

**SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT ELGIN**

**[2021] FAI 26**

ELG-B78-20

**DETERMINATION**

**BY**

**SHERIFF OLGA PASPORTNIKOV**

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

into the death of

**KYLE STEWART**

Elgin 29<sup>th</sup> March 2021

**Determination**

[1] The Sheriff, having resumed consideration of 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 Kyle Stewart (hereinafter also referred to as 'Kyle') who was born on 18 October 1991, and resided at 6 Beech Walk, Elgin, was confirmed deceased at 1243 hours on 25 November 2019 at Dr. Gray's Hospital, Elgin, by Dr. Jonathan Miller.

**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 - Cocaine Intoxication

**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**

**Legal Framework**

- [1] The inquiry was held under section 1 of the 2016 Act and was conducted in accordance with the Act of Sederunt (Fatal Accident Inquiry Rules) 2017 ("the 2017 Rules"). It was a mandatory inquiry in terms of section 2(1) and (4) of the 2016 Act as Kyle Stewart died whilst he was in legal custody, namely police custody.
- [2] The purpose of the inquiry is set out in section 1(3) of the Act as being to establish the circumstances of the death and to consider what steps, if any, might be taken to prevent other deaths in similar circumstances. It is not intended to establish liability, either criminal or civil. It is an inquisitorial process. The Crown, in the form of the Procurator Fiscal represents the public interest.
- [3] In terms of section 26 of the Act the inquiry must determine certain matters, namely where and when the death occurred, when any accident resulting in the death occurred, the cause or causes of the death, the cause or causes of any accident resulting in the death, any precautions which could reasonably have been taken and might realistically have avoided the death or any accident resulting in the death, any defects in

any system of working which contributed to the death, and any other factors relevant to the circumstances of the death. It is open to the Sheriff to make recommendations in relation to matters set out in subsection 4 of section 26 of the Act.

## **Introduction**

[4] This inquiry was held into the death of Kyle Stewart. Kyle sadly died whilst in police custody, having been taken to hospital following a drug overdose. He had become unwell whilst in a cell at Elgin Police Station. First aid had been administered and Kyle Stewart was subsequently taken by ambulance to Dr. Gray's Hospital. Staff there continued with resuscitation attempts but were unable to save him and he died.

[5] Three preliminary hearings were held by Webex on 15<sup>th</sup> and 29<sup>th</sup> January, and 26<sup>th</sup> February 2021.

[6] This inquiry proceeded by Webex on 23<sup>rd</sup> and 24<sup>th</sup> March 2021. Parties were represented as follows:

1. Ms Lixia Sun, PF Depute, represented the Crown;
2. Ms Hodgson, solicitor, represented the family of Kyle Stewart;
3. Mr Reid, solicitor, represented the Chief Constable, Police Service of Scotland;

[7] The representatives had agreed a significant amount of evidence in terms of a Joint Minute of Agreement. This meant that no medical professionals required to attend. The only aspect at issue was the adequacy of the various police searches of Kyle. That notwithstanding, all evidence was nevertheless led in considerable detail. I

anticipate that that was for the benefit of the mother of Kyle Stewart who was observing proceedings. I consider that this was the appropriate way to proceed.

[8] I heard evidence from the following witnesses:

1. PC Lawrence Michael James Ramsay (5 years' service), the police officer responsible for arresting Mr Stewart and taking him to Elgin Police Station;
2. PC Carl Adam Jellis, (5 years' service) the police officer who accompanied PC Ramsay;
3. PC Kevin Grant Anderson, (12 years' service), Police Custody Officer at Elgin Police Station;
4. PC Fiona MacKinnon, (12 years' service), Police Custody Officer at Elgin Police Station;
5. Philip Stuart, (19 years' service), Police Sergeant, Custody Division, Inverness (responsible for care and welfare of all persons in custody and for risk assessment at Elgin Police Station);
6. Mark Fleming, (29 years' service), Police Inspector, Custody Division, Aberdeen (overall responsibility for the custody centres in the Grampian area and expert witness in respect of the procedures carried out by the officers)

[9] The statements previously provided by all of the witnesses, with the exception of PC Ramsay, were adopted by them and were agreed as forming part of their parole evidence.

