

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2020] FAI 27

EDI-B12-20

DETERMINATION

BY

SHERIFF ROBERT D M FIFE

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

into the death of

STUART CLUNIE

Edinburgh, 7 September 2020

Determination

[1] The Sheriff, having considered all the evidence presented at the Inquiry, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the 2016 Act”):

In terms of 26(2)(a) of the 2016 Act (when and where the death occurred):

[2] The late Stuart Clunie, born 4 September 1983, died at 21.49 hours on 5 June 2018 at St Leonards Police Station, Edinburgh.

In terms of section 26(2)(b) of the 2016 Act (when and where any accident resulting in death occurred):

[3] No accident occurred.

In terms of section 26(2)(c) of the 2016 Act (the cause or causes of death):

[4] The cause of death was:

1a. alcohol and mixed drug intoxication

2. alcohol related liver disease

In terms of section 26(2)(d) of the 2016 Act (the cause or causes of any accident resulting in death):

[5] There was no accident. No findings are made.

In terms of section 26(2)(e) of the 2016 Act (any precautions which (i) could reasonably have been taken and (ii) had they been taken, might realistically have resulted in death, or any accident resulting in death, being avoided):

[6] There are no precautions which could reasonably have been taken that might realistically have resulted in the death being avoided.

In terms of section 26(2)(f) of the 2016 Act (any defects in any system of working which contributed to the death or the accident resulting in death):

[7] There were no defects in any system of working which contributed to the death.

In terms of section 26(2)(g) of the 2016 Act (any other facts which are relevant to the circumstances of the death):

[8] There are no other facts which are relevant to the circumstances of the death.

[9] No recommendations are made in terms of section 26(1)(b) and (4) of the 2016 Act.

NOTE

Introduction

[1] This Inquiry was held in terms of section 1 of the 2016 Act. Mr Clunie died in legal custody. The Inquiry was a mandatory Inquiry in terms of section 2(4)(a) of the 2016 Act. The Inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

[2] The parties were represented as follows:

1. Ms Rollo, PF Depute, represented the Crown;
2. Mr Ferguson, solicitor, represented the family of Mr Clunie;
3. Mr Reid, solicitor, represented the Chief Constable, Police Service of Scotland;
4. Mr Cahill, solicitor, represented the Police Officers Federation.

[3] The representatives had agreed a significant amount of evidence in terms of a Joint Minute of Agreement. That resulted in the need for oral evidence being reduced. I heard evidence from the following witnesses:

1. Andrew Kidd, retail worker, who saw Mr Clunie outside a take-away some hours before his death;
 2. PC Thomas Croall, who was a probationer officer as at 5 June 2018, and who was present when Mr Clunie was arrested and subsequently taken to St Leonards Police Station, Edinburgh;
 3. PC Ross Norsworthy, who was the senior officer responsible for arresting Mr Clunie and taking him to St Leonards Police Station, Edinburgh;
 4. Dr Paul Hepple, Muirhouse Medical Group, who was the general practitioner for Mr Clunie;
 5. Dr Sally Ann Collis, Consultant Forensic Pathologist, who prepared the post-mortem report;
 6. PC Scot Cranston, who was present at 9 Wardieburn Street West, Edinburgh where he saw Mr Clunie being escorted to and entering the rear of the police van.
- [4] The statements of a number of witnesses were agreed as equivalent to parole evidence:
1. Natalie Curister, Ambulance Technician with Scottish Ambulance Service;
 2. Robert Souter, Ambulance Technician with Scottish Ambulance Service;
 3. Siobhan Rooney, Student Technician with Scottish Ambulance Service;
 4. Alan Downs, Police Custody Officer, St Leonards Police Station;
 5. Craig Gentle, Police Custody Operations Officer, St Leonards Police Station;

6. James Berry, Detective Sergeant, Gayfield Police Station (informed partner of death and noted statement from partner);
7. Mark Pickavance, Temporary Police Sergeant, Custody Division, St Leonards Police Station (responsible for care and welfare of all persons in custody and for risk assessment at St Leonards Police Station);
8. Steven Notman, Custody Officer, St Leonards Police Station;
9. Steven Marr, Detective Sergeant, Corstorphine Police Station (Crime Scene Manager);
10. Dale Miles, Detective Constable, Gayfield Police Station (noted statements and seized items);
11. Ewan McCurrach, Police Constable, Drylaw Police Station (attended at 9 Wardieburn Street West, Edinburgh);
12. Narelle Alan, Detective Constable, Gayfield Police Station (accompanied DS Berry).

Ms Nicola McElhone

[5] Crown productions 3 and 4 were statements provided by Ms McElhone, who was the partner of Mr Clunie at the time of his death. The statements were agreed by parties as her position, when the statements were provided by her. What Ms McElhone said in the statements was not agreed.

