

**INQUIRY INTO THE DEATH OF WILLIAM NORMAN FORSYTH v.
SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK**

FATAL ACCIDENT INQUIRY

UNDER SECTION 1(1)(a) of the

FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY (SCOTLAND) ACT 1976

Determination by SHERIFF Colin Graham McKay, Esquire,

Sheriff of North Strathclyde

following an inquiry held at Kilmarnock

on Thursday 13 September 2001

into the death of

William Norman Forsyth

KILMARNOCK: 24th September 2001.

The Sheriff, having considered the evidence adduced and submissions thereon at this inquiry under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 DETERMINES:

(A) In terms of Section 6(1)(a) that William Norman Forsyth, aged 18 years, born 9 September 1982 of 57 Carron Place, Irvine died about 0635 hours on Thursday, 5 April 2001, whilst then a postman in the employment of the Royal Mail, in a road traffic accident on the C20 Kilmaurs to Cunninghamhead Road, Kilmaurs, Ayrshire at or near the west entrance to Kilmaurs Mains Farm when the motor van registered number X746 USS driven by him collided with the verge and a tree.

(B) In terms of Section 6(1)(b),

(1) that the cause of death was multiple injuries particularly to his head and chest sustained in the said road traffic accident and,

(2) that a major cause of the said accident was the contamination of the road surface at the location with a mixture of slurry, mud and rainwater.

In terms of Section 6(1)(c), that the accident in which the said William Norman Forsyth died might have been avoided had the road surface been washed with a pressurised water wash following its contamination by a mixture of mud and slurry deposited there in the course of the working operations of a tractor and a slurry trailer driven by Douglas William Craig in the course of his employment with Ian Smith, farmer, of Kilmaurs Mains Farm, Kilmaurs in Ayrshire.

Sheriff.

Note

This inquiry was held in terms of Section 1(1)(a) of the Fatal Accidents and Sudden Deaths (Scotland) Act 1976 (hereinafter "the Act"). I heard evidence and submissions on 13 September 2001. The parents of the late William Norman Forsyth were represented by Mr Rock, solicitor and Mr Ian Smith, farmer of Kilmaurs Mains Farm by Ms Logan, solicitor. The Procurator Fiscal led the evidence of 13 witnesses being witnesses numbers 3 to 14 inclusive of the 16 on her list. Mr Rock for the parents called a Ms Muir and a Ms O'Halloran being witnesses numbers 1 and 15 of the Crown list.

Whilst the exact circumstances giving rise to the accident in which Mr Forsyth died were not fully established the inquiry gave rise to an issue as to whether or not contamination of the road surface should have been cleared prior to the date and time of the accident.

The general circumstances of the accident and death.

I was satisfied from the evidence adduced and the productions that the general circumstances of the accident and death were as follows. On 5 April 2001 William Norman Forsyth was driving a Ford Transit Van in the course of his employment with the Royal Mail. He worked normally as a postman in the sorting office at Irvine but, in the absence of the employee normally responsible for the collection of mail from the Glasgow sorting office, he had been sent to Glasgow to collect mail. In the immediately preceding weeks he had done this about 9 times.

The road at the location of the accident was subject to the national speed limit of 60 miles per hour. However, the type of van being driven by Mr Forsyth was subject to a speed limit of 50 miles per hour on that road. He was travelling eastwards on the road.

Travelling eastwards on the road immediately prior to the location of the accident there is a road narrows hazard warning sign, followed shortly thereafter by the word "SLOW" on the road. This warning is in respect of a bridge at the accident location where the road narrows to such an extent that there is the risk of vehicles moving across into the path of oncoming traffic. After he had driven over the bridge Mr. Forsyth lost control of the van to such an extent that it travelled to the opposite side of the road, yawing in a clockwise direction, so that the front passenger door area of the van collided with a tree, the van then toppling onto its near side. The impact with the tree was of considerable violence but not indicative on its own of excessive speed. It is probable that William Forsyth was not wearing a seat belt. As a result of the impact he sustained multiple injuries particularly to the area of his head and chest which led to his death.

Crown Productions 1 and 2 being books of photographs of the location of the accident, give a clear and accurate picture of the location and the accident. I have to say that, but for the issue of the contamination of the road surface, I would have made a formal determination as a result of this inquiry. As is evident from the determination I have taken the view that there is a precaution which might have prevented the accident. Standing the likelihood that Mr. Forsyth was not wearing a seatbelt, it is not possible with equal certainty to say the precaution would have avoided his death but, in my view, absent any other explanation for the loss of control, it is unlikely the accident would have occurred in the first place had the precaution been taken. There is no reason why he should not have been able to negotiate the road safely in ordinary conditions even at a speed in the region of 50 miles per hour.