[10] The Crown also lodged an inventory of productions as follows:

1. Custody Record

2. Police Scotland Storm print
3. Police Scotland Daybook
4. Police Scotland Prisoner Contact Record
5. Police Scotland Custody Transaction Summary Report
6. Elgin police Station Floor Plan
7. Police Scotland Care and Welfare of Persons in Police Custody – Standard
8. Autopsy Report
9. Toxicology Report
10. Medical Notes from Dr. Gray's Hospital Emergency Department
11. Medical Print Result
12. CCTV Audio and Visual Timeline – BWV Footage Cell 2 Elgin Police Station
13. CCTV Audio and Visual Timeline – BWV Footage 6 Beech Walk, Elgin
14. CCTV Audio and Visual Timeline – BWV Footage 5 Mair Street, Buckie
15. Statement (1) – Inspector Mark Fleming
16. Statement (2) – Inspector Mark Fleming
17. Statement DC Graham Welsh
18. Photobook 1
19. Photobook 2
20. Photobook 3
21. Photobook 4

## The facts

[11] The facts which had been agreed were as follows:

## Background

1. Kyle Stewart was born on 18 October 1991 and resided at 6 Beech Walk, Elgin.
2. In July 2010, Kyle Stewart suffered 67% skin burns from an explosion in a caravan. The burn injuries led to continual treatment of skin grafts and restricted movement in his left arm. In 2016, Kyle Stewart was involved in a road traffic collision which caused him a head and neck injury.  
Kyle Stewart battled anxiety and depression until his death. Consequently, he took street drugs including valium, speed, cannabis and he smoked heavily.  
At the time of his death, Kyle Stewart was prescribed venlafaxine, pregabalin, omeprazole, quetiapine, co-codamol and folic acid.

## The Arrest of Kyle Stewart

3. About 0700 hours on Monday 25 November 2019, witnesses Police Constables Lawrence Ramsay and Carl Jellis commenced duty at Buckie Police Station and continued to follow up enquiries in relation to a stolen motor vehicle from the previous day. These enquiries identified Kyle Stewart as being responsible for the theft. Checks carried out confirmed that Kyle Stewart had been disqualified from driving on 30 March 2019 at Elgin Sheriff Court.

4. About 0850 hours on 25 November 2019 the said officers attended at 5 Mair Street, Buckie and spoke with Kyle Stewart's ex-partner Amanda Kelbie (not a witness) who allowed the officers to enter and carry out a brief search of the property for Kyle Stewart which proved to be negative. Witness PC Ramsay activated his Body Worn Camera from arrival to departure at the address and the footage is captured on:

Label No 1 Body worn video Footage, 5 Mair Street, Buckie 25/11/2019.

5. About 0926 hours on 25 November 2019, witnesses PCs Ramsay and Jellis attended at 6 Beech walk, Elgin, the home address of Kyle Stewart. The officers were allowed entry by Kyle Stewart's mother, Tracey Stewart and Kyle Stewart was located in the upstairs bathroom.

6. About 0930 hours within 6 Beech Walk, Elgin, witness PC Ramsay cautioned and arrested Kyle Stewart in terms of Section 1 of the Criminal Justice (Scotland) Act 2016, for Theft of a Motor Vehicle and Driving Whilst Disqualified, to which he made no reply.

7. Kyle Stewart was thereafter handcuffed and searched by the said police officers before being conveyed by police van SF16 0AB to Elgin police station, arriving at 0945 hours.

8. Witness PC Ramsay had activated his Body Worn Camera from arrival to departure at 6 Beech walk, Elgin and the footage is captured again on:

Label No 2 Body worn video Footage, 6 Beech Walk, Elgin 25/11/2019.

### **Custody and prisoner processing**

9. About 0950 hours, within the police van SF16 0AB at Elgin Police Station, witness PC Ramsay in the presence of witness PC Jellis cautioned and charged Kyle Stewart with the Theft of a Motor vehicle and Driving whilst Disqualified. He made no reply to both charges.

10. Witness PC Ramsay left Kyle Stewart in the vehicle with witness PC Jellis, entered the custody area and explained the circumstances during a telephone call with the remote custody sergeant, witness PS Philip Stuart, who was based at Burnett Road Police Station, Inverness. After being authorised by witness PS Stuart, Kyle Stewart was then taken into Elgin Police Station as an officially accused person.

11. About 1012 hours, within Elgin Police Station charge bar, Kyle Stewart was processed by witnesses PCs Kevin Anderson and Fiona MacKinnon on the National custody System. On completion of the risk assessment, Kyle Stewart was marked as increased risk, with level 2 and was placed on a 30- minute observation. PS Phillip Stuart had also authorised a full strip search, as Kyle Stewart had a drugs marker on PNC and had stated, in response to questions asked during the custody vulnerability assessment process, that he had taken drugs in the previous 24 hours.

12. About 1030 hours Kyle Stewart was taken to Cell MC7 and strip-searched by witnesses PCs Ramsay and Jellis with nothing untoward being found. He was then issued with anti-suicide clothing.

