

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

[2018] FAI 25

B95/18

DETERMINATION

BY

SHERIFF MARGARET M NEILSON

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

into the death of

ANDREW MACDONALD THURSBY

INVERNESS, 10 July 2018

The Sheriff, having resumed consideration of the Fatal Accident Inquiry into the death of Andrew MacDonald Thursby, determines in terms of section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 ("the Act") as follows:-

In terms of section 26(2)(a) (when and where the death occurred)

The late Andrew MacDonald Thursby, born on 30 March 1940 and resident at Beaufort Castle, Beauly, died at Raigmore Hospital, Inverness at 20.00 on 31 December 2016.

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

The accident resulting in the death of said Andrew MacDonald Thursby occurred at around 12.30 on Saturday 31 December 2016 on the A862 Inverness to Ardullie road,

approximately 300 metres north of the Muir of Ord 30 mph limit and near to the entrance to a property called The Dower House.

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

The cause of the death of said Andrew MacDonald Thursby was multiple injuries secondary to a road traffic collision.

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

The cause of the accident resulting in the death was said Andrew MacDonald Thursby, whilst driving his Vauxhall Corsa motor car registration number SH51 VTY, crossing into the opposing lane while negotiating a right hand bend and colliding with another vehicle as he did so. It is not known why he crossed into the opposing lane.

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

There are no precautions which had they been taken might have avoided the accident or the death.

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

There were no defects in any system of working which contributed to the death of Andrew MacDonald Thursby.

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

There are no other facts which are relevant to the circumstances of the death of Andrew MacDonald Thursby.

It is not appropriate to make any recommendations in terms of section 26(1)(b) and (4) of the Act.

NOTE

Introduction

[1] This inquiry was held in terms of section 1 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 and was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017. This was a mandatory inquiry in terms of section 2 of the Act as the deceased died as a result of an accident in the course of his employment or occupation.

[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 1 of the Act.

[4] At this inquiry, parties were represented as follows:- for the Crown – Mr Geoff Main, Procurator Fiscal Depute and for the deceased’s employers – Ms Angela McCracken, solicitor.

[5] I was grateful to both representatives for their sympathetic and professional conduct of the inquiry, in particular the fact that they had agreed a lot of evidence in advance which allowed a joint minute to be lodged and a number of witnesses to be countermanded. I also appreciated their concise and considered submissions. The joint minute contained a significant number of crucial facts relating to the cause of death and others relevant to the ‘mandatory findings’.

[6] The Crown lodged an inventory of productions as follows:-

1. Post mortem report
2. Collision investigation report
3. Vehicle examination report

[7] I heard oral evidence from Mary Alison Macaulay, Trina Murray, Thomas Simon Morrison, Police Constable John McLaughlan and Police Constable Iain Leslie Mathers.

[8] Other witnesses on the Crown list of witnesses did not require to be called because of the existence of the joint minute which had been entered into and read into the record, which included the evidence of those witnesses.

[9] I found all witnesses who gave oral evidence to be credible and generally reliable. I had the impression that they were all trying to assist the inquiry as much as possible.

[10] Mary Alison MacAulay is the house manager at Beaufort Castle where Mr Thursby worked. She was able to provide the background in terms of Mr Thursby's role and duties and what he had been doing in the course of his employment on the day of the accident. I found her to be entirely credible and reliable. What came over most of all was her sadness at the loss of a much valued fellow employee and friend.

[11] Two of the witnesses (Trina Murray and Thomas Morrison) saw the accident happening and were in fact caught up in it themselves. They were clearly, and understandably, still upset by the events that they had witnessed. Each gave their evidence in a clear and straightforward manner. Each spoke of the accident happening in a split second. They had each witnessed the accident from a different place and perspective and unsurprisingly there were slight differences in their accounts. On all material aspects, however, their evidence was consistent and I had no reason to doubt it.

[12] Two police officers also gave evidence. Police Constable Iain Leslie Mathers, based at the Road Policing Unit at Dingwall, was the author of the Collision Investigation Report which was lodged in process. He was taken through his report and gave a clear explanation of his findings. Police Constable John McLaughlan was jointly responsible for the preparation of the vehicle examination report. He was taken through it and explained his findings. I found both police officers to be credible and reliable witnesses.

