

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

[2017] FAI 24

LIV-B165/17

DETERMINATION

BY

SHERIFF PETER G L HAMMOND

UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES (SCOTLAND)
ACT 1976

into the death of

WILLIAM MacKENZIE

Crown: Mr Crosbie, Procurator Fiscal Depute
Deceased's mother: Mr Kee
For NHS Lothian Health Board: Mr Holmes
For Sodexo: Miss Crawford
For The Scottish Prison Service: Mr Fairweather

Livingston, 6 October 2017

The Sheriff, having considered all the evidence adduced and the submissions made thereon, determines in terms of section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 as follows:

Section 6(1)(a)

1. William MacKenzie, born 18 March 1965, died at approximately 08.15 hours on 13 May 2015 in Ward 205 of the Royal Infirmary of Edinburgh.

Section 6(1)(b)

2. The cause of his death was (1a) clinically diagnosed spontaneous bacterial peritonitis and (1b) viral Hepatitis C and alcohol related liver cirrhosis.

Section 6(1)(c)

3. There were no reasonable precautions whereby his death might have been avoided.

Section 6(1)(d)

4. There were no defects in any system of working which contributed to his death.

Section 6(1)(e)

5. There are no other facts which are relevant to the circumstances of his death.

NOTE

[1] This inquiry was held following an application by the procurator fiscal for the district of Lothian and Borders at Livingston, in respect of the death of William MacKenzie. Mr MacKenzie was a 50 year old man who was serving a number of lengthy custodial sentences of imprisonment including for assault and robbery, firearms offences and attempting to defeat the ends of justice. At the time of his death he was serving these prison sentences within HM Prison, Addiewell, but had been admitted to Edinburgh Royal Infirmary a few days prior to his death. It was apparent

on his admission to hospital that Mr MacKenzie's condition was parlous and had deteriorated to the extent that it was recognised he would not survive the admission to hospital. He was placed on a palliative care regime and was pronounced dead at 08.15 hours on 13 May 2015 at Ward 205 of the Royal Infirmary.

[2] As Mr MacKenzie was serving prison sentences at the time of his death, section 1(1)(a)(ii) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 applies. This provides that where a person dies in legal custody an inquiry is mandatory.

[3] I heard evidence on submissions in this inquiry on 6 October 2017. I heard parole evidence from Andy Ireland, former operations manager at HM Prison, Addiewell and Dr Kenneth Simpson, consultant within the Liver and Transplant Unit at the Royal Infirmary of Edinburgh. The parties tendered in evidence a joint minute of agreement, agreeing the essential factual basis of Mr MacKenzie's background, his medical treatment and cause of death. The joint minute incorporated a statement by June Gilmour, staff nurse, and it was agreed that this should be accepted as the equivalent of parole evidence from her. At the conclusion of the evidence I heard submissions from the parties' representatives. The Crown submissions were helpfully presented in writing.

[4] As noted above, there was substantial agreement between the parties over the circumstances and cause of death. Indeed there was very little by way of any dispute regarding the evidence. On behalf of the Crown, NHS Lothian, Sodexo and the Scottish Prison Service it was submitted that only formal findings should be made. The Crown

submissions were adopted. On behalf of Mr MacKenzie's mother, Mrs Margaret Logue, Mr Kee submitted that the court could make a finding under section 6(1)(d) in relation to a number of complaints made by the deceased on previous occasions about not having received medication.

[5] At the time of his death Mr MacKenzie was in lawful custody at Addiewell Prison.

[6] Mr MacKenzie had serious and complicated medical conditions and an extensive history of involvement with medical services in connection with these matters.

[7] Mr MacKenzie was diagnosed as having Hepatitis C in June 2008. On 4 August 2014 he was diagnosed as having decompensated cirrhosis of the liver.

[8] Mr MacKenzie spent the following periods of time receiving treatment within the Royal Infirmary of Edinburgh:

2014 – From 4 August to 6 August for elective paracentesis (a clinical procedure in which a needle is inserted into the peritoneal cavity and ascitic fluid is removed).