13. About 1050 hours, due to mobility issues with a raised bed, Kyle Stewart was moved from ceil MC7 to cell MC2, which has a lower bed and CCTV coverage. He

remained on 30-minute observations. Witness PC MacKinnon provided Kyle Stewart with coffee and reading material. The activities within Cell MC2 were captured on:

Crown label No. 4 - Male cell 2 25/11/2019

A summary of a review of the said Crown label is as follows:

1050 hrs - Kyle Stewart enters cell M2 and is helped to the bed. He is provided with a drink and reading material

1053 hrs - PC Kevin Anderson leaves the cell

1056 hrs - Kyle Stewart's body seen to jolt, as if having a seizure.

Between officers leaving the cell and the first seizure he makes no movement towards his mouth with his hands.

1057 hrs - Kyle Stewart can be heard breathing loud/snoring his left arm is constantly shaking.

1100 hrs - Seen to have seizure followed by another one minute later.

1104 hrs - Seen to have another seizure thereafter loud snoring heard.

1106 hrs - PC Kevin Anderson enters cell, is unable to rouse Kyle Stewart. He leaves cell and heard to call an ambulance.

1107 hrs - PC Fiona MacKinnon enters cell unable to rouse Kyle Stewart after repeated attempts.

1108 hrs - PC Lawrence Ramsay enters cell and together with PC Anderson and PC MacKinnon they place Kyle Stewart on the floor of cell into a recovery position. He is seen to continue having a seizure. Police Officers monitor his airways, as they make provision to protect his head from the wall and bed.

1115 hrs - Kyle Stewart is still in the recovery position but no longer loud breathing.

1120 hrs - PC Ramsay and Anderson detect Kyle Stewart is not breathing and cannot detect pulse. They roll him onto his back.

PC Ramsay commences CPR as Paramedic witness Claire Alldritt enters cell.

Also joined by PC Carl Jellis.

1127 hrs - Package removed from Kyle Stewart's mouth by Paramedic witness Claire Alldritt.

1130 hrs - Additional medical staff enter cell.

1153 hrs - Kyle Stewart removed from cell by ambulance staff.

14. About 1107 hours, witness PC Anderson requested an ambulance via his Airwave terminal (radio) to attend for a male having a seizure within the custody area.

This is recorded on:

Crown Production No. 2 - Police Scotland STORM print

#### **Medical intervention by Scottish Ambulance Service and NHS**

15. Immediately on arrival at Elgin Police Station at 1120 hours, witness Alldritt instructed officers to continue CPR. This was carried out on Kyle Stewart by witnesses PCs Ramsay, Jellis and Anderson. The officers continued with compressions whilst witness Alldritt set up an oxygen supply to Kyle Stewart. She placed defibrillator pads on Kyle Stewart's chest and the machine indicated 'No Shockable Rhythm'.

16. When checking Kyle Stewart's airway, witness Alldritt noticed an item inside his right cheek and she removed a small, black plastic bag from Kyle Stewart's mouth:

Crown Label No. 6 - Black plastic bag. (Crown production 20 in lieu thereof)

17. At 1128 hours ambulance technician witness Barry Mullins and paramedic witness Yvonne MacDonald arrived at Elgin Police Station and they continued with CPR, administered 400 micrograms of Narcan and 5mg of adrenalin to Kyle Stewart and placed him in an ambulance to take him to Doctor Gray's Hospital, Elgin.

18. The ambulance left Elgin Police station at 1155 hours and arrived at Accident & Emergency Department, Dr Gray's hospital at 1202 hours.

19. On arrival, witness Doctor Pamela Hardy and the resuscitation team continued to ventilate Kyle Stewart through the airway that was placed by the Ambulance crew as he had a pulse but was not breathing and was making no respiratory effort of his own. During the process of checking Kyle Stewart's airway for any obstruction, witness Hardy confirmed that there were no foreign bodies present.

20. In light of Kyle Stewart's pupils being fixed and dilated, combined with him being hypoxic and unresponsive towards prolonged and continuous CPR, resuscitation was stopped at 1225 hours with the team in agreement. About 1243 hours, as no output was detected, Kyle Stewart was pronounced life extinct by witness Doctor Johnathan Miller. The resuscitation details were recorded in:

Crown Production No. 10 - Medical notes from Dr. Gray's Hospital

and

Crown Production No. 11 - Medical Print Result

**Post Mortem**

21. Pathologists Doctor Leighanne Deboys and Doctor Tamara McNamee carried out a post mortem examination of Kyle Stewart on 28 November 2019 and certified the cause of death as I (a) Unascertained (Pending Investigations).

They concluded on 1 April 2020 that the most compelling explanation for the death was Cocaine intoxication. Their findings are detailed in

Crown Production No. 8 - Autopsy Report

22. Dr. Deboys advised that the Toxicological analysis of post mortem blood and urine revealed a very high concentration of cocaine and its metabolites. It was one of the highest levels she had ever encountered in her professional career. The level of cocaine was so catastrophic that it was beyond compatible with life and no realistic medical intervention and resuscitation could have retrieved Kyle Stewart.

