

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT WICK

DETERMINATION

by

**SHERIFF ANDREW BERRY, Esquire,
Sheriff of Grampian, Highland
and Islands at Wick**

in an Inquiry into the circumstances of the death of

Elaine Dunne

**under the Fatal Accidents and Sudden Deaths
Inquiry (Scotland) Act 1976**

Wick, 30th January 2015.

The Sheriff, having heard evidence and having resumed consideration of the cause, finds and determines that:

1. In terms of section 6(1)(a) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976, following upon a road traffic accident on the A99 John O'Groats to Wick Road at Auckengill, Caithness on 21st September 2011 Elaine Dunne, date of birth 17.04.81, then aged 30 years and late of XXXXX, Leicester XXXXX died as a result of injuries sustained.
2. In terms of section 6(1)(b) of the Act the cause of death was:-
 - (a) Multiple injuries due to,
 - (b) Road traffic collision of cyclist with a car.
3. In terms of section 6(1) (c) of the Act: there were no reasonable precautions whereby the accident resulting in the death might have been avoided.
4. In terms of section 6(1) (d) of the Act there were no defects in a system of working which contributed to the accident resulting in the death.

5. In terms of section 6(1) (e) of the Act I have no observation or recommendation to make.

Sheriff Andrew Berry

NOTE.

1. This Inquiry took place at the Sheriff Court in Wick with evidence from Mrs Alice Ross being taken when the court sat in a church hall near her home.
2. There was an unusual background in that Mrs Ross had been the subject of criminal proceedings relating to the events considered in the Inquiry which proceedings were discontinued on the eve of trial.
3. On 21st September 2011 Elaine Dunne ("the deceased") was nearing the end of a cycling holiday with her husband when, having been cycling south on the A99 John O'Groats to Wick road, they were stationary on the east side of the road near to the settlement of Auckengill.
4. At the same time Alice MacKenzie Ross, date of birth 10.07.1918, and then aged 93 years of age, was driving her motor vehicle north towards John O'Groats when said vehicle crossed the carriageway and collided with Elaine Dunne causing her death and serious injury to her husband.
5. The case for the Crown was presented by Mr MacDonald, Procurator Fiscal. The UK Driver and Vehicle Licensing Authority (DVLA) was represented by Mr Olson, Advocate and Mrs Ross by Mr McMillan, Solicitor.
6. I heard evidence, in the order they were called, from:-
 - a. Miss Alexandrina Steven, aged 71, a cousin of Mrs Ross;
 - b. Ian Ross, the 67 year old son of Mrs Ross;
 - c. Dr Colin Mumford, Consultant Neurologist, Edinburgh;
 - d. George Scott Lemon, Police Constable, Road Policing Unit, Dingwall;
 - e. Dr Borja Echavarren, Lybster, GP to Mrs Ross;
 - f. Alice MacKenzie Ross;
 - g. Dr Malcolm Metcalfe, Consultant Cardiologist, Aberdeen;
 - h. Dr Intesta Malik, Consultant Physician, Wick;
 - i. Sarah Keir, Consultant in Geriatric Medicine, Edinburgh
7. Two joint minutes of agreement and an affidavit of Dr Mark Ashton, Consultant Pathologist, were read and introduced as evidence. These, amongst other things, agreed the physical circumstances of the fatal accident as stated at paragraphs 3 and 4 above.
8. A central issue in the Inquiry related to the health of Mrs Ross.
9. I was able to conclude that Mrs Ross had generally enjoyed good health throughout her life.
10. It can also readily be said that, with limited exceptions, there existed no medical or related reason that would have caused anyone concern, however remote, as to Mrs Ross's ability to drive.

11. The limited exceptions are that:-
 - a. Mrs Ross's medical notes state that in 1955 and 1981 she had reported "dizziness" and "consciousness disturbance" respectively. The detail offered is restricted to basically those words from which no additional medical opinion was possible in the Inquiry. There is no immediate or other concern over the ensuing 30 years in relation to such matters.
 - b. Approximately one month before the accident on 21st September 2011 Mrs Ross was visiting her cousin, Miss Steven, at the latter's home in John O'Groats and while in the company of Miss Steven, and others, seemed to be, for a short time, unaware of her surroundings. This occurrence happened after a substantial lunch, on a hot day, and while all attending were sitting in the conservatory of Miss Steven's home. Once Mrs Ross had taken fresh air she was fine. There was no concern by anyone as to Mrs Ross's health and no need was felt to contact or have her contact a doctor.
12. Following upon the accident on 21st September 2011 Mrs Ross voluntarily surrendered her driving licence standing the consequences of what had occurred.
13. Also after 21st September Mrs Ross suffered a number of medical episodes which might be described as broadly similar to what had occurred at her cousin's home.
14. Any medical or related examination of Mrs Ross, reflected in the evidence in the Inquiry, has taken place post accident.
15. The medical evidence that was presented in the Inquiry can be said not to have resulted in any categorical conclusion, or conclusions, as to what might have been wrong with Mrs Ross on those occasions.
16. Most likely, from the evidence, Mrs Ross had a blackout of some kind immediately prior to the accident on 21st September 2011. There is a suggestion that this was an episode of vasomotor syncope as were the other events before and after. Such could be caused if a person has been standing or sitting for a long period causing venous (blood) pooling.
17. It is clear from the medical evidence however that no definitive diagnosis could be made and that had Mrs Ross been medically examined immediately before and after the accident on 21st September 2011 no health issue might have been detected. This is assuming that Mrs Ross suffered, on that day, an event as occurred one month before and on occasions thereafter.
18. There were accordingly no red flags or warning lights in relation to the health of Mrs Ross, as at the date of the accident, which might have occasioned anyone to advise or insist, in so far as anyone could, that she seek medical advice.
19. I do not accept the submission by the Procurator Fiscal that Mrs Ross ought, as a reasonable precaution, to have sought and acted upon medical advice following upon the incident at her cousin's home. This occurrence was a passing one in the long life of a robustly healthy lady.
20. Equally there was nothing to indicate she ought to cease driving temporarily or otherwise.
21. It goes without saying that as no doctor was consulted after the event at the home of Miss Steven there can be no question as to whether Mrs Ross ought to have been advised not to drive and/or referred for other examination. It is also far from clear

