

SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK

[2021] FAI 44

KIL-B138-21

DETERMINATION

BY

SHERIFF GEORGE JAMIESON

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

into the death of

SAMUEL THOMSON

Kilmarnock, 26 July 2021

Determination

The sheriff having considered the information presented at the inquiry, Determines in terms of section 26 of the Act that:

Samuel Thomson, born 12 October 1948, died in an accident at work at Mid Tulloch Farm on 1 April 2020 between 15:00 hours and 16:50 hours.

In terms of section 26(2)(a), the death occurred on 1 April 2020 between 15:00 hours and 16:50 hours at Mid Tulloch Farm, Darvel, East Ayrshire.

In terms of section 26(2)(b), the accident which resulted in the death occurred on 1 April 2020 between 15:00 hours and 16:50 hours at Mid Tulloch Farm, Darvel, East Ayrshire.

In terms of section 26(2)(c), the cause of the death was 1a. Combined compressional and positional asphyxia and 1b. Quad bike accident.

In terms of section 26(2)(d), the cause of the accident resulting in the deceased's death was a quad bike accident in which the deceased's quad bike overturned over a small burn on Mid Tulloch Farm, Darvel, East Ayrshire causing the deceased to lie underneath the quad bike, facing upwards.

In terms of section 26(2) (e), no precautions could reasonably have been taken which might realistically have resulted in the death being avoided.

In terms of section 26(2) (f), there were no defects in any system of working which contributed to the death.

In terms of section 26(2) (g), there are no other facts relevant to the circumstances of the death.

Recommendations

No recommendations are made.

NOTE

Introduction

On 23 July 2021 at Kilmarnock Sheriff Court a public inquiry was held under the 2016 Act into the death of the deceased Samuel Thomson, born 12 October 1948.

The death was reported to COPFS on 8 April 2020.

A preliminary hearing was held at Kilmarnock Sheriff Court by teleconference on 4 June 2021.

AMANDA ALLAN, Procurator Fiscal Depute represented the Crown at the inquiry.

The legal framework

An inquiry was held under section 1 of the 2016 Act.

The inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

In terms of sections 1(3) and (4) of the 2016 Act, the purpose of the inquiry was to

(a) establish the circumstances of the death, and (b) consider what steps (if any) might be taken to prevent other deaths in similar circumstances. The purpose of the inquiry was not to establish civil or criminal liability.

In terms of sections 26(1), (2) and (4) of the 2016 Act, the sheriff must as soon as possible after the conclusion of the evidence and submissions in the inquiry, make a determination setting out:

(1) In terms of subsections (1)(a) and (2), in relation to the death to which the inquiry relates, the sheriff's findings as to (a) when and where the death occurred, (b) when and where any accident resulting in the death occurred, (c) the cause or causes of the death, (d) the cause or causes of any accident resulting in the death, (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, (f) any defects in any system of working which contributed to the death or any accident resulting in the death, and (g) any other facts which are relevant to the circumstances of the death.

(2) In terms of subsections (1)(b) and (4), such recommendations (if any) as the sheriff considers appropriate as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of

working, and (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances.

The procurator fiscal depute represented the public interest at the inquiry.

The inquiry was an inquisitorial process.

Summary

Agreed facts

The procurator fiscal depute relied on the following undisputed facts:

1. That Samuel Thomson, born 12 October 1948 (hereinafter referred to as the “deceased”) was joint owner, with his Adult son William Thomson, of Mid Tulloch Farm which is a sheep farm in the Darvel area of East Ayrshire. The deceased owned 35 percent of the business and William Thomson owned 65 percent. Both the deceased and his son worked as self-employed farmers at Mid Tulloch Farm. There were no other employees of the business.
2. The deceased had worked on the farm from the age of 10 years old. The deceased was experienced in using and driving quad bikes, having used quad bikes daily for a period of around 25 years. The deceased was in good health and was not on any medication at the time of his death.
3. At approximately 1500 hours on 1 April 2020 the deceased and his son William Thomson were taking young sheep out to the flock at Mid Tulloch Farm. Both the deceased and his son were on quad bikes and whilst the deceased went to one side of the farm, in the direction of Sorn, William Thomson went in the opposite direction.