**Productions and Labels**

23. That Crown Label number 1 is a true and accurate copy of the visual images of the events which occurred between 08:49:43 and 08:53 :42 on 25 November 2019 at 5 Mair Street, Buckie, taken by witness Police Constable Ramsay from his Body worn camera and which were recorded onto a video surveillance system.

24. That Crown Label number 2 is a true and accurate copy of the visual images of the events which occurred between 09:26:56 and 09:42:06 on 25 November 2019 at

6 Beech Walk, Elgin, taken by witness Police Constable Ramsay from his Body worn camera and which were recorded onto a video surveillance system.

25. That Crown Label number 3 is a true and accurate copy of the visual images of the events which occurred between 11:09:45 and 11:31:58 on 25 November 2019 within cell 2 at Elgin Police station, taken by witness Police Constable Ramsay from his Body worn camera and which were recorded onto a video surveillance system.

26. That Crown Label number 4 is a true and accurate copy of the visual images of the events which occurred between 10:49 and 11:59 on 25 November 2019 at Elgin Police Station, Elgin, taken from a camera positioned within cell MC2 and which were recorded onto a video surveillance system.

27. That Crown Label number 5 is a true and accurate copy of the visual images of the events which occurred between 10:12 and 10:26 on 25 November 2019, taken from a camera positioned at charge bar at Elgin Police Station, Elgin and which were recorded onto a video surveillance system.

28. Crown Productions 18-19 are two photographic albums taken on 25th of November 2019 by Scene examiner witness Pamela Wilson at Accident and Emergency Department, Dr Gray's Hospital and Elgin Police Station, showing the following:

- 1) Photographs Nos. 11-12 Views of general cell block area, Elgin Police Station
- 2) Photographs Nos. 13-16 Views of booking area and lockers, Elgin Police Station

- 3) Photographs Nos.17-18 views of belongings of Kyle Stewart within locker, Elgin police Station
- 4) Photograph No.19 View of cell block area, Elgin police station
- 5) Photographs Nos.20-23 views of front and within cell 7, Elgin Police Station
- 6) Photographs Nos.24-25 views of cell block area leading up to booking area, Elgin Police Station
- 7) Photographs Nos. 26-27 views of trainers and trousers belonging to Kyle Stewart in front of Cell 2, Elgin Police Station
- 8) Photograph No.28 View of prisoner contact record for Cell 2, Elgin Police Station
- 9) Photograph No. 29 view of front door of cell 2, Elgin Police Station
- 10) Photograph No. 30 view of single mattress within cell 2, Elgin Police Station
- 11) Photographs Nos. 31-32 Views of toilet and adjacent black sock within Cell 2, Elgin police Station
- 12) Photograph No. 33 View of money and paper on the floor of Cell 2, Elgin Police Station
- 13) Photograph No. 34 view of blue blanket within Cell 2, Elgin Police Station
- 14) Photographs Nos. 35-36 views of magazines in the corner of Cell 2, Elgin Police Station

- 15) Photograph No. 37 view of blue T-shirt on the floor of cell 2, Elgin Police Station
  - 16) Photographs Nos. 38-39 Views of clear plastic bag in corner of Cell 2, Elgin Police Station
  - 17) Photograph Nos. 40-43 view of clear plastic bag containing remnants of black plastic bag on top of magazines within cell 2, Elgin police Station
  - 18) Photographs Nos. 44-47 views of red staining on wall of cell 2, Elgin Police Station
29. Crown Productions 20 - 21 are two photographic albums taken on 26<sup>th</sup> November 2019 by Scene examiner witness Matthew Clarke at Elgin Police Station, showing the following:
- 1) Photographs Nos. 48 - 53 black and clear plastic bags
  - 2) Photographs Nos. 54 - 56 front and rear of police van SF16 0AB
  - 3) Photographs Nos. 57 - 62 inside of police van SF16 0AB
- [12] As stated in paragraph [3] of this note, the facts here were not in dispute as almost the entirety of Kyle Stewart's time in police custody was captured on video footage in one form or another. Accordingly, there was no dispute as to what had occurred. That being the case, I intend to simply outline the additional facts which I found proved at the inquiry and reasonable inferences from those facts and the circumstances relevant to the death after viewing all footage and hearing from the witnesses. For ease of reference, I shall use the same headings as *per* the agreed evidence:

## **Background**

1. Kyle Stewart resided with his mother at 6 Beech Walk, Elgin. Occasionally, he resided with his former partner at 5 Mair Street, Buckie.

2. As a result of his burns and subsequent road traffic collision, Kyle suffered disability to the extent that his spine was twisted and his neck was partially immobile, causing his head to hang permanently to the right.

