

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT PERTH

[2018] FAI 40

B232/18

DETERMINATION

BY

SHERIFF LINDSAY DAVID ROBERTSON FOULIS, Esq

**UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016**

into the death of

DARRELL KERR SMITH

PERTH, 19 December 2018. The Sheriff, having considered all the evidence adduced,

Determines:-

1. In terms of Section 26(2)(a) of the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016, that Darrell Kerr Smith died at 2.10am on 4 June 2016 within Ward 3, Perth Royal Infirmary, Perth.
2. In terms of Section 26(2)(b) of the said Act, that the accident resulting in his death took place at 8.10am on 16 May 2016 within Cell 4 on the second floor of B Hall, H M Prison, Perth.
3. In terms of Section 26(2)(c) of the said Act that the cause of his death was myocardial infarction, coronary artery atherosclerosis, and bronchopneumonia.

NOTE

[1] This fatal accident inquiry into the death of Darrell Smith was held on 27 November 2018. The Crown were represented by Mr Sadiq, Procurator Fiscal depute, Dundee. M/s Gormley, solicitor, Edinburgh, appeared to represent Tayside Health Board. Mr Phillips, solicitor, Glasgow, appeared to represent the Prison Officers Association. Mr Smith, solicitor, Edinburgh, appeared to represent the Scottish Prison Service.

[2] The deceased was a serving prisoner, having been sentenced to a period of four months imprisonment on 6 May 2016. Accordingly at the time of his death it seems that he was in legal custody. An inquiry was required to be held in terms of section 2 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016.

[3] A preliminary hearing was assigned to take place on 18 October 2018. At that hearing it was indicated to me by those who then were represented that matters were agreed and that a joint minute would in due course be extended and produced. This was said to obviate the necessity of any evidence being led at the inquiry, The outcome of the inquiry would be that formal findings in line with those above would be made. Amongst those represented at that time was the deceased's family. Ultimately I was satisfied that it was indeed appropriate to make these formal findings having regard to the terms of the Joint Minute and the additional evidence presented. This was in accordance with the submissions from those represented at the Inquiry. I did not consider that any additional findings in my determination in terms of section 26(1)(a) or any recommendations in terms of section 26(1)(b) and (4) of the 2016 Act were required.

[4] Clearly it is anticipated that considerable efforts will be made to agree matters which are non contentious at an inquiry in terms of the 2016 Act. Section 18 of the Act refers to agreement of facts before the inquiry and a number of paragraphs in the subsequent Act of Sederunt (Fatal Accident Inquiry Rules) 2017 are directed to such agreement with reference to joint minutes, duties on participants to agree information, and notices to admit as examples.

[5] These observations having made been, it should not, however, be lost sight of that the role of the sheriff at an inquiry is different from that played in adversarial proceedings. This is made clear by reference to the provisions of section 20(2) of the 2016 Act. It accordingly appeared to me that the parties entering a joint minute and intimating to me that this dealt with the matters which were to be the subject matter of the inquiry did not constrain me from seeking certain information to ensure that there were not matters upon which I should consider evidence in an appropriate form to be presented to me. I accordingly appointed the Crown to lodge a list of their proposed witnesses accompanied by a synopsis of the subject matter of the evidence from each witness. Having considered this list when lodged, I ordered that the Crown produce affidavits from witnesses who appeared to me might have something material to impart. The affidavits having been produced, it so happened that there were three matters upon which I wished further information, namely what were the respective benefits of manual as opposed to automatic defibrillators, the cost difference between the two, and the reasons why two nurses, who were in B Hall at the time the deceased became ill, did not

respond to the alarm. The evidence subsequently presented satisfactorily answered any potential issues which arose from these matters.

[6] I make mention of these matters because I formed an impression that when I indicated I was not simply content to proceed on the basis of the joint minute, there was an element of surprise experienced by the legal representatives. However, as I indicated to them, this is an inquiry and the court's role is an inquisitorial one. When understandable emphasis is placed on agreement of matters and attempts to avoid the unnecessary use of court resources, there may be a danger that the requirements of an inquisitorial role are overlooked.

[7] I accordingly indicated to parties that I would produce a brief note with my observations. It, of course, may be that others do not agree with these observations and that is their prerogative.

[8] I close by offering my belated condolences to the family of Darrell Smith.