

SHERIFFDOM OF NORTH STRATHCLYDE AT DUNOON

2020 FAI 47

DNN-B26-20

DETERMINATION

BY

SHERIFF THOMAS WARD

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

into the death of

IAIN NEIL MacNICOL

Dunoon, 9 December 2020

The Sheriff, having considered the information presented at the Inquiry Determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc.

(Scotland) Act 2016 that:

1. In terms of Section 26(2) (a), the death of Iain Neil MacNicol occurred on a remote hillside on the north side of a valley within the boundary of Turnalt Farm, Barbreck, Lochgilphead, Argyll on 1 July 2018.
2. In terms of Section 26(2) (b), the accident resulting in the death occurred in a remote hillside on the north side of a valley within Turnalt Farm, Barbreck, Lochgilphead, Argyll on 1 July 2018.
3. In terms of Section 26(2) (c) the cause of death was:

4. 1 (a) A neck injury due to:
 - 1(b) Quad bike accident (driver).
5. In terms of Section 26(2)(d) the accident was caused by one, more than one, or all of the following factors:
 - i. A pre-existing morbidity, namely heart disease
 - ii. Rough terrain
 - iii. Failure to follow a safe route
 - iv. Partially obscured visibility
 - v. Lack of attention
 - vi. Driver confidence
6. In terms of Section 26(2) (e), no precautions could reasonably have been taken which might realistically have resulted in the death being avoided.
7. In terms of Section 26(2) (f), there were no defects in the system of working which contributed to the death.
8. In terms of Section 26(2)(g), of the said Act that the following facts are relevant to the circumstances of Ian Neil MacNicol's death:
 - i. That Mr MacNicol was not trained to drive a quad bike by an approved training provider:
 - ii. That Mr MacNicol's full vision was reduced by a plastic fish box attached to the front of the quad bike:
 - iii. That Mr MacNicol was not wearing a safety helmet.

9. It is recommended in terms of section 26(1) (b) of the Act that:
- (a) Anyone working on a farm and using a quad bike should undertake a course of driving instruction before being allowed to use a quad bike.
 - (b) Any adaptations which obscure the driver`s full vision should not be attached to a quad bike.
 - (c) All persons driving a quad bike should wear a safety helmet.

NOTE

Introduction

[1] Under the Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016 an Inquiry was held on 8 December 2020 at Dunoon Sheriff Court by teleconference. Prior to that date Mr Fauré, Procurator Fiscal Depute, and Iain MacNicol, son of the deceased, entered into a joint minute of agreement which essentially covered all of the facts relating to the death.

[2] Because of the current pandemic the pre-Inquiry callings of the case and the Inquiry itself were heard by teleconference. Because a joint minute had been signed by Mr Fauré and Mr MacNicol no evidence was led.

[3] I also had prior to 8 December 2020, the Crown submissions. This inquiry was a mandatory inquiry under Section 2(3) of the Inquiries into Fatal Accidents and Sudden

Deaths etc. (Scotland) Act 2016, the death having occurred in Scotland whilst the deceased was acting in the course of his employment.

[4] The joint minute was in the following terms:

“Stuart Fauré, Procurator Fiscal Depute for the Crown
Iain MacNicol, son, for the family of Mr Iain MacNicol

Do hereby concur in stating to the Court that the parties have agreed that the following facts have been agreed and can be admitted into evidence without the necessity of evidence being led:

1. Mr MacNicol was aged 76 years at the time of his death having been born on the 5th September 1941. He was a farmer and one of the partners in the family business John MacNicol and Sons since the 1970s. His two brothers were the other partners in the business, Alistair MacNicol and James (Hamish) MacNicol. Their farm extended to some 4500 acres and they farmed blackface sheep and beef cattle. He lived with his wife Anne MacNicol at Turnalt Farm, Barbreck, Lochgilphead, Argyll. Mr MacNicol was very experienced and knowledgeable of the terrain on the hills on Turnalt Farm. He had been a shepherd on the farm all his working life, a little over sixty years. He had walked the hills until April 2012. He bought a Quad bike to assist him in covering the ground.

2. At approximately 0600 on Sunday 1st July 2018, a group gathered at Turnalt Farm for the purpose of going out and 'gathering' the sheep in off the hillside in order to mark the lambs and shear the ewe hoggs. This had become something of an annual event always occurring in and around the beginning of the month of July. On this occasion the group consisted of family and friends namely Mr MacNicol's brother Hamish MacNicol, Robert Shaw Sr, Robert Shaw Jr, Iain Shaw, Robert Graham and his daughter June Graham.

3. They gathered as a group at about 6:00am and set off in two pickup trucks. At approximately 6:45am they could go no further by motor vehicle so they proceeded on foot save for Mr MacNicol and Mr Shaw Snr who were riding two all-terrain vehicles (hereinafter referred to as quad-bikes). Mr MacNicol's quadbike was a Honda Fourtrax 420 registered number SF12 HRN. Both men also had portable two-way radios. The plan was for the group on foot to stay within shouting distance of one another and Mr MacNicol and Mr Shaw Snr to stay within radio contact with one another. The group as a whole went out onto the hillside and began gathering in the sheep, driving them toward an area called the 'fank' (a sheep pen).