From 22 August to 28 August again for elective paracentesis. He was suffering from abdominal pain and was given antibiotics.

From 9 September to 12 September for elective paracentesis.

From 10 October to 13 October for elective paracentesis.

From 20 October to 24 October for elective paracentesis. During this admission the doctors discussed the possibility of a liver transplant and further tests were to be arranged.

From 10 November to 12 November for elective paracentesis.

From 21 November to 23 November for elective paracentesis.

From 3 December to 7 December for elective paracentesis. He was also found to be suffering from encephalopathy on this occasion.

From 15 December to 17 December for elective paracentesis.

From 22 December 2014 to 10 January 2015 for elective paracentesis. He was also treated for spontaneous bacterial peritonitis which required ten days worth of antibiotics.

2015

16 January to 20 January for elective paracentesis. At this time a request was made to staff at HMP Addiewell for a urine sample for testing purposes in order to determine his suitability for a liver transplant.

From 4 February to 5 February for elective paracentesis.

From 18 February to 20 February again for elective paracentesis.

[9] Mr MacKenzie was started on treatment for Hepatitis C on 24 November 2014 and continued taking this until 24 February 2015.

[10] In February 2015 Mr MacKenzie was deemed unsuitable for a liver transplant because his urine test was positive for Buprenorphine (Subutex). This was a clinical decision and not affected in any way by the fact that Mr MacKenzie was a serving prisoner.

[11] It was agreed that during Mr MacKenzie's time in HMP Addiewell, he was taking illicit drugs and on several occasions he declined hospital treatment in defiance of medical advice. On 14 March 2013 Mr MacKenzie pled guilty to possessing heroin on

29 November 2012 within Addiewell. This drug had been found within his cell during a search by police officers.

[12] On 25 February 2015 Mr MacKenzie was admitted to the Royal Infirmary of Edinburgh with a history of fluid leaking from an umbilical hernia. He was given antibiotics and painkillers and observations and CT scans were carried out. It was discovered that there was bowel in the umbilical hernia but no strangulation. He recovered well and was discharged on 3 March 2015.

[13] Mr MacKenzie was again admitted to the Royal Infirmary of Edinburgh on 13 March 2015 for paracentesis. On this occasion 11 litres of fluid were drained from his body. It was then discovered that he had an umbilical hernia, and further fluid had built up in the abdominal cavity. He was given further treatment by antibiotics and further fluid was drained. He was discharged on 28 March 2015.

[14] On 10 April 2015 Mr MacKenzie was seen by a nurse in relation to addiction treatment and gave an account of heroin abuse. He enquired about being placed on a methadone programme.

[15] Mr MacKenzie was admitted to the Royal Infirmary of Edinburgh for the final time on 10 May 2015, after complaining of abdominal pain.

[16] On 11 May 2015 Mr MacKenzie was assessed by medical staff. His medical condition was unsurvivable and hopeless. He was found to have infection in the fluid, a kidney injury and encephalopathy (becoming sleepy and confused). His Glasgow coma scale was found to be GCS 11/15. Despite treatment with antibiotics and IV fluids, it

became apparent to doctors that his condition had deteriorated and he would not survive the admission to hospital. He was thereafter placed on a palliative care regime.

[17] Throughout his final admission to the Royal Infirmary of Edinburgh, Mr MacKenzie was accompanied by G4S officers, although he was not handcuffed.

[18] Mr MacKenzie was pronounced dead at 08.15 hours on 13 May 2015 at Ward 205 of the infirmary.

[19] Prior to his death Mr MacKenzie had been under the care of Dr Kenneth Simpson, consultant within the Liver and Transplant Unit of the Royal Infirmary of Edinburgh. Dr Simpson noted that the deceased had advanced cirrhosis of the liver due to previous alcohol addiction and Hepatitis C. Mr MacKenzie's main problem latterly was ascites (fluid in the abdomen) and the only treatment he could tolerate was to come in as a patient every couple of weeks to have the fluid drained. Dr Simpson confirmed in evidence that he never had any concerns about the deceased's treatment in prison or at Edinburgh Royal Infirmary.

