

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

[2016] FAI 01

DETERMINATION BY SHERIFF CHRISTOPHER M SHEAD, advocate

in respect of the Fatal Accident Inquiry

into the death of MARK BRODIE

PERTH, 18 DECEMBER 2015

The sheriff, having considered the evidence adduced, Determines in terms of section 6(1) of the Fatal Accident and Sudden Deaths (Scotland) Act 1976:

- a) That the late Mark Brodie died on 26 February 2015 at 16:44 having been fatally injured in a road traffic accident which occurred at approximately 16:00 on the A9 Perth to Inverness road 150 metres north of its junction with the unclassified road to Murthly Castle.
- b) That the cause of death was multiple injuries caused by blunt force trauma sustained in the accident.
- c) That had the late Mr James Williamson not consumed heroin and diazepam, or if having done so, he had not driven that day the death of Mr Brodie might have been avoided.
- d) That there was no defect in any system of working which contributed to his death.
- e) That other facts relevant to the circumstances of the death are set out in the findings which follow.

Findings in fact

[1] The deceased sustained fatal injuries in a collision between the car he was driving and

a car being driven by the late Mr James Williamson. The latter was also killed in the collision. That collision occurred on 26 February 2015 at approximately 16:00 on the A9 Perth to Inverness road 150 metres north of its junction with the unclassified road to Murthly Castle.

[2] At the time the deceased was employed by SSE as a project manager and was living in Leven. He had been working in Inverness and on the day of the fatal accident he had been travelling home from there to Fife. He was driving in the course of his employment when the accident happened.

[3] The collision occurred as a result of the late Mr Williamson veering on to the opposite side of the road.

[4] Both of the drivers were pronounced dead at the scene.

[5] On the instructions of the Procurator Fiscal at Perth a post-mortem examination was carried out in respect of the late Mr Brodie on 2 March 2015. That examination established that death was caused by multiple injuries as a result of blunt force trauma which the deceased had sustained in the collision. Samples were taken which, on analysis, were negative for the presence of alcohol or drugs.

[6] A post-mortem was also carried out on the late Mr Williamson in the course of which samples of blood and urine were collected. These samples were analysed for the presence of alcohol and drugs. Toxicological analyses revealed the presence of morphine. The finding of morphine indicated that Mr Williamson had taken heroin before his death.

[7] The analyses also revealed therapeutic levels of diazepam.

[8] Both morphine and diazepam may result in drowsiness and impaired reaction time.

[9] It is not possible to say how much heroin may have been consumed by the late Mr Williamson.

[10] In the minutes before the fatal accident occurred the late Mr Williamson had been seen driving on to the wrong side of the road. Subsequently he was observed driving erratically. He then veered into the path of the car driven by the deceased.

[11] The late Mr Williamson had consumed both heroin and diazepam before driving that day. At the time of the accident he was under the influence of both drugs.

[12] That his consumption of drugs made a material contribution to the occurrence of the accident.

A summary of the main points of the evidence

[1] The Crown led evidence from four witnesses and lodged a joint minute which the parties had helpfully agreed.

[2] I need not summarise the evidence of the first witness, Chris Farrell, who was a representative of the deceased's employer beyond noting that his evidence provided the basis on which to conclude that the accident occurred in the course of the deceased's employment.

Craig Wemyss

[3] The witness explained that he had been driving from Perth to Kindallochin on the A9. The weather was fine. The volume of traffic was moderate although there was more traffic travelling south than north. He was travelling north when he noticed a green Citroen Xsara which was travelling the same direction but ahead of him. At the end of a stretch of dual carriageway he saw the Xsara cross the chevrons and veer into the southbound carriageway. The car then pulled back into the northbound carriageway.

[4] As he continued his journey he saw the car being driven erratically and swinging out towards the white line dividing the carriageways. This happened about half a dozen times. He was concerned by the manner in which the car was being driven and tried to contact the police on "101" but he could not get through. He then lost reception on his mobile phone.

[5] He had been travelling behind a Mercedes. The Xsara was in front of that car. He decided to overtake both cars and he pulled out to do so. He then became aware of the Xsara pulling out. He decided not to complete his overtaking manoeuvre because he was apprehensive about whether the car would pull out in front of him. He pulled back in and continued his journey. He noticed the Xsara continuing to weave about but it did not cross into the other carriageway.