Findings in fact

I found the following facts admitted or proved:

[6] Stuart Clunie was born on 4 September 1983 and resided at 1F2, 9 Wardieburn Street West, Edinburgh.

[7] Mr Clunie had a history of alcohol and substance abuse.

[8] Mr Clunie was placed on bail at Edinburgh Sheriff Court on 24 May 2018, with special conditions that he should not enter 9 Wardieburn Street West, Edinburgh or approach his partner Nicola McElhone, of that address.

[9] On 5 June 2018 at about 20.10 hours, police officers were instructed to attend 9/4 Wardieburn Street West, Edinburgh in connection with a domestic incident.

PC Norsworthy and Probationer Officer PC Croall attended the property.

PC Norsworthy was the senior police officer.

[10] Before arriving at the property, the officers were informed by Police Control Room that Mr Clunie was within the property in breach of bail conditions, that there had been a possible assault within the property, and that the person responsible, Mr Clunie, was a violent individual. There was a marker on police systems that Mr Clunie was a violent person, who had previously assaulted or attempted to assault police officers.

[11] The property at 1F2, 9 Wardieburn Street West, Edinburgh, was on the first landing. PC Norsworthy was allowed into the property by Ms McElhone. PC Croall remained on the ground floor covering the front and rear of the property, to prevent any escape by Mr Clunie.

[12] PC Norsworthy found Mr Clunie in the kitchen, hiding behind a bike. Mr Clunie was holding a bottle of vodka in his right hand. Mr Clunie confirmed his personal details. He was not happy with police officers being in the property. He would not let PC Norsworthy take the bottle of vodka from him. PC Norsworthy radioed PC Croall to come up to the property and assist. PC Croall arrived and removed the bottle of vodka from Mr Clunie.

[13] PC Norsworthy informed Mr Clunie that he was being arrested for breach of bail conditions. Mr Clunie was handcuffed to the front. Mr Clunie was significantly taller and of heavier build in comparison to both the officers. On being informed that he was arrested, Mr Clunie became verbally abusive and aggressive to the officers. He made various threats of violence towards both officers.

[14] Mr Clunie was taken from the kitchen through to the living room where he was sat down on a sofa. Mr Clunie was partially dressed. PC Norsworthy asked Ms McElhone to get some clothes for him. Mr Clunie was repeatedly demanding that he wanted a cigarette and vodka, otherwise he would kick off.

[15] PC Norsworthy permitted Mr Clunie to have a cigarette. He calmed down briefly. Once he was fully dressed and on his feet, Mr Clunie began repeating demands that he would kick off. Mr Clunie said he was an alcoholic. He said to the officers that he was not going to leave the property until he had his vodka.

[16] Both PC Norsworthy and PC Clunie believed Mr Clunie was going to attack them. PC Croall was aware of a very recent prior incident when Mr Clunie had fought with police officers.

[17] The officers intended to de-escalate the situation. They both believed there was a real risk of them being assaulted by Mr Clunie and there was a vulnerable person within the property, Ms McElhone.

[18] PC Norsworthy was concerned that if the officers did not appease Mr Clunie's behaviour and give him some vodka they would have been physically assaulted, and would have struggled to get Mr Clunie under control.

[19] PC Norsworthy believed that by giving Mr Clunie a drink of vodka that would de-escalate the situation. Mr Clunie initially demanded the full bottle of vodka.

PC Norsworthy refused that. PC Norsworthy asked PC Croall to pour a small measure of vodka from the bottle into a glass. PC Croall poured a small measure, about 25mL, into a glass. Mr Clunie drank the vodka. That did de-escalate the situation. Mr Clunie calmed down and stopped making threats of violence towards the officers.

[20] The officers then managed to remove Mr Clunie from the property, take him down the stairs, and out of the property to the cage at the rear of the police van.

Mr Clunie was obstructive and used his body as a deadweight, but he did not threaten to assault the officers.

[21] As they were getting close to the police van, Mr Clunie tensed up again and had to be restrained. The handcuffs were removed from the front, and were stacked to the rear, so that there was less risk of Mr Clunie assaulting the officers.

[22] Mr Clunie was placed in the cage in the rear of the van. Mr Clunie would not sit on a bench in the van despite being asked to do so a number of times by PC Norsworthy. Mr Clunie chose to lay down on the floor.

[23] PC Norsworthy drove the van to St Leonards Police Station. PC Croall was in the rear compartment of the van maintaining observations of Mr Clunie in the rear of the van. The journey to St Leonards Police Station took about 15-20 minutes.

[24] At the property, Mr Clunie appeared to be under the influence of alcohol. He was slightly slurred in his speech, but he could converse; he could talk; and he could walk.

[25] PC Norsworthy and PC Croall had no concerns about Mr Clunie's health while at the property or at any point until arriving at St Leonards Police Station.