Summary

[13] Andrew Macdonald Thursby was born on 30 March 1940, and, at the time of his death, resided at Beaufort Castle, Beaulieu. He was employed by Beaufort Castle as a handyman. He was a time-served joiner but undertook a variety of tasks, being responsible for repair and maintenance of the Castle, the ten letting cottages and the farm buildings on the estate. He had worked at the Castle with the previous owner and continued when the present owner purchased it in 1995. In 1998, he moved into a staff flat within the Castle, the flat being provided as part of his employment. He was a long serving member of staff who was like a friend of the family and was entrusted to just get on with his job. Although his work hours were normally 08.00 – 17.00 they could be subject to change if additional jobs required to be done. He had a very flexible working relationship due to his age and the length of time he had worked at the Castle. He could be expected to deal with anything, whenever it was required, day or night. He knew what had to be done on any given day and would be trusted to get it done. He had a unique position within the organisation.

[14] Mr Thursby was the owner of a blue Vauxhall Corsa motor car registered number SH51 VTY. On 31 December 2016 he had wanted to do some shopping for himself and had discussed with the house manager, Mrs MacAulay whether he would be better off going to Inverness or Dingwall. They decided that Dingwall would be better. She had asked him to get three things for the castle; napkins, flowers and some muffins that the owner particularly liked. He was also getting some things for himself. They spoke on a number of occasions after he had left, including him calling her from Tesco in Dingwall. He had used his own car that day which he was perfectly entitled to

do. Equally he could have used one of the castle pool cars which were available to him as well.

[15] Trina Murray was driving along the A862 sometime after midday on 31 December 2016. She was due to conduct an interview at Muir of Ord. She was driving behind Mr Thursby's blue Vauxhall Corsa in her own Mini Cooper. Suddenly she saw the blue Vauxhall Corsa veering to the other side of the road and collide with an oncoming pickup truck. She tried to avoid the incident but the Vauxhall Corsa spun round and hit her car. As her car was hit the engine from the Vauxhall Corsa came out and landed some distance away in a field. She got out, called 999 and spoke to Mr Thursby. Another gentleman came out of a house and cut the seatbelt off him. She spoke to him and reassured him. He was unable to say much. She had had no concerns about his driving until his car veered. She had been travelling about 50 to 55 mph and thought he would have been travelling at a similar speed. It was over in seconds. There was no prior warning. It had come out of the blue. He had not been indicating to turn right. He just went round the corner and veered straight off into the pickup truck.

[16] Thomas Morrison is a farmer who lives near to the locus of the accident. He was travelling on the A862 in the direction from Muir of Ord to Conon Bridge in a Toyota Hilux around midday on 31 December 2016. He was going to turn off in around 100 metres. He saw a car suddenly come towards him. He thought he saw the tyres turn left slightly then the car came across the carriageway towards him. He had nowhere to go. The other vehicle was on his side of the road and hit the front of his vehicle. The other vehicle was hit just behind the front wheel behind the engine. The other vehicle spun to his right and hit the car travelling immediately behind it (the Mini Cooper driven by Ms Murray). His own vehicle stopped immediately as a result of the impact, more or less

where the collision happened. He only saw the car for a few seconds as it came round the corner. He saw the tyres flick to the left. It looked like the driver was maybe going to veer left then overcorrected himself and came towards him. He had not noticed anything about the car before that. The other vehicle would have been doing around 50 mph. He was doing around 40 mph himself. He could not take evasive action. There was nowhere he could have gone.

[17] At 12.40 on Saturday 31 December 2016, Police Constable Colin Marshall was informed by radio that reports had been received from the ambulance service of a three-vehicle road traffic collision on the A862 road near to Muir of Ord. He attended immediately with his colleague Police Constable Housby and arrived at the locus, which was confirmed as being on the A862 Inverness to Arduillie road, approximately 300 metres north of the Muir of Ord 30mph limit and near to the entrance to a property called The Dower House. The carriageway at this location negotiates a series of bends with the collision taking place on a right hand bend for vehicles travelling south towards Muir of Ord.