4. Around 30 minutes later, at approximately 1530 hours, William Thomson returned to the farm and was waiting on the deceased joining him. When the deceased had not returned at 1545 hours William Thomson went to look for him. He attended at the highest point of land at the property to try to locate the deceased and could see their two dogs who had been with his father. William Thomson then saw the deceased's quad bike to be upturned in the field.
5. William Thomson made his way to the quad bike and discovered it to be upside down over a small burn. He could see the deceased was lying underneath the bike, facing upwards. William Thomson immediately moved the quad bike and pulled the deceased from the burn. In doing so he could see that the deceased's face was blue in colour, he was not breathing, and there appeared to be no signs of life.
6. An ambulance was contacted to attend at the farm by William Thomson and he returned to the main farm building to await their arrival. Paramedics attended from Scottish Ambulance Service and William Thomson used his quad bike to transport them to where the deceased was located.
7. The ambulance crew could find no signs of life and the deceased was pronounced life extinct at 1650 hours on 1 April 2020.
8. Police Officers from Police Service of Scotland also attended at the farm and a Mountain Rescue team were thereafter arranged to recover the deceased's body from its location. The deceased was transferred to Crosshouse Hospital, Kilmarnock.

9. Police Officers described the locus as being typical moorland with no particularly steep or rough terrain, although the terrain was not smooth. It was noted that there is a small stream in the vicinity of where the deceased's body was located.

10. At the time of the incident the deceased was wearing a motorcycle style helmet with a visor. The quad bike did not have any rollover protection bars attached.

11. The quad bike, a Yamaha Kodiak 700cc, was seized and later subject to an examination. It was found to be in full working order with no mechanical faults or defects identified. The quad bike was around 13 months old at the time of the deceased's death and had been serviced in February 2020.

12. On 6 April 2020 a Post Mortem examination was carried out at Crosshouse Hospital, Kilmarnock. The cause of death was recorded as: 1a. Combined compressional and positional asphyxia and 1b. Quad bike accident.

13. The Health and Safety Executive were made aware of the circumstances of the death of the deceased. They did not attend at the farm however did undertake an investigation into the circumstances, including instruction of the mechanical examination of the quad bike. They concluded that no further action was to be taken by the Health and Safety Executive in relation to the death of the deceased.

14. The Post Mortem Report, dated 16 July 2020, recorded that

“the autopsy findings in association with the history are in keeping with both compressional and positional asphyxia as cause of death. No other health issues are identified as contributory”.

15. Toxicological analysis was also undertaken of a sample of the deceased's blood.

This sample tested positive for alcohol, at 44 mg/100ml. The Supplementary Post

Mortem Report, dated 18 September 2020, recorded that “this level of alcohol is sufficient to cause mild euphoria with decreased attention and inhibition”. No change was made to the cause of death previously recorded.

16. Crown Production Number 1 is a true and accurate copy of the Intimation of Death Form in relation to the deceased.

17. Crown Production Number 2 is a true and accurate copy of the Post Mortem Report, dated 16 July 2020, prepared by Doctor Jon Coldewey in relation to the Post Mortem examination of the deceased undertaken on 6 April 2020.

18. Crown Production Number 3 is a true and accurate copy of the Supplementary Post Mortem Report, dated 18 September 2020, prepared by Doctor Mark Brown following on from the results of the toxicological analysis undertaken in relation to the deceased.

19. Crown Production Number 4 is a true and accurate copy of the Toxicology Report, dated 11 September 2020, prepared by Doctor Peter Maskell.

20. Crown Production Number 5 is a true and accurate copy of the Health and Safety Executive Report, dated 2 November 2020, prepared by Alexandra Brown in relation to their investigation of the death of the deceased.

21. Crown Production Number 6 is a true and accurate copy of Photographs taken at Mid Tulloch Farm, Darvel, of the deceased, the quad bike, and the farm, on 1 April 2020.

Discussion***Cause of Death***

The deceased died in an accident when his quad bike overturned on a small burn in the farm, trapping him underneath the quad bike. The deceased was alone at the time and nothing could have been done to assist him or prevent his death. There were no precautions which could reasonably have been taken which might realistically have resulted in the deceased's death being avoided. There were no defects in any system of working which contributed to the death.

Conclusion

The deceased worked on the farm from childhood and had used quad bikes for around 25 years. This was a tragic accident. I accordingly make no recommendations. I extend my condolences to the deceased's family for their tragic loss. I thank Miss Allan for her valued assistance to the court in her efficient and timely presentation of this inquiry.