was to relieve the pain of stable angina. If that had passed there was no need to take it. If Mr. Khalid's complaint was not stable angina it would have had no effect in preventing his death.

(c) SPS Nurse Training and Staff

[17]. Some of the cross examination of Miss Williams-Martin and her line manager Mr. Allan on behalf of Mr. Khalid's family was suggestive of the idea that, in some way, either she or SPS nursing staff in general were insufficiently experienced or trained in comparison with nurses working in GP surgeries. Although it was suggested, in the submissions on behalf of the family, that Miss Williams-Martin's inexperience was a factor in her treatment of Mr. Khalid at the gym, there was no evidence that the system of training or the general standard of nursing care in the SPS had any causal connection with Mr. Khalid's death. While Both Dr. Tait and Mr. Crawford alluded to the possibility of a wider range of work in general practice both accepted that the SPS nursing environment was akin to general practice. Mr. Allan did not consider that either Miss Williams-Martin or the service provided by nurses in the SPS was unable to deal adequately with the medical needs of prisoners. He pointed to the accreditation of Dumfries Prison as having been assessed by the West of Scotland University as a suitable establishment for student nurses.

(d) Participation in PT by Prisoners

[18]. Quite a lot of time was taken up at the enquiry in the examination of the procedures which the SPS had in place to assess prisoners before they undertook exercise at the gym. The first thing which has to be said is that such participation is voluntary. And the second (this was clearly confirmed by Dr. Tait in his evidence) is that physical exercise can be beneficial for those who have had heart attacks and who may suffer from stable angina. In the context of this discussion it might be convenient to describe briefly what that angina is. Angina occurs in patients with ischeamic heart disease when fatty deposits lead to the narrowing of the coronary arteries. This reduces blood supply to areas of the heart muscle. Increased demand on the heart, such as caused by effort or exercise, brings on pain. That pain is often predictable so patients can avoid the activity or take GTN spray to prevent or relieve it. This is what is referred to a stable angina. Unstable angina is when the nature, frequency or severity of the pain changes such as when it occurs with minimal exertion or at rest. Pain which persists for more than fifteen minutes, and is not completely relieved by GTN spray, may indicate the possibility of unstable

angina. That is a serious condition and a medical emergency where the calling of an ambulance and referral to hospital is advised.

[19]. There was no dispute that Mr. Khalid had been assessed in 2006 when he indicated an interest in going to the gym. That recorded his previous physical activity and that he had experienced heart disease or similar problems, that he had such a history, that he suffered from high blood pressure and was taking medication to control it and that he had been told that his cholesterol was at a high risk level. Other relevant questions were asked. He had been assessed and he had been monitored when his exercise programme had commenced. There was no evidence that it was inappropriate or unsafe for Mr. Khalid to participate in gym exercise. The history of his attendance at the gym over three years had given no indication that it had caused him any health problems.

[20]. There was a line of questioning about the undisputed fact that the assessment remained with the gym staff and had not been passed to the prison Health Centre. There is no evidence that this contributed to Mr. Khalid's death or would have prevented it. It would have added nothing to Miss Williams-Martin's state of knowledge when she was treating Mr. Khalid. It has no relevance to Mr. Khalid's death.

(e) The Response to Finding Mr. Khalid in his cell on 23 November 2009

[21]. It is impossible to be precise as to the exact time of Mr. Khalid's death. He was alive when his cell was locked at 15.15. He was almost certainly dead when Mr. Ullah entered his cell at 16.50. The evidence of those who saw him shortly after that ("blue lips and cold" – Mary Rzbecki; "very grey and cold" – Mr. Allen) suggest a time of death as near to 15.10 as 16.50. The evidence was quite clear that the promptest possible action was commenced to attempt to resuscitate him and correctly maintained before and after the arrival of the paramedics. The evidence of Jennifer Irvine was suggestive that these valiant efforts were always in vain. There is no room for any finding that anything which happened after 15.15 had any causal connection with Mr. Khalid's death or might have prevented it.

Miss Williams-Martin's Treatment of Mr. Khalid

[22]. The central issue at the heart of the evidence led at the Inquiry was Miss Williams-Martin's treatment of Mr. Khalid when she saw him at the gym. And even there the crucial issue is in short compass.

(a) The Time of the Examination

[23]. There are difficulties in reconciling all the evidence about the precise chronology of Mr. Khalid's attendance at the gym and his return to his cell. The best evidence about both when he left for the gym and when he returned to his cell is that of Miss Borthwick. Mr. Stitt, although in many ways a valuable and reliable witness, was not precise as to time (he was not really pressed on the point). Miss Borthwick said that the prisoners left for the gym at 13.50. She was quite precise on the point and justified her evidence by reference to other regular times for locking and unlocking cells. Likewise she was quite precise that Mr. Khalid had returned at 15.15. Again, she related this to other relevant times. Her evidence was consistent with that of Mr. McIntyre who was not quite so exact. Both were entirely credible and reliable.

