

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT FORFAR

[2017] FAI 3

B332/16

DETERMINATION

BY

SHERIFF GREGOR MURRAY

**UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRIES (SCOTLAND)
ACT 1976**

into the Death of

JOHN WILLIAM PHILLIPS

Forfar, 24 December 2016

The Sheriff, having considered the evidence and the submissions of the Procurator Fiscal Depute and the agent for the Firm of AD Cochrane and Sons, determines for the purposes of s.6(1) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that:-

(i) At about 14.00 hours on 14 March 2013, in woodland approximately 400 metres north of Auchendorie Farm, Westmuir, by Kirriemuir, an accident occurred as a result of which John William Phillips was pronounced dead at approximately 14.05 hours that day.

(ii) The cause of said accident was Mr Phillips's failure to leave a sufficient hinge between the sink and second cuts he made to the trunk of a beech tree he was felling.

(iii) The causes of Mr Phillips's death were (a) crush injuries to his chest and abdomen and (b) entrapment by a falling tree.

(iv) The accident could not have been avoided by the taking of any reasonable precautions.

(v) Mr Phillips's death could not have been avoided by the taking of any reasonable precautions.

(vi) Any other facts relevant to the circumstances of Mr Phillips's death are recorded below.

NOTE

Introduction

[1] This Inquiry was held on 8 December 2016. The Crown was represented by Mr Saddiq, PFD; the other interested party, the Firm of AD Cochrane and Son, was represented by Mr Hennessy, Solicitor. The lodging of a substantial Joint Minute in advance enabled the inquiry to be completed in a day. Evidence was taken from three witnesses, David Cochrane of AD Cochrane and Sons, Sarah Liversidge of the Health and Safety Executive and Keith Paterson of the Forestry Commission. Almost all the witness evidence was unchallenged and in any event, was clearly credible and reliable.

Summary of the Evidence

[2] John William Phillips ("Mr Phillips") was born on 9 October 1983 and resided

in Forfar. He operated a firewood and tree cutting business and had worked in a similar capacity since leaving school. He advertised his services to include the felling of large trees. In 2006, he gained City & Guilds Certificates of Competence in (i) Chainsaw Maintenance, On-Site Preparation and Basic Cross Cutting of Trees and (ii) Felling and Processing Small Trees with trunk diameters of between 200 and 380 millimetres.

[3] The Firm of AD Cochrane and Son operates a farm at Auchedorie, Westmuir, by Kirriemuir. In 2012, it obtained a licence to clear two unproductive areas of woodland on the farm. Crown Production 8 is a copy of the licence. One area was commercially harvested in early 2013. However, as wood harvested from the other was to be retained by the firm, they commenced clearing it themselves in February 2013.

[4] The Cochrane and Phillips families are close friends. On about 9 March 2013, Mr Phillips stopped to chat with members of the Cochrane family who were clearing the second area. Agreement was then reached that Mr Phillips would fell the remaining trees in the second area, in exchange for a proportion of the wood which was harvested.

[5] On 13 March 2013, Mr Phillips commenced felling trees in the second area, assisted by David Cochrane ("Mr Cochrane") of AD Cochrane and Sons. Mr Phillips and Mr Cochrane were lifelong friends. Mr Phillips was in charge of planning and executing the tree felling, during which he used his own tools. These included a Stihl 20 inch bar chainsaw, a Stihl 36 inch bar chainsaw, an axe, wedges and a wire

cable. He wore appropriate clothing and utilised appropriate safety techniques during the work. Mr Cochrane removed felled trees and cut limbs from them. He was driving a Caterpillar front end loader or telehandler operated by AD Cochrane and Sons. Around ten trees were successfully felled on 13 March.

[6] The following morning, Mr Phillips and Mr Cochrane continued felling trees in the manner undertaken the previous day. Four or five trees were successfully felled before 12.30pm, when they took lunch.

[7] About 1pm, Mr Phillips commenced felling a large beech tree adjacent to the unclassified road leading to the farm. It was approximately 30 metres high. Its main trunk was 1.1 metres in diameter and ran from its base to around half of its height, above which there were two large limbs. Mr Phillips and Mr Cochrane agreed to fell the tree away from the road.

[8] Felling the tree in that direction entailed, in sequence:-

- a. Mr Phillips's wire cable being strung between the tree and a hitch loop on the rear of the telehandler operated by Mr Cochrane.
- b. Mr Phillips cutting a wedge shaped sink cut about half way through the base of the tree trunk in the direction of intended fall.
- c. Mr Phillips performing a single parallel second cut into the opposing side of the trunk to a point just before the leading edge of the sink cut. Thereby, a hinge in the tree trunk would be formed between the sink and second cuts. To facilitate safe control of the tree during felling, the hinge formed required to be at least 10% of the tree diameter.