[20] Following Mr MacKenzie's death, a post-mortem examination established the cause of his death to be clinically diagnosed spontaneous bacterial peritonitis and viral Hepatitis C with alcohol related liver cirrhosis.

[21] The Crown submission, adopted by the other parties, was that there was no indication that Mr MacKenzie would have, or could have, been given any different medical treatment had he been at liberty. There is no indication that Mr MacKenzie was ever refused access to hospital treatment, although on some occasions he chose himself not to attend. The evidence seems to establish that the only potential "cure" for

Mr MacKenzie's medical conditions would be a liver transplant, but this was not possible because he was continuing to take illicit substances.

[22] On the day of Mr MacKenzie's admission to hospital he was complaining of abdominal pain and was seen by nurse June Gilmour. Medical staff at the prison were aware of Mr MacKenzie's medical needs and acted appropriately in referring Mr MacKenzie to hospital. When he presented at hospital on 10 May, Mr MacKenzie's condition was by then unsurvivable and he passed away in hospital after being provided with appropriate palliative care.

[23] The only other matter raised was in relation to section 6(1)(d). On behalf of Mr MacKenzie's mother, Mr Kee suggested that it might be open to the court to make a finding under section 6(1)(d) that Mr MacKenzie had not been given access to prescribed medication on occasions and this could be described to be a defect in a system of working which contributed to his death.

[24] The basis of Mr Kee's submission related to complaints by Mr MacKenzie that he had not been getting medication. I was referred to production 4. Page 154 is an NHS feedback form completed by Mr MacKenzie on 20 March 2012, wherein he complained he had not been given certain medication because they were not on his "Cardex". He stated that he needed his "sleepers" and painkillers and that these medications had ran out three days previously.

[25] At page 143 there is another feedback form wherein Mr MacKenzie complains again on 6 May 2012 that he had been left in pain for a week because his prescribed medication had not been made available to him. Page 122 is a letter from

Mr MacKenzie's solicitors to the head of healthcare at HMP Addiewell dated 18 December 2012. This is a complaint on behalf of Mr MacKenzie that he had repeatedly unsuccessfully requested to be provided with some form of strap to assist in reducing the pain caused by his hernia. The solicitors had been told by Mr MacKenzie that his hospital consultant had advised this should be provided.

[26] According to Mr Kee, the failure to obtain this medication would be likely to have worsened Mr MacKenzie's condition and accordingly this was a defect in the system of work.

[27] I note that the three complaints recorded by or on behalf of Mr MacKenzie about interruption of his medication took place some three years before his death. One of these related to "painkillers" and "sleepers". Another relates to a hernia belt. The third complaint was not specific. As Mr Holmes pointed out, there was no evidence that the absence of any of these medications or the provision of a hernia belt could have contributed to his death. Even if the references in 2012 relate to medications listed by Dr Simpson, these were not things which could have made a difference to his condition. Dr Simpson's evidence was that the only effective treatment for Hepatitis C was not available until 2014; in other words some two years after these complaints were being made. Furthermore, it was agreed in the joint minute and confirmed by Dr Simpson that he had no concerns about Mr MacKenzie's treatment in prison or at the time of his final admission.

[28] I wholly accept Mr Holmes' observations in relation to the historic and speculative nature of these complaints and the lapse of time between these being made

and Mr MacKenzie's death. In any event there was no vouching or other evidence to demonstrate whether Mr MacKenzie should have had these particular medications, whether in fact he had not received them and, if not, what reasons there might have been. I note that according to Dr Simpson, in the course of Mr MacKenzie's protracted history of treatment, his prescribing regime was varied from time to time according to his needs and condition.

[29] For all these reasons I consider that the attempt to link missing medication to the cause of Mr MacKenzie's ultimate death is wholly speculative and remote and I am unable to find it established that there was any interruption of Mr MacKenzie's medication regime such as would have a bearing on his death three years later.

[30] For these reasons it is appropriate for me only to make formal findings in this case.