

SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT ALLOA

DETERMINATION

by

**DAVID NICOL MACKIE, Advocate,
Sheriff of Tayside Central and Fife at
Alloa**

in

Inquiry into the circumstances of the
death of **DAVID GRAY**, late of 45
Craigleith View, Tullibody

in terms of section 6 of the Fatal
Accidents and Sudden Deaths Inquiry
(Scotland) Act 1976

**ALLOA,
16th August 2007**

The Sheriff, having resumed consideration of the Inquiry, DETERMINES as follows:

1. In terms of section 6(1)(a) of the Act that David Gray, who was born on 12th July 1962, and late of 45 Craigleith View, Tullibody, died on the A907 Stirling to Dunfermline Road, Cambus, District of Clackmannan approximately 50 metres west of its junction with the access road to Braehead Golf Club between 11.30 p.m. and 11.40 p.m. on Wednesday 3rd August 2005 having sustained injury in a road traffic accident at the same place and time.
2. In terms of section 6(1)(b) of the Act that the cause of death was multiple injuries sustained in the accident.
3. Further in terms of section 6(1)(b) of the Act that the accident was caused by the deceased, for reasons unknown, losing control of the Skoda motor car,

registered number SK05 VOM being driven by him westwards in said road and colliding with a Renault Master motor van, registered number HN04 KZG travelling eastwards in said road.

4. In terms of section 6(1)(c) of the Act that the death might have been avoided by the deceased having taken the precaution of wearing the seat belt provided in the motor car being driven by him.

Sheriff David N Mackie

NOTE:

Background and circumstances of the accident

[1] The late David Gray was an experienced taxi driver operating his own vehicle in the employment of Premier Cars of Alloa¹. Janet Gray, who described herself as his partner, worked with the same firm as radio operator and dispatcher. On 3rd August 2005 they both started a 12 hour shift at 12 noon.

[2] Such shifts were the norm for taxi drivers such as the deceased. The driving work was not intensive and I heard from Ms Gray that in the course of a shift there would be intervals between 'shouts' which could be up to 30 minutes or an hour during which time the deceased normally passed his time in the office. In addition the deceased took other breaks for rest and refreshment including a meal and it was Ms Gray who, to an extent, oversaw the taking of breaks by drivers including the deceased. It was she who prepared the deceased's meal during the shift on 3rd August 2005.

[3] The deceased was in the office when a call came in from his mother for a taxi. He decided to take the call as it was his mother whom he took to her home in Tullibody. After dropping her off he made to return to Alloa from Tullibody using the A907 Stirling to Dunfermline Road. It was about 11.30 p.m. and Mr Gray was in good spirits intending to return to the office to finish his shift and collect Ms Gray. They were both anticipating the start of their forthcoming holiday at the week-end.

¹ I heard no evidence as to whether the deceased was the driver of a licensed taxi or of a private hire vehicle. Much of the evidence implies the latter though he was designed as a taxi driver.

Thus it was that the deceased came to be driving his Skoda motor car westwards in the A 907 Stirling to Dunfermline Road near the entrance to Braehead Golf Club. The section of road in question was a long sweeping left hand bend for the deceased with trees on the nearside. The road and road markings were in good order. It had been raining and so the road surface was damp and possibly wet. It was dark. The national speed limit of 60 m.p.h. applied. Mr Gray was not wearing a seat belt.

[4] At about the same time as the deceased was leaving his mother's address in Tullibody Bryan Carroll, a 59 year old Heavy Goods Vehicle driver at the time, and his partner Sheila Darley, were leaving his son's home in Clackmannan on the start of a long journey south to their home in Kidderminster. They had been up for a few days to help Mr Carroll's son move into his new home and had decided to travel through the night when they anticipated the roads would be quieter. They were heading towards Stirling and found themselves travelling eastwards in the A 907 Road near to the entrance to Braehead Golf Club. I accepted Mr Carroll's evidence that he was driving well within the speed limit.

[5] Something caused Mr Gray to lose control of his car. Fresh gouge and scuff marks on the vertical face of the kerb on the north side of the road and a tyre mark on the kerb shy line and kerb stone there on the south side of the road led Constable Roderick McMillan, a Force Collision Investigation Officer of Central Scotland Police, to draw an inference that the vehicle apparently struck the nearside kerb twice and then, out of control, veered across to the south side of the road into the eastbound carriageway striking the kerb on that side of the road.