[26] On arrival at St Leonards Police Station at 21.14 hours, Mr Clunie was found to be unresponsive.

[27] Cardio pulmonary resuscitation ("CPR") was immediately commenced by police and nursing staff (based at St Leonards Police Station), and an ambulance was requested.

[28] At 21.23 hours, paramedics attended St Leonards Police Station. CPR was continued unsuccessfully. Mr Clunie was examined, and life was pronounced extinct at 21.49 hours.

[29] At the date and time of his death, Mr Clunie was lawfully under arrest and in custody at St Leonards Police Station.

[30] A post-mortem examination was conducted on 8 June 2018 by Consultant Forensic Pathologists Drs Sally-Anne Collis and Kerry-Anne Shearer at the City of Edinburgh Mortuary. The cause of death was certified as 1a. Alcohol and Mixed Drug Intoxication and 2. Alcohol Related Liver Disease.

[31] Crown production 2 was the post-mortem report dated 10 September 2018 and Histology, Neuropathology and Toxicological Reports dated 1 August 2018, 20 July 2018 and 3 September 2018, all of which were agreed.

[32] Crown production 1 comprised the medical records for Mr Clunie.

[33] Crown production 5 comprised an amended post-mortem report, which replaced Crown production 2, and was agreed.

[34] Ms McElhone was the cohabitee of Mr Clunie at the time of his death.

Ms McElhone died on 24 June 2020.

Medical witness summaries

1. Dr Paul Hepple

[35] Dr Hepple was a general practitioner with Muirhouse Medical Group, Muirhouse Avenue, Edinburgh. Mr Clunie had been a patient of Dr Hepple for many years prior to his death.

[36] Around June 2018, Mr Clunie had three main medical conditions: (1) drug dependency; (2) alcohol dependency; and (3) depression and anxiety.

Drug dependency

[37] Mr Clunie had been on a methadone prescription for many years, but that stopped being prescribed in December 2017. Dr Hepple did not think Mr Clunie had a severe drug dependency, but the drug dependency overlapped with his anxiety and depression.

[38] Dr Hepple saw Mr Clunie on regular occasions. Mr Clunie did admit to taking street drugs: opiates, heroin, dihydrocodeine and cocaine on occasions. Mr Clunie would smoke rather than inject drugs. As far as Dr Hepple was aware, Mr Clunie continued to take street drugs up until his death.

Alcohol dependency

[39] Mr Clunie was diagnosed as being alcohol dependent in 2006. There were phases when he was, and phases when he was not, alcohol dependent. He had two admissions to the Ritson Clinic in 2015 and 2016, when he had been unable to detox in the community.

[40] At times, the alcohol dependency was severe. There was a note in the medical records from 2014 when, at worst, Mr Clunie was consuming 360 units of alcohol a week.

Depression and anxiety

[41] Mr Clunie had been diagnosed with depression in 2002, since he was a young man, but there was no record of any prescriptions for depression in the years prior to his death. He was an anxious man, who suffered panic attacks, and who was often nervous when outside.

Period leading up to date of death

[42] During the last 2 months prior to his death Mr Clunie was very alcohol dependent again, and taking very large amounts of alcohol.

[43] Mr Clunie also had physical problems. He had attended at the Accident and Emergency Department at Edinburgh Royal Infirmary on three occasions:

1. Overdose of unknown drugs (not known if deliberate or unintentional);
2. Abdominal pain;
3. Assaulted.

[44] Dr Hepple or one of the other GPs had seen Mr Clunie every week during the 6 weeks up to his death, primarily in relation to his alcohol dependency.

[45] The last time Dr Hepple saw Mr Clunie prior to his death was on 29 May 2018. The consultation was mostly about the multiple injuries to his back, nose and ear when he was assaulted some 10 days earlier, and to see if Dr Hepple could assist further with the alcohol dependency. The information about the assault came from a letter Dr Hepple received from the Accident and Emergency Department. Mr Clunie had been due to have a follow-up with plastic surgery, but when he saw Mr Clunie, Mr Clunie said he had missed an appointment with the plastic surgeon the day before.

[46] Prescriptions as at 5 June 2018:

1. Diazepam 30mg daily (6 x 5mg) for anxiety and Benzodiazepine dependency;
2. Pregabalin 150mg capsules 2 x daily for sciatica and for the treatment of anxiety;

3. Chlordiazepoxide 10mg capsules (8 tablets taken for a week) to minimise symptoms when withdrawing from alcohol and to help stop drinking;
 4. Thiamine 100mg tablets 3 x daily to protect the nervous system from the harm from alcohol;
 5. Lansoprazole 30mg capsules, anti-acid for stomach indigestion.
- [47] In April 2018, Mr Clunie was prescribed a short course of Lofexidine 200mg tablets x 4 daily to help relieve the symptoms of opiate withdrawal. The Lofexidine was only prescribed once, on 24 April 2018.