[6] The cars were travelling at about 60mph. He then saw the Xsara veer violently into the southbound carriageway. At that point the road was a single carriageway in each direction.

[7] The driver of the car coming south (the late Mr Brodie) was given no time to react. The cars collided driver's side to driver's side. The car driven by the late Mr Brodie was forced on to the grass verge.

[8] The witness applied his brakes, stopped his car and got out to help. He went first to the Xsara and tried to open the driver's door which was jammed. He saw there was very extensive damage to the car and he thought that there was little chance that the driver was going to survive.

[9] He then went to the other car (a Vauxhall Vectra). He saw the late Mr Brodie lying across the passenger seat. He appeared to be conscious. His eyes were open but his pupils were dilated. He grabbed his hand but there was little response.

[10] By chance a paramedic was passing and he stopped to help. He asked Mr Wemyss to go and talk to the driver of the Vectra which he did. The paramedic then came to treat the late Mr Brodie having first checked on the driver of the other car.

PC Graeme Wallace

[11] He had been asked to attend the scene of the accident at about 17:30. He explained he was a trained collision investigator and had been a traffic officer for 13 years.

[12] He was referred to Crown production 1 which was the report he had compiled with his colleague PC Michael Douglas. He was referred to the conclusions of that report and in particular the sixth paragraph. It could not be ascertained what had caused the late Mr Williamson to veer into the southbound carriageway although some possibilities were considered. Among those was the possibility that the deceased had been under the influence of drugs at the time. However at the time of the writing of the report no results of the blood analyses were available.

[13] There was no evidence at the scene or otherwise to suggest that the late Mr Brodie was at fault for the collision which had occurred.

Dr Helen Brownlow

[14] Dr Brownlow is a consultant forensic pathologist based at the University of Dundee. On the instructions of the Procurator Fiscal she had conducted post-mortem examinations on both of the deceased on 2 March 2015.

[15] She was referred to each of the relevant reports. Crown production 3 was the report on the examination of the late Mr Brodie. She was referred to page 3 of that report and confirmed her opinion that his death was attributed to multiple injuries as a result of blunt

force trauma. The extent and severity of the injuries was such that death would have occurred within minutes regardless of any medical intervention.

[16] Crown production 4 was the report compiled in relation to the late Mr James Williamson. She confirmed the cause of his death under reference to the report. Under part 2 she had listed morphine and diazepam misuse. She explained that she had made reference to this as a factor which had contributed to the collision which caused the death.

[17] She was referred to [5] on page 3 of her report and confirmed her opinion as to the cause of death. She expressed her opinion based on the results of the toxicological analyses that the finding of morphine in the blood suggested that the deceased Mr Williamson had taken heroin rather than morphine. However it was not possible to say what quantity of heroin may have been taken.

[18] She went on to explain that both morphine and diazepam may result in drowsiness and impaired reaction time.

[19] In cross-examination she confirmed that samples had been taken from the late Mr Brodie. On analysis the results were negative for the presence of alcohol or drugs.

The submissions

[20] The Procurator Fiscal asked me to make findings as required by section 6(1) (a) and (b) of the 1976 Act. She set out the proposed terms of those findings based on the joint minute and the oral evidence adduced. In addition she asked me to hold under 6(1) (c) that if the late Mr Williamson had not taken drugs or, if having done so, he had refrained from driving, the death of the late Mr Brodie might have been avoided.

[21] The solicitor for SSE adopted the Procurator Fiscal's submissions.

[22] The making of a determination under section 6(1) (c) depends on the court being prepared to draw a series of inferences from the evidence: that the late Mr Williamson had consumed heroin and diazepam, that he was under the influence of those drugs at the time of the accident, that the drugs had reduced his state of alertness and that his state at the time was a material factor in the occurrence of the accident.

[23] These inferences depend essentially on the results of the analyses, the expression of opinion by Dr Brownlow and the manner of driving spoken to by Mr Wemyss. Having considered the relevant evidence I have reached the conclusion that it would be open to the court to draw the inferences referred to and I am prepared to do so.

[24] Against that background I have made a determination in terms of section 6(1) (a) - (c) as I was invited to do.

Conclusion

[25] I should like to express my condolences to all those who have suffered as a result of this needless and tragic accident.

Sheriff of Tayside, Central and Fife

Perth 18 December 2015