- d. The tree falling away from the road by any combination of (i) Mr Phillips driving a wedge into the second cut to assist its fall (ii) the operation of gravity on the wedge created by the sink cut and the hinge in the tree trunk and/or (iii) Mr Phillips signalling to Mr Cochrane to drive the telehandler in the direction of intended fell, allowing the wire to pull the tree from the road.

[9] Mr Phillips attached one end of the wire cable around one of the upper limbs using a webbing strap. He then attached the other end to the hitch loop on the rear of the telehandler. Mr Cochrane positioned the telehandler around 60 metres away, directly in the line of intended fall. Thereby, tension was created in the wire cable, preventing the tree from falling onto the road.

[10] Using the larger Stihl saw, Mr Phillips successfully completed a sink cut on the base of the tree trunk on the side towards which it was intended to fall.

[11] Mr Phillips then commenced the second cut on the opposite side of the tree trunk. However, the bar of his chainsaw jammed in the trunk during the second cut. Subsequently, its chain became disconnected from the saw as he attempted to remove it. Consequently, Mr Phillips attempted to make a new second cut using the smaller Stihl chainsaw. As its bar was insufficiently wide to fully cut through the trunk, he partially completed the new second cut standing at one side of the tree trunk then moved round to the other side and continued making it from there. As he did so, the tree detached from its stump. As a result, the wire cable lost tension and the tree began to fall towards the road, in the opposite direction to that

intended. Mr Phillips unsuccessfully attempted to run out of the path of the falling tree and was crushed between one of its upper limbs and the stump of another recently cut tree.

[12] Mr Cochrane witnessed the tree falling on to Mr Phillips. He drove over to him in the telehandler and raised the tree off Mr Phillips's body. He was unable to find a pulse and called 999. After police and paramedics attended the locus and examined Mr Phillips's body, life was pronounced extinct.

[13] On 18 March 2013, Dr Graham Whyte, Consultant Forensic Pathologist, carried out an autopsy examination of Mr Phillips's body at the request of the Procurator Fiscal, Dundee. He later certified the cause of his death as 1(a) Crush Injuries to Chest and Abdomen and 1(b) Entrapment by Falling Tree (At Work). His Final Report dated 18 March 2013 comprises Crown Production number 2.

[14] Notification of Mr Phillips's death was given to the Health and Safety Executive. Sarah Forbes (now Liversidge) of that body examined the locus on 15 March 2013. Crown Production 1 is an investigation report she prepared which accurately records her findings. She was accompanied during her examination by Keith Paterson of the Forestry Commission. Crown Production 14 is a report he prepared afterwards which accurately records his findings. Crown Productions 4 to 6 are pamphlets produced by the Forestry Industry Safety Accord which provide guidance on the safe felling of trees. They *inter alia* confirm that Mr Phillips was standing in a recommended position when he was attempting to complete the new second cut.

[15] Crown Productions 12 and 13 are books of numbered photographs taken on Thursday 14 March 2013 at the locus by Robert Bishop, a Scene Examiner employed by the Scottish Police Services Authority. Photographs 1 to 4 show the second area of woodland which was being cleared by Mr Phillips and Mr Cochrane and the telehandler. Photographs 5 to 9 show the same area, including the covered body of Mr Phillips. Photographs 10 to 12 show the same scene viewed from the road to Auchendorie. Photographs 13 to 24 show Mr Phillips's covered body in close proximity to the tree which fell on him. Photographs 26 to 32 show the tree and the wire cable strapped to it. Photographs 33 to 49 show the tree stump.

Reflections on the Evidence

[16] Self-evidently, tree felling is an inherently dangerous process. Though evidence was led which demonstrated that any risks it creates can substantially be mitigated – in particular by those undertaking such work wearing safety clothing, using the correct tools, utilising recognised relevant techniques, obtaining City and Guilds Certificates and/or reading documentation – those risks cannot fully be eliminated.

[17] What occurred was, on the evidence of this case, a genuine tragic accident, reflective of the remaining risks. Mr Phillips was highly experienced, wore safety clothing, used appropriate tools and utilised safe techniques. He had already felled many trees, including larger specimens, at the locus over two days without incident. Though Mr Phillips did not hold City & Guilds Certificates for felling trees with a

trunk diameter in excess of 380 millimetres, there was no suggestion he ought not to have worked with such trees or that the techniques he employed felling them were in any way inappropriate.

[18] As has long been recognised, it is not the purpose of an Inquiry of this nature to find fault or blame. As such, it is unnecessary to consider why Mr Phillips left an inadequate hinge as he completed the second cut. However, it should be stressed that Mr Paterson had no criticism of the course of action adopted by Mr Phillips after the first saw jammed and its chain disconnected. That amplifies the accidental nature of what occurred and, of course, the deep sadness of its outcome, not least Mr Cochrane witnessing a fatal accident involving a close friend. Both agents in submissions expressed deep and heartfelt sympathy to all those who have suffered loss following Mr Phillips's highly unfortunate death, to which I add my own condolences.