[18] On arrival, the police officers observed that three vehicles had been involved in the collision. Within the southbound lane, facing towards Muir of Ord was a dark blue Mini Cooper registration number NG16 ONW with its nearside wheels resting on the nearside verge. This vehicle had damage to the front and front nearside. No persons were within this vehicle. Behind the Mini Cooper was a blue Vauxhall Corsa motor vehicle, registration number SH51VTY which was facing north on the southbound verge. This vehicle had sustained extensive front end and nearside impact damage which had resulted in the engine being projected a considerable distance from the

vehicle and landing in a field. Within the driver's seat of this vehicle Mr Thursby was being assessed by paramedics. The vehicle airbags had been activated.

[19] Partially on the north bound carriageway and the verge facing towards Conon Bridge was a blue Toyota Hilux motor vehicle registered number SY64KVW. Behind this vehicle was a twin axle trailer which the officers assumed had been towed by the Toyota Hilux. The Toyota Hilux had sustained front end impact damage resulting in the activation of the vehicle airbags and detachment of the trailer. No persons were within this vehicle.

[20] The Fire and Rescue Service arrived at the locus along with other Police units and the carriageway was closed. Collision investigators were requested to attend.

[21] Ms Murray confirmed to police officers that she had been the driver of the Mini Cooper registered number NG16ONW and provided a negative breath test.

[22] Mr Morrison confirmed to police officers that he had been the driver of the Toyota Hilux registered number SY64KVW and also provided a negative breath test.

[23] Mairi MacIver is a paramedic who attended the locus with her colleague Caroline Hafiz. On arrival at 12.43, they saw a blue Vauxhall Corsa on the left hand side on the verge leaning against a wall. The car was badly damaged. They could see a male, Mr Thursby, sitting across the front seats of the Vauxhall Corsa and were made aware that he was the only casualty. He was lying with his head on the passenger seat side and his legs were still on the driver's side. They began to assess his injuries and undertook a primary survey from which they deemed his injuries to be life threatening. The paramedics could not carry out a full assessment because they could not access him in the car. Mr Thursby was conscious at this time and was able to tell them his name. The paramedics noticed an obvious fracture to his left leg and his appearance suggested that

he was suffering from shock. He also had an injury to the back of his head that was bleeding slightly. At this point, the Fire and Rescue Service carried out his rapid extraction.

[24] Mr Thursby was then placed in the ambulance for the paramedics to carry out a full assessment. They found him to have extensive abdominal injuries and potential chest injuries. It was assessed that his injuries were time-critical and potentially life threatening and that he had to go to hospital quickly. On the way to hospital, his condition continued to deteriorate, despite attempts to stabilise him.

[25] Mr Thursby arrived at Raigmore Hospital and received emergency treatment including a laparotomy. However all attempts to save his life failed and Doctor Ian Skipsey pronounced life extinct at 20.00 on 31 December 2016.

[26] On 5 January 2017, under the supervision of Dr Natasha Inglis and Dr Grant Stenhouse, Consultant Pathologists, Dr Gavin Laing, Specialty Registrar, undertook a post mortem examination of the deceased. The conclusion was that he died of multiple injuries secondary to a road traffic collision. The post-mortem examination did not reveal any conclusive evidence of any underlying medical condition which could have precipitated the collision and the medical certificate of cause of death was completed as follows: I (a) Multiple injuries due to (or as a consequence of) (b) Road traffic collision

[27] CCTV images from Tesco, Mart Road, Dingwall showed Mr Thursby paying for items and leaving the store at 1200 hours on 31 December 2016. His till receipt showed he had purchased four bouquets of flowers, four packs of napkins, four newspapers and three packs of muffins.

[28] Dingwall town centre CCTV identified a blue Vauxhall Corsa motor vehicle believed to be that driven by Mr Thursby, (although the registration number of the

vehicle could not be identified on the footage) leaving Dingwall in the same direction of travel as he could have taken to leave Dingwall and travel to the locus of the incident.

The timing from the Tesco till print, Tesco CCTV and the Dingwall town centre CCTV, all place the deceased leaving Tesco and travelling through Dingwall between approximately 12.00 and 12.10 hours on 31 December 2016.