I accept that the precise circumstances of the accident cannot be determined. There were no eye witnesses to it although several witnesses arrived within what must have been moments of the occurrence of the accident. At that point William Forsyth was apparently still breathing and the engine of the vehicle was still running. He was bleeding from his ears and appeared unconscious. He was found with the upper part of his body in the passenger seat of the van. He was not secured by a seat belt. Subsequent examination of the van by a crash investigation officer of Strathclyde Police showed that the driver's seat belt was in a locked position ready for use. The seat belt did not disclose any burn marks commonly found when a seat belt has been subjected to the strains of a body in an accident of considerable impact. Accordingly it is probable that Mr. Forsyth was not wearing a seat belt at the time of the accident. However the consultant pathologist called by the Crown, Doctor Graham, was unable to make any comment on whether the wearing of a seat belt would have prevented death. He could only say that, statistically, the wearing of a seat belt reduces the risk of fatal injuries in such accidents.

Section 6(1)(c) - reasonable precautions

However, in terms of Section 6(1)(c) the Sheriff is invited to consider whether there were any reasonable precautions whereby the death "and any accident resulting in the death might have been avoided". I have emphasised the latter words of this sub-section because, as Mr Rock for the parents pointed out, it could be said that timeous and proper clearing of the contamination from the road surface might have prevented the accident. This really was the only matter, in my view, requiring more than formal consideration for the purposes of a determination. Neither the Procurator Fiscal nor Ms Logan asked me to make any findings beyond a formal determination.

The road surface was contaminated with a mixture of mud and slurry which had come from farming operations earlier in the week. Douglas Craig, a 20 year old farm labourer in the employment of Mr Ian Smith, the owner of Kilmaurs Mains Farm, said that he had been instructed by his employer to put slurry into fields lying on the south side of the road. By reference to the photographs - in particular number 6 of Crown Production 2 - he said that he had loaded his slurry trailer at the farm and then driven westwards to just beyond some cottages where he turned right into a field. He subsequently left the field by a gate immediately west of a bridge over a river shown in these photographs. He turned left out of the field gate and returned to the farm to load up with slurry. He estimated he carried out this journey about 20 to 25 times on the first day of the operation and about 15 times on the second day. There was some doubt on his evidence and that of David Speirs, another labourer working for Mr Smith, whether this was done on the Monday and Tuesday of the week beginning 2 April 2001 or the Tuesday and Wednesday. However Mr Smith, in his evidence, said it was the Monday and Tuesday and that also was the information given by Douglas Craig and David Speirs to police officers immediately following the accident. I am satisfied that the operations were carried out on the Monday 2 April and Tuesday 3 April.

Douglas Craig explained that, in the course of returning from the field to the farm to take on further loads of slurry, accumulations of mud and slurry, particularly on the tractor wheels, were deposited on to the roadway. In accordance with instructions from Mr Smith to clean up the site after this work, both Douglas Craig and David Speirs attempted to clean these deposits from the road surface. Douglas Craig described the method of using a "mapbro" bucket - a mechanically driven shovel / bucket - the leading edge of which he lowered down onto the road surface and drove along in a scraping effect to remove the deposits. He did this at the end of the operations on each of the two days. He explained that it was not very effective because the weather on each day had been dry and, with the passage of traffic over the road, much of the mud and slurry deposited had been driven into the road surface. It was very difficult to remove with the leading edge of the bucket. David Speirs had used a shovel and brush to sweep the road surface into the bucket. Both were satisfied that they had done a reasonable job to clear the road.

On the Tuesday, in the later afternoon, Mr Smith - who had not been present during these working operations - himself drove the "mapbro" along the road surface using the leading edge of the bucket to scrape the road surface but lifted no material. Once again he explained that the deposits were ingrained into the road surface because of the dry weather and the passage of traffic.

Both Craig Douglas and Ian Smith were asked about other methods of clearing the road and both explained that it would be possible to wash the road. This would be done by using a water tanker and a pressurised washing system attached to it. Mr Smith explained that he was aware of this method and that he knew some farmers used it when mud and/or slurry was deposited on public road surfaces. He did not consider it necessary on this occasion having regard to the state of the road when he saw it on Tuesday after completion of this scraping process. He had such a tanker and washing system on the farm.

The state of the road at the location of the accident is well demonstrated by the photographs in Crown Production number 1. It was accepted that these photographs had been taken at 0700 hours on the day of the accident. It was accepted that they showed accurately the extent of the contamination of the road surface at the location of the accident. It was also quite clearly the case that the road was not in that state when last seen by Mr Smith or by Douglas Craig or David Speirs. It had rained overnight from the 4th to the 5th of April and at the time of the accident all witnesses described the road surface as damp. This had led to the previously dry mixture of mud and slurry expanding with the rainwater to create a very greasy road surface. Mr Smith recognised that this was what had occurred and it was clear that he knew that would be the effect of rainwater on the dried deposits in the road surface unless they were washed away.