[24]. The time to walk to the gym was about a minute or so. So, allowing for changing (I heard no evidence about that), Mr. Khalid was likely to have started his exercise about 1.55/14.00. Mr. Stitt said that the exercise lasted about 40 to 45 minutes. The only other evidence about that came from Mr. Ullah who said it lasted about one hour. It was not clear whether he was including in that any changing time.

[25]. Mr. Stitt's evidence was that he noticed Mr. Khalid stooped over the machine about five minutes from the end of the exercise period. Mr. Ullah said that it was about half an hour into the exercise. Miss Williams-Martin initially said that she received the call at 14.30. Her nursing notes record an examination time of 14.30. But in cross examination she accepted that the correct time could be later and was prepared to accept that it might have been roughly 15.00. She said that she took about five minutes to get to the gym and then had to wait for Mr. Khalid to finish showering. That was confirmed by Mr. Stitt. So it would appear that her note is inaccurate and that the examination of Mr.

Khalid commenced some time between 14.45 and 15.00. And that is consistent with the time of his return to his cell.

[26]. Mr. Ullah's evidence gave a different picture. He suggested a substantial wait before Miss Williams-Martin arrived and a further wait before the examination commenced – in all about half an hour. He spoke of banter between Miss Williams-Martin and other prisoners. That does not accord with the other evidence. And in cross examination and re-examination he was unsure about the time. I reject his evidence on this matter as unreliable.

(b) The Examination

[27]. The primary evidence about this came from Miss Williams-Martin. In addition, she had described what she had done, and what Mr. Khalid's condition was, to three other witnesses, Miss Borthwick, Dr. Sabur and Constable McKay. There was also the evidence of the nursing notes which she made. It was not the subject of challenge that she taken appropriate blood pressure and pulse measurements and that these were normal and did not point to any heart problem. That is recorded in her notes. She also said that she had asked Mr. Khalid if he had pain in his left arm, shoulder, neck or jaw and observed that he did not look clammy or pale. None of that is recorded in her notes. Nor is there any reference to his previous medical history of which she was aware or any questions about that or any question or response as to whether he had or was feeling nauseous. She said that she had asked Mr. Khalid if his chest pain had gone and that he replied that it had eased off. That is what she recorded in her notes. She went on to say that she followed this question by asking him if the pain had gone completely and that he nodded. None of that is recorded in the notes. She said that she advised Mr. Khalid not to go to work that afternoon, to rest in his cell and to take his GTN spray as a precaution. That is recorded in the notes.

[28]. Miss Williams-Martin spoke first to Kerry Borthwick when she phoned to tell her that Mr. Khalid was returning to his cell. (That was at about 15.10.) Miss Borthwick's evidence was that Miss Williams-Martin had told her that Mr. Khalid had been experiencing chest pains in the gym, that he was returning to the Hall, that she had told

him to take his spray and that he would not be attending work. In cross examination she confirmed that Miss Williams-Martin had referred to chest pain in the past tense.

[29]. Dr. Sabur was called after the resuscitation attempts ceased. He spoke to Miss Williams-Martin and said that he recorded what she told him. In the medical notes that was as follows:

> "History taken from staff. Developed chest pain while doing PT at about 2.30 p.m. Advised to stop and take his GTN spray. Seen by nursing staff when coming out of shower after stopping PT when he only complained of dull chest pain."

[30]. Dr. Sabur was pressed on his note on cross examination. He was asked if Miss Williams-Martin had said that the pain had gone. He said that he gathered that the pain had eased and almost gone after the shower. He accepted that if the pain was dull it had not gone completely and that if he had been told that the pain had gone completely he would have noted that. He later accepted that he had not noted every last detail of what he was told.

[31]. Constable McKay took a statement from Miss Williams-Martin on 24 November 2009, the day following Mr. Khalid's death. The typed version of that was a Crown Production. In fact, Constable McKay had brought with her the manuscript version from which the typed version had been prepared and she confirmed that the latter was accurate. She was quite clear that what was in the statement was what Miss Williams-Martin had said to her and that if she had said anything else that would have been recorded. She was quite firm on this matter when cross examined. She had written what she was told. She had not suggested any account to Miss Williams-Martin. I regarded Constable McKay as an entirely credible and reliable witness on the subject of what Miss Williams-Martin said to her and that this was accurately recorded in the written statement. The relevant part was as follows:

> "Nas himself told me that he had experienced some chest pain in the gym when exercising. I asked him if he had pain elsewhere and he said no. I asked specifically if he had pain in his left arm or jaw, as this could be associated symptoms of a heart attack but he said he didn't. He said that the pain had since eased off."