[29] Police Constable Iain Mathers, who is a road traffic police officer based in Dingwall and whose core role is as a collision investigator, prepared a collision report (Crown Production 2) with his colleague Police Constable David Housby. He had been made aware of the accident around 12.50 and attended shortly afterwards. It was overcast and the road surface was damp. There had been light rain but it had stopped. The photographs in his report show the bend at the locus of the accident. It is not a particularly tight bend. There is a 60 mph speed limit. The 30 mph limit stops 100 yards further back. Most drivers would take the bend at around 45 to 50 mph but it could be driven at 60 mph. The vehicles were all still at the scene in the positions as described by the first officers who had arrived. There was considerable damage to the front and front offside of the Toyota Hilux which was found facing north. The load area was twisted and there was damage to the rear panel where the trailer had struck it. It had broken from its connection. The Vauxhall Corsa was on the opposite side of the road also facing north. There was considerable damage to the front, predominately to the nearside. The engine had detached from its housing and as the Vauxhall Corsa had rotated the engine had been thrown from the vehicle. The seat belt was in place but had been cut by someone assisting the driver. The Mini Cooper was approximately 3 metres south of the Vauxhall Corsa. There was damage to the front panel bumper and front nearside wing and scraping along the nearside bodywork. Skid tests were carried out. The results,

while low in terms of the Highway Code, were still acceptable for cohesion on the damp road surface. The damp surface might have been a very small contributory factor to the accident if any as it would allow a vehicle to slide slightly more than had the surface been dry. On the Vauxhall Corsa the rear tyres were underinflated but there were no mechanical defects which might have contributed to the accident. Speed calculations could not be carried out but there was no evidence of excessive speed being a factor. He concluded that the Vauxhall Corsa had veered across the road from the damage caused to both vehicles and the gouge marks found in the northbound lane. 95% of the damage to the Vauxhall Corsa would have occurred in the initial collision with the Toyota Hilux. The damage from the collision with the Mini Cooper was very slight and had caused some scraping. He concluded that the driver of the Vauxhall Corsa had lost control of the vehicle but could find no obvious reason for it to have happened. It could have been inattention or inappropriate steering or a combination of both. There had possibly been a jerky steering input when the driver realised he was veering left. There was no evidence of excessive speed. There was no drink or drugs in anyone's system. PC Mathers had taken the tyre pressures himself at that time. The rear tyre pressures were 13 psi which is very low. That could have contributed to the accident. He thought that the driver probably lost control of the vehicle then the low rear tyre pressures would have made it more difficult for him to regain control. That would have destabilised the car while driving round the right hand bend which had followed the earlier left hand bend.

[30] Police Constable John McLauchlan, who is a police officer in the road traffic policing unit in Dingwall, examined the three vehicles involved in the accident and prepared a report (Crown production 3). It described the damage to the Vauxhall Corsa

in particular the extensive frontal and nearside damage, the fact that the engine, radiator and battery were missing and the nearside door glass and nearside rear window glass was smashed. The deceased had been wearing a seat belt. It had been cut off after the accident. The tyre pressures were, front offside, 26 psi, front nearside 0 psi, rear nearside, 10 psi and rear offside, 12 psi. The normal pressure for this type of vehicle would be around 28 psi. The pressures of the rear tyres were very low. There was no evidence that they had been damaged in the collision and their appearance suggested that had been the running pressure of those tyres. There was cracking to the side walls which was consistent with the tyres running on low pressure for an extended period. The wear pattern was also consistent with that. If a car is driven with underinflated tyres this could cause the car to skid. If a driver were driving in a straight line it may not be noticeable, but on a bend, if the back end went, low tyre pressure could cause a skid. On a tighter bend the potential effect could be greater. Apart from the underinflated rear tyres there were no other pre collision defects which might have contributed to the accident. He had also examined the Toyota Hilux and the Mini Cooper which were involved in the accident. Neither had defects. Both were relatively new and in good condition.

Submissions

[31] Mr Main invited me to make findings in relation to the date, place, time of death and the accident resulting in the death and the cause of death, all in line with the joint minute and the oral evidence. None of this appeared to me to be in any way controversial. In terms of section 26(2)(d) he asked me to find that the cause of the accident was Mr Thursby crossing into the opposite lane. He felt that while the court

had been given possible scenarios about what had happened in oral evidence from eye witnesses and the police accident collision report (possible overcorrection or low tyre pressures), he was not sure that it was strong enough to come to any conclusion as to why the deceased had crossed over to the other carriageway. In terms of section 26(2)(e), (f) and (g) he asked me to find that nothing relevant arose.