## **The Arrest of Kyle Stewart**

3. When police officers attended at 6 Beech Walk, Elgin, they advised Kyle's mother that she did not require to allow them entry. Initially, she denied that Kyle was in the house. This may have been because she did not know that he was there. She advised PC Ramsay and PC Jellis that Kyle's bedroom was upstairs and officers started to make their way there.

4. When PC Ramsay went upstairs, he saw Kyle Stewart in the bathroom. He told him that he was under arrest. In the bathroom, the door was closed so the officer couldn't see what Kyle was doing. Without too much difficulty, he pushed the door in. The door was not locked, but some force still required to be used. Kyle Stewart had an arm behind his back. PC Ramsay feared he had a weapon and issued his PAVA spray. He asked Kyle to show him what was in his hand which he did do. There was nothing in Kyle Stewart's hand. Kyle was naked from the waist up and his demeanour was nothing out of the ordinary. He wasn't displaying any aggressive behaviour.

Handcuffs were applied in a stacked position to the front due to Kyle Stewart's disability. Before cuffs were applied, Kyle Stewart had been covered by the door. At no time thereafter did Kyle's hands go anywhere near his mouth. Constables Ramsay and Jellis did not have any concerns that Kyle Stewart had been under the influence of drink or drugs. All of this was captured by PC Ramsay's body worn video camera.

5. Whilst still in the house, officers assisted Kyle Stewart to put clothes onto the upper half of his body. One handcuff at a time was removed to facilitate this. This was a t-shirt and jacket. A search was carried out by the officers and some items of a personal nature were found. Kyle Stewart indicated that these were to be left with his mother. PC Ramsay reassured Kyle's mother, who was upset, that Kyle would be treated with dignity and allowed to get dressed before leaving the house. All of this was captured by PC Ramsay's body worn video camera.

6. Kyle Stewart requested a cigarette, one was provided to him (obtained from his mother and handed to him by PC Ramsay who checked that it was tobacco) and Kyle smoked this prior to being placed into police van SF16 0AB. All of this was captured by PC Ramsay's body worn video camera.

7. Whilst in the police van, PC Jellis sat in the back and observed Kyle Stewart all the way to Elgin Police Station. The journey took around 5 minutes. At no time was Kyle Stewart seen to put his hands near to his face or mouth.

### **Custody and prisoner processing**

8. During the initial processing procedures, PC Anderson and PC MacKinnon

asked whether Kyle Stewart had taken any drugs in the past 24 hours. Kyle Stewart admitted that he had smoked cannabis the evening before. He presented well and spoke to the police officers. The police officers had had previous dealings with Kyle Stewart. PC Anderson considered that Kyle Stewart's presentation on that occasion was the best it had been. He did not appear under the influence of drink or drugs. They had no indication that he was concealing drugs in his mouth as he spoke freely and it did not appear that he had something in his mouth. PC MacKinnon's view was that, given her proximity to Kyle Stewart, she would have seen if he had had anything in his mouth. Additionally, the CCTV footage of the charge bar shows Kyle Stewart with his head bent down whilst speaking to the officers. At no time during the 15 minutes or so of this procedure are Kyle Stewart's hands seen to go towards his face or mouth.

9. Kyle Stewart advised police officers that he was in receipt of prescribed medication. For this reason, he was assessed at being at an increased risk until such time as officers had obtained medical advice as to whether the medication was necessary whilst Kyle Stewart was in custody. Observation of Kyle every 30 minutes was considered appropriate and PC Anderson anticipated that this would have been reduced once confirmation about Kyle's medication had been received from the nurse. Having to check on someone so regularly was very intrusive on their privacy and it was not done unless required. Although PS Stuart had authority to overrule this, he considered that the decision made by the custody officers was appropriate.

10. As Kyle Stewart had a drugs 'marker', a strip search was authorised. During this search, police officers did not check inside Kyle Stewart's mouth. PC Ramsay advised

that, although he would ordinarily do this as a matter of routine, he did not do so on this occasion. On carrying out the full search, he considered that the physical nature of Kyle's disability was such that he would not be able to conceal anything in his mouth unnoticed. Neither had Kyle given any reason for the officers to suspect that he was likely to have had anything in his mouth.

11. PC Anderson considered that, due to the issues with Kyle's spine, he may be more comfortable with a raised bed. Accordingly, he was allocated male cell 7 (MC7).

At that time, all the cells in the custody suite were empty, the 7 persons in custody having been taken to appear at court shortly prior to the arrival of Kyle.

Kyle Stewart was offered a drink and he indicated that he would like coffee.

PC MacKinnon went to make this while PC Anderson made the necessary enquiries with the nurse at Kittybrewster, Aberdeen (the remote 24 hour police medical centre) about getting Kyle Stewart's medical records.