[32]. The statement then goes on to relate the taking of blood pressure and other observations which seems to indicate that what Miss Williams-Martin was speaking of took place early on in the examination. There was no reference in the statement to any further question about the pain going completely or any indication from Mr. Khalid that it had.

[33]. What Miss Williams-Martin recorded in the nursing notes is as follows:

> "Chest pain. BP 120/80Pulse R16.80. Advised to rest. Take GTN spray and return to flat.
>
> Called flat to let them know he is coming back to flat. Chest pains eased off and advised to rest. Will review later and will list for M.O."

[34]. The context of what occurred during the examination of Mr. Khalid was found, primarily, in the evidence of Dr. Crawford and Dr. Tait. Both described the difference between a heart attack and stable angina. The latter was characterised by the complete disappearance of pain within fifteen minutes. Any pain might be eased by rest or by the administration of the GTN spray but its complete disappearance within fifteen minutes was important in determining if it had been caused by angina or whether it was a more serious life threatening event. The determination of cessation of pain was the important factor in any assessment or diagnosis of that. (In fact Miss Williams-Martin acknowledged the significance of that in her own evidence.) If pain had not disappeared completely then both the medical witnesses said that further medical assistance should have been sought either by calling Dr. Sabur's practice or calling for an ambulance. Both accepted that Miss Williams-Martin was not trained and should not be expected to make a diagnosis that a heart attack was being suffered but, in the circumstances where she saw Mr. Khalid, she should have established if the pain had gone completely and, if not, sought further advice. Dr. Crawford, in particular, emphasised how difficult it was to diagnose a heart attack and the need to err on the side of caution.

[35]. Both the medical witnesses were critical of the nursing notes made by Miss Williams-Martin. While it is true that there was no expert evidence from any nursing witness about what these might be expected to contain, both doctors had extensive experience of seeing and working from such notes and, it seemed to me, were in a position to give reliable evidence about what might have been expected. Dr. Crawford

said that the notes were "totally inadequate" from a medical point of view. Dr. Tait was more guarded but described the recording as "sub optimal".

[36]. From the evidence of Dr. Crawford and Dr. Tait, but also from Miss Williams-Martin's evidence, I felt able to draw two conclusions. As part of her examination of Mr. Khalid, in the circumstances in which she attended on him, Miss Williams-Martin should have established from Mr. Khalid that his chest pain had gone completely. In the absence of doing so she should have called for medical assistance either from the prison doctor or by summoning an ambulance.

[37]. I am satisfied on the balance of probabilities that Miss Williams-Martin did not establish that Mr. Khalid's chest pain had gone completely. That is despite what she said in giving evidence. It was suggested, that in saying that she had asked him if the pain had gone completely and that he had nodded, she was lying and seeking to mislead the court. It is not necessary to say that. As I shall explain, what she said in evidence is not supported, in my opinion, by the other evidence which I heard. But that may mean no more than that Miss Williams-Martin is aware of what she should have done and, over the passage of time, is simply unable to accept that she did not do so and has convinced herself of that. Her presentation as a witness was not of someone who was deliberately attempting to mislead the court. She came across as a dedicated and caring nurse. I am satisfied that she genuinely believed that she was giving an accurate account of what she did. But it is a mistaken account which is not supported by the other evidence.

[38]. Why do I say that? First of all she, and the medical witnesses, acknowledged the significance of establishing the disappearance of pain and the importance of recording such a significant finding accurately in the medical notes. If the appropriate question had been asked and answered it is probable that it would have featured in the nursing notes. It is probable too that it would have been mentioned to at least one of those to whom an account of the examination was given. And the language of the note which was made tends to support the continuing existence of pain ("eased off"). That language is repeated in what was said to Dr. Sabur and Constable McKay. What was said to Kerry Borthwick ("had been experiencing chest pain") is ambivalent. So the weight of the recorded descriptions points away from the cessation of pain having been established.

[39]. There is also a difficulty in the advice given to take the GTN spray. The purpose of that is to relieve angina pain. Both medical witnesses said that it served no purpose once the pain had disappeared. It is not a precaution. It seems improbable that advice to take it would have been given if it had been established that the pain had disappeared.

[40]. And it is impossible to ignore the fact that Mr. Khalid died from a heart attack shortly after he had been seen by Miss Williams-Martin. It does not establish that he was suffering from any chest pain when he left the gym but it makes it less likely that he was asked if he was and answered (whether by nodding or otherwise) that he was not.

[41]. In seeking to resolve this issue I was asked, particularly by Miss Watt, to take account of some other evidence which I heard. There was the generally favourable evidence about Miss Williams-Martin's work and experience, particularly her response to two earlier incidents where prisoners had suffered heart pain and she had acted appropriately in summoning medical assistance. I took account of that but the balance of the evidence led me to the conclusion that, on the balance of probabilities, Mrs. Williams-Martin had not asked Mr. Khalid if his pain had gone completely and so had not established that it had.