[32] Ms McCracken adopted the Crown submissions in their entirety.

Discussion

[33] In this case the inquiry had the benefit of direct eyewitness evidence from two people who witnessed the accident. In addition it heard oral evidence from two Police Officers who arrived at the scene shortly after the accident and there was agreed evidence contained in a joint minute from paramedics who arrived at the scene very soon after the accident. I concluded that all of these witnesses were entirely credible. It was clear from observing the two witnesses who were caught up in the accident that they had been affected and troubled by witnessing it.

[34] The locus of the accident was spoken to by the two eye witnesses and the Police Officers who attended and prepared their reports and is in no doubt.

[35] From the oral evidence of the eye witnesses, the till receipt and CCTV from Tesco, the Dingwall town CCTV and the timings of calls to the emergency services it is clear that the accident must have occurred at around 12.30 on 31 December 2016.

[36] The cause of death is outlined in the post-mortem report and agreed in the joint minute as is the time and place of death.

[37] Mr Thursby had a somewhat unusual working pattern, because of his very lengthy service at Beaufort Castle and unique status there, but it was evident from the

evidence of Mrs MacAulay that he had been in the course of employment at the time of the accident which caused his death, albeit that he was also carrying out errands for himself at the same time. She spoke to having a lot of contact with him on a daily basis and the fact that he could use his own car for work purposes if he wished although he could also use pool cars if he preferred. When he said he was planning to go to the shops she had asked him to get various items for the Castle. Her evidence was poignant as she spoke to the fact that they had been planning to make stovies later that day, that Mr Thursby always enjoyed Hogmanay and had been looking forward to spending that evening with the Castle owners and other staff and that there had been a lot of banter with the younger staff in the morning. She made it clear in her evidence that she had very fond memories of that part of the day.

[38] From the evidence before me there can be no doubt that Mr Thursby's car veered across the road and collided with Mr Morrison's pickup resulting in the death of Mr Thursby. What is less clear is why this might have happened. Mr Morrison was fairly sure that he had seen the wheels of the Vauxhall Corsa flick to the left before it veered to the right towards him. Ms Murray saw the Vauxhall Corsa suddenly veer off course without warning. Neither of them thought that the Vauxhall Corsa was being driven at excessive speed. The police investigations did not find any suggestion of excessive speed either. There was no suggestion of drink or drugs in Mr Thursby's system. That was clear from the post-mortem report. That report also makes clear that there was no conclusive evidence found of any underlying medical condition which might have explained the collision. The road surface was slightly damp but the police officer who was asked about this in evidence did not think it would have been a factor or, if it was, only a very small contributory factor. Both police officers who respectively

carried out the vehicle examination report and collision investigation report spoke to both rear tyres being markedly underinflated and that this was not as a result of the accident. Indeed one of the officers gave clear evidence that in his opinion the vehicle had been run with the rear tyres at a very low pressure for some considerable time and gave cogent reasons for this opinion. Both police officers explained the consequences of driving a vehicle with such underinflated tyres, including the fact that it would be more difficult to control the vehicle on a bend. Both provided possible scenarios, such as Mr Thursby having lost concentration and veering to the left slightly (as witnessed by Mr Morrison) and then overcorrecting causing him to veer to the right, or veering to the left and then the underinflated rear tyres causing him to lose control on the bend making it impossible for him to correct. I agree with Mr Main that while these are indeed possible scenarios, the evidence is such that it is simply not possible to say exactly why Mr Thursby's Vauxhall Corsa veered to the right and hit Mr Morrison's Toyota Hilux. Going beyond determining that Mr Thursby's car crossed over to the other carriageway thus causing the accident would involve speculation on my part. Accordingly I will limit my findings on that basis.

[39] At the start of the inquiry and at the end I extended my condolences to Mr Thursby's family, who, while not formally represented at the inquiry, observed throughout. I was joined in so doing by the procurator fiscal depute and the solicitor representing Mr Thursby's employers. I would wish formally to repeat those condolences in this determination. Mr Thursby was clearly a much loved family member and a much valued and respected employee who was considered a friend as well as an employee. It was very clear from the evidence that he will be sadly missed by those who knew and worked with him.