Coffee was provided and Kyle Stewart tried to get onto the bed to drink this.

PC MacKinnon saw that he was struggling and PC Anderson and PC Jellis attended to try and help Kyle Stewart onto the bed. Given the difficulty in doing so, it was decided that, in the event Kyle Stewart needed to get up from the bed again for any reason, he might struggle to get back onto it. The decision was taken thereafter to move Kyle to male cell 2 (MC2) where the bed was low and there was CCTV so officers could be alerted in the event of Kyle requiring anything.

PC MacKinnon brought some magazines for Kyle to read. PC Anderson placed a rolled up blanket behind Kyle's neck for his comfort and he and PC Jellis further pulled the

mattress further up the bed so Kyle Stewart could sit up a little and drink his coffee more comfortably. This was because he had spilled a little coffee whilst trying to drink it lying down. All of this was captured on CCTV from within MC2.

12. A few minutes after Kyle Stewart had been left alone, he began to exhibit signs of becoming unwell. He was not under constant observation and so the initial movements seen on CCTV could have easily been missed or not seen as anything out of the ordinary.

13. Kyle Stewart had been quite quiet throughout his time in police custody, but that was not remarkable and nothing out of the ordinary in respect of many people taken into custody. At no time whether in the presence of police officers, or when left alone in MC2 was Kyle Stewart seen to place his hands near to his face or mouth. The officers were given no cause for concern about his welfare at any time prior to Kyle taking unwell.

14. PC MacKinnon heard a noise coming from MC2 and asked PC Anderson to go and check on Kyle Stewart at 11.06 which he did at once.

### **Medical Intervention by Scottish Ambulance Service and NHS**

15. PC Ramsay, whilst elsewhere in the police station, heard PC Anderson summoning an ambulance over his airwave terminal (radio) and immediately made his way to the custody suite to assist. Whilst the ambulance was being called, PC MacKinnon entered MC2 and tried to reassure Kyle Stewart. She believed he was having an epileptic fit. PCs Ramsay and Anderson then provided Kyle Stewart with

first aid. They moved him to the floor to put him into the recovery position. There was a lot of liquid in Kyle Stewart's mouth and the officers ensured that this was drained and the airway was kept clear. The officers are heard to comment that it was draining away well. PC Ramsay tried to open Kyle Stewart's mouth a bit when trying to keep his airway clear, but he did not see inside.

Police officers receive first aid training at the Scottish police college during their initial training. This is referred to as "Scottish Police Emergency Life Saving" (SPELS) training. Thereafter, there is a refresher course which takes place annually. It is an officer safety training course during which around 1 or 2 hours are devoted to first aid and resuscitation training (using a model) is given. All officers involved with Kyle Stewart had carried out this training in the 12 month period prior to 25<sup>th</sup> November 2019.

16. PC Jellis waited outside for the ambulance to arrive to ensure there was no delay in opening the gate and then escorting the paramedic to the custody suite.

17. As the paramedic, Claire Alldritt was arriving, Kyle Stewart's condition was deteriorating and PC Ramsay advised that he was about to start CPR. Claire Alldritt confirmed that this was the correct course of action. Officers Ramsay, Anderson and Jellis then took it in turns to carry out CPR and administer oxygen through the face mask.

18. Once Claire Alldritt had set up her equipment, she was in the process of putting in a tube into Kyle Stewart's airway at which time she brought out a plastic bag and asked police officers if they had put the bag there. Police officers confirmed that they had not and that the bag had not been there previously. Words like "regurgitated" were

used. PC MacKinnon was of the view that, had the black bag been in his mouth previously, she would have seen it during the booking in process. Additionally, the size of it was such, that it would have taken up half of Kyle Stewart's mouth and he would not have been in a position to speak properly. He had been speaking clearly. PC Ramsay assumed that prolonged CPR attempts had dislodged the bag.

### **Post Mortem**

19. The autopsy report mentioned that there was an area of pallor in the oesophagus which "may represent patchy post mortem change or may have been the result of compression by a previously removed foreign object."

20. Further, toxicological analysis suggested that a quantity of cocaine had been taken with alcohol a number of hours prior to death, and a large quantity of cocaine had been taken subsequently - closer to the time of death. Recent use of cannabis was noted. This was consistent with the history provided by Kyle Stewart in respect of having smoked 4 'joints', although he made no mention of having consumed cocaine with alcohol the night before. Nor, obviously, of having secreted the larger amount of cocaine.

21. The history given by police officers and the observation of the seizures on CCTV footage by pathologists, together with all post mortem examination was consistent with cocaine intoxication.

22. Unfortunately, as soon as Kyle Stewart had ingested this exceptionally high toxic dose, there was no realistic possibility of survival even with immediate medical treatment.