Mr MacNicol had not undertaken any form of formal training by an approved quad-bike provider nor was he wearing a safety helmet. He had received some basic training in the operation of a quadbike from his son, Mr Iain MacNicol. The terrain was rough and there were no marker posts highlighting safe routes to follow nor were there any posts indicating unsuitable terrain for quadbikes to travel over.

Soon after this exercise began Mr MacNicol was not responding to radio requests from Mr Shaw Snr and had not been seen for approximately ten minutes. The last time he had been seen was approximately 6:50am and it was now 7:00am. Mr Shaw Snr shouted to his son, Mr Shaw Jnr to go to the top of a nearby ridge and determine whether he could see Mr MacNicol.

At the top of the ridge Mr Shaw Jnr saw what he thought was a wheel in the air and shouted his concerns to his father. His father went to investigate on his quadbike passing his son on the way.

Mr Shaw Snr found Mr MacNicol lying face down on the ground with the quadbike lying on top of him. The quadbike was upside down and had turned through 180 degrees. Mr Shaw Snr managed to move the quadbike off Mr MacNicol who had remained unresponsive throughout and was displaying no signs of life. Mr Shaw Snr formed the view that the accident had been fatal.

The locus was on a remote hillside on the north side of a valley in which the farm was situated. The surrounding land was used for rough grazing for sheep. The quadbike was near the bottom of the down slope before it levels off. In close proximity was an almost vertical drop of approximately 0.5 of a meter whereas the rest of the gradients on the slope varied but at no other point on the downslope was the gradient so severe. The ground was covered in rough grass, heather and blaeberry. Mr Shaw Jnr arrived shortly thereafter and then left to summon help. Mr Shaw Snr sought out others in the party to let them know what had happened.

An air ambulance arrived on the hillside at approximately 08:15am and its crew including Dr Euan McIntosh attended to Mr MacNicol. His life was pronounced extinct at 08:18am by Dr Euan McIntosh. Thereafter Mr MacNicol was removed from the hillside and flown back to his farm by the air ambulance and from there he was taken to the Mid-Argyll Hospital in Lochgilphead.

On the same day, the 1st July 2018 the quad-bike Mr MacNicol was riding at the time of the accident removed to the Stag Garage, Lorne Street, Lochgilphead pending examination.

Mr MacNicol had in the past been distracted by looking at his dogs and the sheep rather than focusing on the route he was taking.

Mr MacNicol had been taking prescribed medication in relation to a pre-existing heart condition. He took his medication, one tablet, each day without fail.

On the morning of the ingathering Mr MacNicol was late to join the party. This was an unusual occurrence, normally he was first there. He offered no explanation for his lateness.

Mr MacNicol was prone to taking "turns" which were infrequent however usually lasted for a short time during which time he would remain stationary and wait for them to pass.

Mr MacNicol's quadbike had been adapted by the attaching of a large plastic fish box on the front of the quadbike. This was not factory fitted.

Post Mortem Examination

3. On the 9th July 2018 at the Queen Elizabeth II University Hospital, Glasgow a post mortem was conducted by Consultant Forensic Pathologist Dr Julia Bell. The cause of death was recorded as 1a Neck Injury due to 1b Quad Bike accident (driver).

4. Dr Bell also recorded in her report that Mr MacNicol had a pre-existing morbidity, he suffered from heart disease and she was unable as a result of this pre-existing condition to exclude the possibility that this condition played a part in his death - either in the events leading up to the accident or making him more susceptible to a cardiac arrest following the neck injury.

Registration of Death with Registers of Scotland

5. The death was recorded by the Registrar after investigation by the Crown as at 1a Neck injury 1b Quad bike accident (driver). The death was registered on the 10th July 2018.

HSE investigation

6. The Health and Safety Executive initially investigated the matter given Mr MacNicol, a farmer, died in the course of his employment, whilst herding sheep. The investigation was undertaken by Health and Safety Inspector Alexandra Brown and she was assisted by her colleague Inspector Peter Dodd.

Her investigation revealed that the quadbike was mechanically sound and did not contribute to the accident which resulted in Mr MacNicol's death. She did however highlight, which was consistent with Inspector Dodd's observations that the rough terrain, failure to follow a safe route, partially obscured visibility, lack of attention and driver competence all could either individually or collectively be considered possible contributing factors in the accident. She also recognised and commented on the observations made by the Consultant Forensic Pathologist Dr Bell accepting that Mr MacNicol's pre-existing heart condition may have contributed to the accident either in the events leading up to the accident or to the cardiac arrest that followed the accident. No proceedings were recommended in these circumstances given Mr MacNicol was self-employed and there were no employees.