[6] This brought the Skoda motor car into the path of the oncoming Renault van. The nearside of the deceased's vehicle collided with the front offside corner of the van with the main force of the impact occurring at the nearside 'A' pillar of the Skoda motor car. The forward momentum and catastrophic deceleration caused the deceased to be thrown against the steering wheel with such force that he suffered instant death from massive internal injuries.

The cause of the accident

[7] It is not clear what caused the deceased to lose control of the vehicle. The vehicle was new and had recently undergone a service according to Ms Gray. An examination of the vehicle after the accident failed to disclose any defects which were not caused by the accident itself. In particular the tyres and braking system appeared to have been in good order. I therefore rule out any defect in the vehicle as having caused the deceased's loss of control.

[8] A number of possible causes of the deceased's loss of control were discussed in the course of the evidence of Constable McMillan, the Collision Investigation Officer, but he candidly explained that it would be speculative to suggest a cause. While I do not intend to engage in any speculation here I do exclude the possibility that the deceased was suffering fatigue and may have fallen asleep. This hypothesis does not consist with the evidence of the deceased's mother, Bridget Gray, the last person to see him alive, that he was in good spirits and of a cheerful disposition when he left her on the relatively short journey back to base. Nor does it consist with the evidence of his partner Ms Gray who was with him before he left to pick up his mother and who had no concerns whatsoever about his driving. While he was coming to the end of a twelve hour shift there was nothing unusual about such a long shift which was his normal working pattern. I was satisfied from the evidence of Ms Gray that in the course of the shift he had ample opportunity for rest and refreshment. I have come to the view that fatigue was not a factor in the accident.

[9] The cause of Mr Gray's loss of control of the vehicle must remain unknown. It can be inferred, however, that the vehicle twice came into contact with the north kerb and was out of control thereafter if not before.

Speed

[10] There was no direct evidence of the speed of the Skoda motor car immediately before the accident. The analysis by the Collision Investigation Officer was limited by the absence of locked wheel tyre marks which might have allowed for a minimum pre-impact speed assessment to be carried out.

[11] The Consultant Pathologist Dr Macleod was unaware at the time of preparing his report that the airbags in the Skoda motor car had deployed in the collision but

unhesitatingly indicated that knowledge of this fact did not cause him to wish to reconsider his conclusion that the massive internal injuries sustained by the deceased were consistent with severe deceleration against the steering wheel. He expressed the view that the rate of deceleration was such that the defence of the airbags proved futile in avoiding fatal injury in such a violent collision. There was clearly a massive impact between the two vehicles and that is graphically reflected in the extent of the damage to both as seen in the photographs forming Crown Production 1. It would be speculative, however, to offer any assessment of the pre-impact speed of the Skoda motor car and wrong to suggest that excessive speed played a part in this tragic accident.

Seat belt – a reasonable precaution

[12] The Skoda motor car was fitted with a seat belt which was in good working order. The deceased was not wearing the belt when he was found still in the driver's seat immediately after the impact. Had the seat belt been worn in such a violent collision it is inconceivable that it would not have shown abrasion marks where it was retained in the seat belt mechanism. That was the opinion of Constable McMillan. No such marks were present. By the same token Dr Macleod the Pathologist found none of the bruising and marking in the area of the right shoulder and chest of the deceased which would have been normal and consistent with his being restrained by a seat belt in a violent collision. I have concluded that the deceased was not wearing his seat belt.

[13] The injuries sustained by the deceased included fractures of all his ribs and a severe compression of his chest typical of and consistent with being thrust with extreme force against the steering wheel. This in turn caused a rupture of his heart, the aorta, that is the main vessel leading from the heart, and complete disruption of his liver. There were many other injuries but these ones were catastrophic. Dr Macleod indicated that any one of them on their own would have proved fatal. Death was instantaneous.

[14] The tragedy of the deceased's omission to wear his seat belt is brought home by Dr Macleod's opinion that had he worn it he might not have died. He could not go so far as to express the opinion that he definitely would not have died but he might

have survived. I have come to the view that the wearing of the seat belt by the late Mr Gray was a reasonable precaution whereby the death might have been avoided. It would not have avoided the accident but might have greatly lessened the consequences. As a taxi driver the late Mr Gray may have believed that on this journey he was exempted from wearing a seat belt². That may or may not be the case. This tragedy serves to illustrate, however, that those in our community who for work or other reasons are legally exempted from wearing seat belts can never be exempted from the consequences of not doing so. Mr Gray was pronounced dead at the scene of the accident.

Alloa,

16th August 2007

² **The Motor Vehicles (Wearing of Seat Belts) Regulations 1993 (SI 1993/176), reg. 6(1)(g)(i) and (ii)**