23. All police witnesses stated that, had Kyle Stewart indicated to them that he had either swallowed or 'banked' (hidden internally in any way) drugs, or had they had any cause at all to suspect that this was the case, he would have been taken to hospital immediately.

### **Issues for the Inquiry**

[13] The issues for this enquiry were whether a) Kyle Stewart had been adequately searched; and b) whether police officers afforded him the best medical care when it became apparent that he was unwell.

### **Crown Submissions**

[14] Ms Sun very helpfully provided written submissions. She started by offering her sincere condolences to Kyle Stewart's mother and other family members.

[15] She invited me to make findings in relation to the date, place, time and cause of death. In terms of section 26(2)(d), (e), (f) and she asked me to make no findings. In terms of section 26(2)(g), she advised that investigations had been made by the police to try and trace the source of the cocaine ingested by Kyle Stewart, but these had proved negative and there were no further leads.

**Submissions on behalf of the Family**

[16] Ms. Hodgson submitted that inquiry should consider whether the medical training the police constables received was fit for purpose at the time of the incident. PC Ramsay in particular had stated that he had also received CPR training in his previous employment. Whilst there was no issue taken by the family with the quality of CPR Kyle Stewart received, the question of whether an hour on a refresher course was enough was raised.

[17] Further, Ms. Hodgson submitted, SPELS training should be reviewed to include diagnostics and the treatment of overdoses in police custody.

**Submissions for the Chief Constable, Police Service of Scotland**

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

[19] He further submitted, given the question raised by the family in relation to medical training, that there had been no evidence that the training was not fit for purpose. It had to be remembered, he submitted, that custody staff are not medical professionals. The situation had been set out by Inspector Fleming – staff had to be trained in procedures how to react to medical emergencies when they occurred and hence the remote nurse provision for those in custody.

[20] There was no evidence led as to what it is considered officers should be trained to do. There is a whole range of medical conditions requiring diagnosis. If one intends to train custody staff or anyone else to diagnosis level, then that is to describe a health

care professional. It is not possible to train custody staff to a diagnostic level – that is the domain of medical staff.

[21] The focus, Mr. Reid submitted, had to be on the care that Kyle Stewart received in custody when it became apparent that he was unwell.

### **Discussion and Conclusions**

[22] The factual evidence was not in dispute. As well as having the benefit of the majority of the incident being recorded, the statements provided by the witnesses and the parole evidence gone through in some detail ensured that everything was fully covered. Although video footage was not played in full when clips were put to witnesses for comment, I watched each recording all the way through and noted the additional detail from it.

[23] Sadly, it is now known that no amount of effort or medical intervention would have been successful. All officers who dealt with Kyle Stewart stated that had Kyle let them know that he was concealing drugs, or had they had any suspicion whatsoever that this was the case, he would have been immediately taken to the accident and emergency department at the local hospital. There was some discussion surrounding the procedures which might have been expected in that event, including taking an x-ray. Even so, it is not certain that Kyle's life might have been saved even then.

[24] As well as the benefit of video footage of events surrounding the apprehension of Kyle Stewart, the booking in procedure, and everything that transpired from the moment Kyle was transferred to MC2, I have also read the initial accounts, witness

statements, and PIRC statements of the police witnesses Jellis, Anderson, MacKinnon and Stuart as they had adopted their statements into their evidence.

[25] Police staff are not medical professionals and cannot be expected to view prisoners from a medical perspective. They do not have and should not be credited with diagnostic abilities. In this case, as viewed on PC Ramsay's bodyworn camera footage, as soon as Kyle's situation changed, he stated that he was going to start CPR. Almost immediately thereafter, the paramedic, Clair Alldritt, arrived and, on being apprised of the position, asked him to start CPR until she got her equipment set up. Thereafter, police officers took it in turns to administer CPR and operate the oxygen mask. This shows that the medical skills deployed by the police officers were timeous and competent.

[26] In respect of the family's concerns that police officers should be trained to deal with overdoses in police custody, this argument may have been more appropriate in the event of an opiate overdose. There was evidence from Inspector Fleming that operational police officers (not custody officers) in three areas in Scotland are currently trialling a nasal spray to counter the effects of a suspected opiate overdose. It is not known whether the trial will be rolled out nationwide, or rolled out at all. In any case, it is not relevant to this inquiry as the cause of death was not as a result of opiate intoxication. It is also worthy of note that the antidote to an opiate overdose, namely narcan, was in fact administered to Kyle by the paramedic whilst still at the police station. Inspector Fleming was also of the view that the police officers' conduct was wholly appropriate during the whole time Kyle was in police custody.