[42]. Of course if she had asked the question Mr. Khalid might have answered in the affirmative in which case the balance of the medical evidence was that she could quite properly have told him to return to his cell rather than call for medical assistance or an ambulance. But that is in the realm of speculation.

(c) The Consequences of not establishing that Mr. Khalid's chest pain had gone completely

[43]. This is a more difficult issue than might have been expected and was not the subject of the sort of detailed evidence which might have been anticipated. It is clear that no ambulance was called and no medical assistance was sought. Beyond that it is possible reasonably to infer from the evidence that the possibility of any emergency response to the life threatening event which later caused Mr. Khalid's death was removed. The nature of that response was clear from the evidence of the prison officers and paramedics who attempted to revive Mr. Khalid for approximately twenty minutes in circumstances where there was no response to their efforts and all had formed the impression that he was dead.

It is likely that, had an ambulance been summoned, and the terminal event had occurred while he was awaiting its arrival, while he was on the way to hospital or after he had arrived there similar efforts would have taken place. As it turned out he was locked in his cell when the terminal event involving his heart, and which caused his death, occurred. It is correct that Jennifer Irving spoke of situations where any response after cardiac arrest will not achieve anything for the patient but she also said there were other situations where the outcome would be dependent on how quickly paramedics reached the patient and some of these outcomes could be favourable. She could not say which would have applied to Mr. Khalid.

[44]. Beyond any immediate response of that nature it is quite clear from the evidence of both Dr. Tait and Dr. Crawford that, if an ambulance had been called, other procedures might have followed and Mr. Khalid would have been likely to have been admitted to hospital. Dr. Tait said that it was not possible to say with certainty that death would have been averted but he described various procedures which would have been carried out. Certainly neither doctor was asked in terms what the effect of admission to hospital might have been but I do not think it unreasonable to infer from what they said that the purpose of admission would have been to treat Mr. Khalid and attempt to prevent his death. Because no ambulance was called, or any doctor summoned, that possibility did not exist.

Reasonable precautions, if any, whereby Mr. Khalid's death might have been avoided

[45]. Section 6 of the 1976 Act permits consideration of any reasonable precautions which might have avoided Mr. Khalid's death and a finding to that effect if appropriate. The standard which the court must apply in addressing that question is different from that in a civil action based on, for example, the negligence of nursing or medical staff. "Would" is not the test. The test is "might". The word has been discussed in a variety of Determinations in other Fatal Accident Inquiries. In the most recent edition of the standard text book on the subject (Carmichael: *Sudden Deaths and Fatal Accident Inquiries* 3rd Edtn. at page 174) it is suggested:

> "What is required is not a finding as to a reasonable precaution whereby the death or accident resulting in the death "would" have been avoided but whereby the death or

> accident resulting in the death "might" have been avoided…… Certainty that the accident or the death would have been avoided by the reasonable precaution is not what is required. What is envisaged is not a "probability" but a real or lively possibility that the death might have been avoided by the reasonable precaution."

[46]. But, in my opinion, the best expression of what is intended by the use of the word "might" may be found in a Determination by Sheriff Lothian (*Kyle Brown*, Edinburgh, 1 October 2007) where he says:

> "The way that I consider this matter is to conclude that the sense of "might" is that the chance of survival cannot be completely ruled out."

[47]. Applying the test in that way to the circumstances of Mr. Khalid's death, if Miss Williams-Martin had asked Mr. Khalid if his chest pain had completely disappeared, I cannot rule out that he might have answered in the negative and an ambulance called. In that scenario the steps to which I have referred, whether the emergency treatment by the paramedics, his removal to hospital or the possibility of further treatment there are probabilities, indeed more than that, and the chance that Mr. Khalid might have survived and not died cannot be ruled out. Of course it is possible that he might have died; but he might not.

[48]. What reasonable precautions might have avoided that? Mr. Skinner urged me to find that such a reasonable precaution might have been to call for an ambulance to take Mr. Khalid to hospital. I agree that it might have played a part in avoiding Mr. Khalid's death but it is, strictly speaking, a possible consequence of the first reasonable precaution which should have been taken. That was to ascertain if Mr. Khalid's chest pain had gone completely. That was, on the medical evidence, the reasonable step for Miss Williams-Martin to have taken when confronted with a previously well patient with known coronary heart disease; and a previous myocardial infarction patient who had suffered a sudden onset of acute chest pain which was unusual for him. I have found that was not done by her. On that basis I find that to have done so was also a reasonable precaution whereby Mr. Khalid's death might have been avoided.

[49]. I would stress however that to have done so would not have guaranteed Mr. Khalid's survival. Nor would that survival have been a probability. The evidence does not support either such conclusion.