The following are Crown Productions in this Inquiry. In respect of these productions the following remarks are made:

Crown Production One: is a true and accurate copy of Health and Safety Executive (HSE) Guidance note re Quad-bikes – Agricultural Information Sheet 33. (Revision 1)

Crown Production Two: is a true and accurate copy of a Health and Safety Executive (HSE) Report into the death of Mr MacNicol compiled by HSE Inspector Brown and dated 18TH February 2019. (counter signed by Cameron Adam)

Crown Production Three: is a true and accurate copy of photographs taken by Mr Peter Dodd on the 6th July 2018 at Stag Garage, Lorne Street, Lochgilphead showing quad-bike registered number SF12HRN. These copy photographs have not been retouched. Crown Production Three A: is a true and accurate copy of photographs taken by Mr Peter Dodd on the 24th July 2018 showing the locus of the accident and topography of the immediate area. These copy photographs have not been retouched.

Crown Production Four: is a true and accurate copy of the Post-Mortem report by Dr Julia Bell into the death of Iain MacNicol Snr dated the 27th September 2018.

Crown Production Five: is a true and accurate copy of the supplementary neuropathology report compiled by Professor Smith dated 3rd September 2018.

Crown Production Six: is a true and accurate copy of a toxicology report containing findings from blood and urine analysis Mr MacNicol compiled and signed by Hazel Torrance Forensic Toxicologist dated the 20th August 2018

Crown Production Seven: is a Notification to the Registrar of Births, Marriages and Deaths in terms of Section 28 (1)(b) of the 1965 Registration of Births, Deaths and Marriages (Scotland) Act. The Registration Notification was made on 10th July 2018. The document is a true and accurate record of the Notification.

Crown Production Eight: is a true and accurate copy of a Health and Safety Executive (HSE) report dated the 23rd October 2018 compiled by Mr Peter Dodd HSE Inspector.”

That joint minute was signed by the Procurator Fiscal Depute on behalf of the Crown and Iain MacNicol the next of kin. I have incorporated the joint minute into my formal findings.

Submissions

[5] Mr Fauré on behalf of the Crown concentrated his submissions in relation to Section 26(2) (g), namely, “any other facts that are relevant to the circumstances of the death”. He invited me to adopt a wide interpretation of this Section. I think in this particular case that submission is correct. It does not need to be a requirement for there to be a causal connection between “any other facts” and the death itself. The facts however require to be relevant to the circumstances of the death.

[6] The deceased in this case did not undertake any kind of formal training by an approved quad bike provider, nor was he wearing a safety helmet. The only training which he had was some basic training which was provided by his son, Iain MacNicol. This was important since the terrain was rough and there were no marker posts highlighting safe routes to follow nor were there any posts indicating unsuitable terrain for the quad bikes to travel over.

[7] The quad bike driven by the deceased had been adapted by the attaching of a large plastic fish box onto the front of the quad bike and this was not a fitted accessory. In addition the deceased was not wearing a safety helmet.

[8] Although in this case there is no indication that the eventual outcome would have been different if the deceased had been wearing a safety helmet, there is no doubt that it would be a prudent step for anyone driving a vehicle such as this to wear a safety helmet. Modern tractors, according to Mr MacNicoll, have roll bars in the event that they topple over. It does not seem to me that safety concerns finish at a farm's boundaries. In addition, it is I think important, that those who drive quad bikes are aware of the limitations of such a vehicle particularly in rough terrain. I consider that that some form of instruction should be given before someone is allowed to drive a quad bike off road and in terrain where there are no markers to show safe routes.

[9] The quad bike in this case had a large plastic fish box attached to the front of it. There is no doubt, looking at the photographs, that this would have impaired the driver's view of the terrain as he approached it. That in turn would preclude the driver from taking necessary avoiding action if obstacles were in front of the vehicle. The suggestion was made that only Honda factory fitted accessories should be fitted to a Honda Quad bike but I think that goes too far. As Mr MacNicoll pointed out in his response to that suggestion, that would mean that other non-Honda items would be prohibited. In my opinion anything which precluded clear vision should be prohibited.

Recommendations

[10] I would recommend therefore that

- a) Anyone working on a farm and using a quad bike should undertake a course of driving instruction before being allowed to operate the quad bike.
- b) Any adaptations which obscure the driver's full vision should not be attached to a quad bike.
- c) All persons driving a quad bike should wear a safety helmet.

Conclusion

[11] The recommendations which I have made seem to me to be self-evident. There is no doubt that there is an art in driving a quad bike and there is an owner's manual indicating the necessary steps which should be taken when driving up or down a hill or traversing one. The fact that the quad bike is open to the elements, and generally has no roll bar makes it all the more essential that the person driving wears some form of safety helmet in the event of the quad bike turning over. Nothing should obscure the driver's vision. Again that is self-evident.

[12] I thank the parties for their assistance in conducting the Inquiry. The deceased's son, Mr Iain MacNicol co-operated fully in the preparation and conduct of the Inquiry. In advance of the Inquiry he agreed all of the relevant facts and participated in a number of teleconferences in preparation.

[13] I send my condolences to the MacNicol family for their tragic loss.