[27] Whilst I was invited by Ms. Hodgson to make findings in terms of 'section 24', I took this to be a slip of the tongue and considered that she was referring to section 26(4). That said, there was no detail given of what these findings should entail, nor was there an evidential basis for any such determination. No criticism of the search was made on behalf of the family. Questions were asked about the searches, and, other than the query in respect of a failure to search the mouth (which I shall come on to address), no criticism was made of any of the actions taken by the police officers.

[28] In considering the adequacy of the level of training of the police officers, I agree with Mr. Reid's submission that, even with additional training, it is difficult to see how one could expect custody staff to make a medical diagnosis. PC McKinnon wondered if Kyle was having an epileptic fit. The amount of training needed to differentiate between the number of causes and types of fit is difficult to imagine. As well as no defect whatsoever with the training given to police officers, on this occasion what had to be considered was that there was no defect with the care and treatment given to Kyle Stewart when it became apparent that he was in distress. There was no evidence that any other treatment or equipment was more appropriate. Police Officers did what was appropriate - they tried to keep an airway clear, put Kyle into the recovery position and started CPR when it was apparent that Kyle had gone into cardiac arrest at the same time paramedic arrived.

[29] As already agreed by parties, even if there had been a doctor present, it doesn't appear that anything could have been done to save Kyle's life. Unfortunately, death was unavoidable given the level of cocaine taken.

[30] I consider it necessary to address the lack of search of Kyle's mouth. Reasons have already been given above as to why PC Ramsay did not do this. All officers were of the view, from their close dealings with Kyle, that he had not been concealing drugs within his mouth. There is a sound evidential basis for such a view being held.

[31] The fact that Kyle may have hidden the black plastic bag with cocaine in his mouth cannot be ruled out completely. However, the reasons why it should be accepted that the view reached by police officers that this could **not** have been the case was an appropriate one and one which was reasonably held. This was based on the following factors:

1. Size – PC MacKinnon's evidence was that she had been close to Kyle, and would have noticed if he had had anything in his mouth. She saw the bag when it was taken out of Kyle's mouth. She made the comment that, had that bag been in his mouth, he would have been unable to speak without it being noticed or his speech being severely affected.
2. On being apprehended by PC Ramsay and PC Jellis, Kyle was seen and heard to cough whilst smoking a cigarette at his house. From the point he was placed in the police van, Kyle was under constant observation by PC Jellis.
3. Although he didn't say much, Kyle conversed with police officers and answered questions put to him clearly. On CCTV footage of the charge bar, he had his head down slightly whilst answering the welfare

questions. At no time did anything fall out or did Kyle appear to adjust anything in his mouth after speaking.

4. On carrying out a full search, it was considered that the nature of Kyle's disability was such that he would have been unable to secrete anything in his mouth unnoticed.

[32] Subsequently, had Kyle managed to conceal the drugs within his mouth for that time, there are further factors which, on a reasonable inference may support the fact that the package had not been in Kyle's mouth. These factors are:

1. Kyle asked for and was seen to drink coffee.
2. From the medical notes, Kyle had aspirated and, on the testimony of PC Ramsay and what can be seen on the video footage, a significant volume of liquid was in Kyle's mouth when police officers put him on the floor into the recovery position and put his head down to drain the fluid. The officers are heard on camera commenting that it was draining away well. One might have expected anything in the mouth to have come out.
3. The genuine surprise and disbelief expressed by the police officers (I was particularly struck by the parole evidence of PC Anderson who expressed a heartfelt disappointment and dismay when recalling the moment) when the black plastic was taken out of Kyle's mouth. PC Ramsay immediately assumed that it had been the CPR attempts which had dislodged the bag. From initial statements, words like "regurgitated" were used and the immediate assumption was that it had been ingested. This suggests that,

notwithstanding the background of Kyle having a 'drugs marker' on his record and an intimate search having been suggested by officers, officers had no prior reason to suspect that Kyle may have had drugs in his mouth.

4. The autopsy report mentioned that an area of pallor in the oesophagus "may represent patchy post mortem change or may have been the result of compression by a previously removed foreign object."

[33] Having taken all these factors into account, therefore, I do not consider that there is anything which could have been done by police officers, nor could they have taken any further reasonable precautions, made any improvements to their system of working, introduced a system of working or any further steps which might have realistically prevented other deaths in similar circumstances.

[34] I am aware that Kyle's mother viewed proceedings and I am grateful to her that she chose to do so. I hope that she and other family members will receive some comfort and reassurance at the genuine care and compassion Kyle received. I hope also that there is reassurance that all of the police officers involved with Kyle performed to the very best of their abilities to try and save Kyle. They are to be commended for their response, as are the medical staff who attended to Kyle and made every effort to save his life.

[35] Lastly, I once again express my sympathy to the family of Kyle Stewart for their loss.