I attached considerable weight to the evidence of Constable James Brown of the Strathclyde Police Crash Investigation Unit. This officer was 47 years of age with 26 years police service. Of these 26 years, 22 had been in traffic. He had been in accident investigation for 7 years. He held a variety of qualifications including advanced driver, advanced motor cyclist, City and Guilds certification in motor vehicle examination, the authority of the Chief Constable to test and prohibit motor vehicles on roads, and was a member of the Institute of Traffic Accident Investigators. He had attended the location of the accident at 0700 hours and found the van in the position shown in the Crown photographs. He described the road surface as "badly contaminated by mud and slurry from the area of the bridge to the farm entrance". In his view the road condition was likely to have been slightly worse at the time of the accident.

He had prepared a sketch of the area - which was Crown Production 7 - and had marked on it the area contaminated by mud and slurry. As a result of the presence of other heavy vehicles, such as the fire brigade and ambulance, tyre markings and other evidential material had been so contaminated that it was not possible for him to carry out as full an investigation as he might otherwise have done. By tracing the van tyre marks back from the point of impact he was able to conclude that the driver of the van had, at the very latest, lost control of it just past the main farm entrance. The van had travelled across the road, yawing in a clockwise direction, as it headed in the direction of a tree at the west corner of the west entrance to the farm. "Yawing", he explained, described the van as rotating clockwise on its own axis whilst the wheels were still rotating in a forwards direction. He could not say whether there had been any loss of control prior to that point because of the interference with the accident location by the presence of other vehicles. The van had rotated through approximately 100o and the front nearside door area had collided with the tree. He was unable to calculate speed but agreed it was unlikely to be as slow as 20 miles per hour. At best he said the damage was consistent with a speed in the 50s.

He described the road as extremely slippery underfoot. He and his colleague had carried out skid tests to determine the co-efficient of friction for the road surface. In so doing they had used a similar van. He said that at this particular location, in ordinary conditions, he would have expected a co-efficient of friction of a figure of 6.5. He explained that if he had found co-efficient of friction in a like road elsewhere below 6 he would have reported it to the roads department for attention. The co-efficient determined by reason of the tests carried out was between 2.92 and 3.16. He said that even at a low speed the driver of the van used in the tests had found he was losing control on the contaminated road surface. He had already said that the road surface contamination was likely to have been worse at the time of the accident. He explained that any adjustment of steering or braking would have led to a loss of control of the van. He accepted that he was unable from physical evidence to determine anything about what the driver had done or was doing at the time of the accident. There was no street lighting and at best the driver would get a view of the surface in his headlights. The road itself was in good repair. In his view the contamination of the road surface was a major factor in the occurrence of the accident.

I accept that conclusion. The officer reaching it has considerable experience in these matters. He was familiar with road surfaces being contaminated in rural areas. The amount of contamination found he described as unusual in his experience. He remarked that he would have considered prosecution. Whilst there is no evidence about the exact circumstances giving rise to the accident, it seems to me to be quite clear that the officer was right to reach the conclusion that the contamination was a major factor.

In that circumstance, standing the evidence I have from Mr Smith and his employee Douglas Craig, that another method of cleaning of the road surface was open to them, namely, the use of a water tanker or bowser with pressurised water washing system, I have come to the conclusion that that would have been a reasonable precaution to have taken and, had it been taken, it might have prevented the occurrence of the accident. As I have said both Mr Smith and Douglas Craig were aware that this particular method of cleaning was used elsewhere. Douglas Craig had not used it because the road surface was fine, in his view, after the scraping at the end of each day's operations. This was clearly because there was no rain or other water on the surface which would have caused the ingrained mud and slurry to expand and create a slippery surface. It is also my view that he was not instructed to use this method of cleaning the road surface.

It was quite clear from the evidence of Constable Brown (the Traffic Accident Investigator) that it was not the mere presence of rainwater or dampness on the road that made the road surface excessively slippery, but the contamination of the surface with mud and slurry. In his evidence, Mr Smith said that he was aware of that risk, namely, that rain falling on such a road surface, contaminated, as it was, with ingrained mud and slurry, could lead to the creation of the conditions faced by Mr. Forsyth as he drove along that road. In these circumstances I am quite satisfied that Mr Smith should have been aware of the risk of serious and dangerous contamination of the road surface - rain is a common feature of our weather - and should have secured the carrying out of the cleaning operation by his employees following the completion of work on each day using the water tanker with the

pressurised water washing system. Had he done so he might have prevented the accident occurring.