that had she sought advice from her GP after that event that she would have been advised not to drive. That, of course, is hypothetical in any event.

22. I have been greatly assisted by the evidence of all of the witnesses who gave evidence not least that of the medical witnesses which included:
- a. Dr Mumford stating that at the date of his evidence and even after forensic analysis he still could not give a “robust diagnosis” and could not be certain as to what condition Mrs Ross might have been suffering from.
 - b. Dr Metcalfe stating that had Mrs Ross been examined the day before and the day after the accident it was entirely possible that nothing might have been diagnosed, adding that what had occurred was “a terrible accident”. He agreed that if I were to address the objectives of the Inquiry (paragraph 24 herein) that would be based upon very limited information.
 - c. Dr Malik stating that he had been asked to examine Mrs Ross in August 2012, being some 11 months after the accident, when he found that she did not need treatment; that further investigation was not required; and that he agreed with the views of Drs Mumford and Metcalfe.
 - d. Dr Keir stating that had the event at Mrs Ross’s cousins been reported to her GP, as a single episode she would not have expected to see that as a referral to her for further investigation; agreeing that no symptoms might have been diagnosed in relation to Mrs Ross had she been examined before and after the accident; and that had a GP been made aware of what had occurred at the home of Ms Steven he might well, on that information, not have advised her not to drive.

23. The real issue before me in the Inquiry is whether, based on age alone, a person aged 93 ought to be subject to closer scrutiny by medical advisors and DVLA.
24. I think that it is important to consider the terms of the application for the Inquiry which stated as its objectives:-

- a. *“To examine the issues of public safety surrounding the licensing of elderly drivers and in particular whether the introduction of a mandatory medical testing regime of such drivers throughout the UK is feasible and a reasonable precaution which might have avoided the said accident and death”;*

The circumstances of this case do not allow me to draw any such conclusion.

- b. *“To identify any defect in the system for the licensing of elderly drivers which might have contributed to the death”;*

There is no such defect in the circumstances of this matter which contributed to the death

- c. *"In the public interest, to make any other recommendations considered appropriate to the DVLA or any other regulatory body regarding any reasonable precautions which might have avoided the death or similar future accidents".*

There is no precaution in the circumstances of this matter which might have avoided the death or similar future accidents and accordingly no recommendation I can make.

25. These issues are much too wide for what is an examination into the facts and circumstances of a single occurrence the cause of which cannot be stated with any degree of certainty. Mr Olsen correctly submitted that I should not treat this Inquiry as a public inquiry.
26. There is nothing in the facts of this matter that would allow me to conclude that if Mrs Ross had been required, in terms of being (say) over the age of 80, to renew her licence to drive every 2 years, as opposed to every 3 years, that this would have prevented the accident.
27. For the avoidance of any doubt the facts and circumstances of this tragedy bear no comparison whatever with a situation such as where an individual might, having suffered repeated ill health failed, in defiance of common sense, to seek medical advice; or failed, again in defiance of common sense, to desist from driving pending medical advice; or, having sought such advice, failed to comply with same by continuing to drive against that advice.
28. I might add that from the evidence, where consideration was given to what medical witnesses' views were as to DVLA or other regulation of elderly drivers there were concerns in relation to GP confidentiality and what information patients might keep from them; the potential administrative burden on GPs if asked to regularly certify fitness to drive in relation to a growing elderly population; and it being an unrealistic administrative burden more generally to require blanket testing of elderly drivers.
29. I was greatly assisted by the focused presentation of the case by Mr MacDonald, Mr Olson and Mr MacMillan.
30. During the Inquiry Mr Dunne and others listened attentively to the evidence. I offer my condolences to them and to the extended family and friends of Mr and Mrs Dunne.