2. Dr Sallyanne Collis

[48] Dr Collis was a consultant forensic pathologist who spoke to the terms of the post-mortem report (Crown production 5). The key findings were as follows:

- There was cirrhosis with severe steatosis of the liver. There was end stage damage to the liver;
- The toxicology report recorded the blood alcohol level was 352mg/100mL which was more than 7 times the Scottish legal driving limit (50mg/100mL);
- A mixture of drugs was detected.

[49] Summary from the post-mortem report:

“Taking all of the findings into consideration it is our opinion that the central factor in Stuart Clunie’s death was acute alcohol intoxication; however, the other drugs detected may have further compromised central nervous system and respiratory function and increased the risk of a sudden cardiac dysrhythmia. The alcohol related liver disease could have affected the body’s abilities to metabolise the drugs present.

The cause of death should (be amended to) read:

- 1a. Alcohol and mixed drug intoxication
2. Alcohol related liver disease"

Issue for the Inquiry

[50] The issue for the Inquiry was whether the actions of police officers in permitting the deceased alcohol whilst under arrest were appropriate.

Submissions

Submissions for Crown

[51] In summary, the Crown's position was as follows:

- From medical evidence, Mr Clunie was not a man in good health and his lifestyle was potentially capable of shortening his life. The post-mortem examination showed that Mr Clunie died of mixed alcohol and drug toxicity, being a combination of both factors on an already weakened system. It could not be said that the alcohol provided by the officers played any part in his death.
- The actions of the officers, though questioned at the Inquiry, appeared to have been carried out to defuse a potentially volatile situation and in good faith.
- There was no causal link between the ingestion of the alcohol provided by the officers and the cause of death.

[52] The Crown sought a formal determination.

Submissions by family

[53] Mr Ferguson submitted the only additional factor the court had to consider was whether the actions of police officers to provide Mr Clunie with alcohol was appropriate, given his background.

Submissions for Chief Constable, Police Service of Scotland

[54] Mr Reid adopted the submissions for the Crown.

[55] The statements from Ms McElhone were hearsay. None of the matters, where inconsistent with the evidence of the police officers, was put to the officers. The statements should be ignored or disregarded.

Submissions for Police Officers Federation**Generally**

[56] Mr Cahill adopted the submissions by the Crown and Mr Reid, adding that in relation to the statements of Ms McElhone, not only were the statements hearsay, but the statements had been filtered through the eyes of those who obtained the statements. In relation to the second statement, Ms McElhone refused to consider the content of the first statement she gave to the police.

[57] PC Croall and PC Norsworthy were credible and reliable witnesses, who both assisted the Inquiry as best they could.

Issue of appropriateness

[58] Essentially, the police officers made a risk assessment at the time, at Mr Clunie's demands for vodka. They were considering the safest approach to remove Mr Clunie to a police van and detain him at St Leonards Police Station.

[59] A number of other factors were relevant:

- The officers had previous knowledge of Mr Clunie;
- There had been previous incidents of violence by Mr Clunie;
- There was the direct behaviour of Mr Clunie towards officers Croall and Norsworthy;
- The size and weight of Mr Clunie in comparison to the officers;
- There was the presence of a vulnerable witness, the partner of Mr Clunie.

[60] While giving a drink of vodka would not be appropriate in every circumstance, in the particular circumstances the actions taken by the officers had prevented or potentially prevented an officer safety issue.

Determination

[61] I have made formal findings in this Determination.

[62] The only issue for the Inquiry was whether the actions of police officers in permitting Mr Clunie alcohol whilst under arrest were appropriate.

[63] The officers PC Norsworthy and PC Croall were credible and reliable witnesses. Any discrepancies in their evidence were not material.

[64] Generally, it would not be appropriate for the police to give an arrested person any alcohol. In the unusual circumstances of the present case, giving Mr Clunie a small quantity of vodka, around 25mL, to de-escalate the probability of Mr Clunie being violent towards the officers and Ms McElhone was not inappropriate.

[65] I placed no weight on the two statements obtained from Ms McElhone. The officers were not questioned on any points in the statements which were inconsistent with their evidence.

[66] There was no causal link between the drinking of vodka by Mr Clunie and his death.

[67] As stated by the forensic pathologist Dr Collis in the post-mortem report, the central factor in Stuart Clunie's death was acute alcohol intoxication, but the other drugs detected may have further compromised his breathing and increased the risk of a sudden heart attack, and his sudden death.

[68] Finally, I am grateful for Mr Clunie's brother who attended throughout the Inquiry. I wish to express my sympathy to the family of Mr Clunie for their loss.