

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2019] FAI 34

EDI-B378-19

DETERMINATION

BY

SHERIFF MICHAEL G O'GRADY QC

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

into the death of

JOHN FOSTER NISBET

Edinburgh, 5 August 2019

The Sheriff, having considered the evidence adduced, DETERMINES: in terms of the inquiries into Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 2016

Section 26(2);

- (a) That John Foster Nisbet aged 72 died within his motor vehicle on the southbound carriageway of the A1, at its junction giving on to Salter's Road, Wallyford, East Lothian. He was formally pronounced dead at approximately 0100 hours on 27 November 2016.
- (b) The death occurred following an accident on the said southbound carriageway at the A1 at its junction with Salter's Road, Wallyford, East Lothian.
- (c) The cause of the death of Mr Nisbet was –
 - 1a Multiple injuries

1b road traffic incident (driver)

(d) The likely cause of the accident was driver fatigue affecting the perception and judgement of the deceased.

(g) The following facts are relevant to the circumstances of the death –

The deceased John Foster Nisbet was at the material time working in his capacity as a taxi driver. On 27 November 2016 between 0030 hours and 0035 hours on the A1, Edinburgh to Newcastle Road, around 550m southwest of its junction with Salter's Road (A6094), Wallyford, East Lothian there was a collision on the eastbound carriageway between the black coloured London taxi registration B164 JGX driven by the deceased and a white coloured Peugeot van, registration EK65 ZVX driven by Andrew Johnston. At the time of the collision, there were no passengers within the deceased's taxi. The deceased was aged 72 years, was a self-employed taxi driver and rented the taxi which he was driving. The deceased had been so employed for 12 or 13 years. He normally worked four to six days per week, commencing each shift at approximately 1600 hours, having a break at his home at approximately 2000 hours and thereafter returning to work from 2200 hours until 0500 hours the following morning. On 26 November the deceased returned from work for his break between 1900 hours and 2000 hours. During that break he had a short sleep but was described by his wife as still being tired when he left home for the remainder of his shift. At around 0030 hours Andrew Johnston was driving home in his Peugeot van on the A1 southbound road. At approximately 0032 hours police operators received the call regarding a collision having occurred on the A1, southbound at the junction with Wallyford. PC Alan Musgrave, an Operational Roads

Policing Officer made his way immediately to the locus. He arrived at about 0032 hours.

On arrival at the scene other emergency services were already present. Constable Musgrave noted two vehicles within lane two that had collided. The Peugeot van was facing northwards and had significant frontend damage and the fire service were preparing to extricate the driver, Andrew Johnston, from the driver's seat. Constable Musgrave noted that the driver of the London taxi (the deceased) was slumped forward in the driver's seat. At approximately 0115 hours Andrew Johnston was conveyed to Edinburgh Royal Infirmary. John Foster Nisbet was examined by emergency services who pronounced life extinct at 0100 hours on 27 November 2016. He was thereafter conveyed to Edinburgh City Mortuary. Police Constable Andrew Bowman attended at the Edinburgh Royal Infirmary and carried out drink driving procedures in relation to Andrew Johnston; he provided a negative specimen of breath. On 30 November 2016 the deceased underwent a post-mortem examination at Edinburgh City Mortuary which confirmed the cause of his death as "1(a) multiple injuries and 1(b) road traffic incident (driver)". Following the accident specialist police officers conducted a thorough investigation and their findings and conclusions are contained in Crown production 2 which is a Collision Investigation Report dated 9 May 2017. The available evidence confirmed that the taxi driven by the deceased, for reasons unknown, entered the exit ramp for Salter's Road and proceeded thereafter to join the southbound carriageway of the A1 thus driving into the path of oncoming traffic; the collision occurred as a direct result. The evidence demonstrated that the deceased executed this manoeuvre in the

face of ample signage and road markings clearly indicating no entry to the slip road from his direction of travel.

Note

[1] This Fatal Accident Inquiry relates to the tragic death of Mr John Foster Nisbet, aged 72. Mr Nisbet had for many years worked as a taxi driver and, despite his age, continued to do so. As I have noted in my findings, on this particular evening he was working a long shift from 1600 hours to 0500 hours the following morning. Although he had a break that evening, going home for a meal, he was observed by his wife at that stage to be tired which, given his age and his working hours that day is unsurprising. However that may be, at some stage he found himself at the junction between Salter's Road and the A1. The junction in question is part of an arrangement of slip roads which a driver can take to enter the A1 either southbound or northbound. Mr Nisbet however drove his vehicle down what was in fact the off slip road on the motorway. In so doing he inevitably emerged from that slip road to find himself facing north on the southbound carriageway, that is to say, facing the wrong way towards oncoming traffic. It was in that context that the collision took place and in the circumstances such a collision was almost inevitable. Mr Nisbet was a hardworking and experienced driver and why such an incident should occur has inevitably to be a matter of inference. On the available evidence however police investigators have, in my view correctly, been forced to the conclusion that the deceased was suffering from fatigue and that his

perception of the road layout and his judgement were thereby impaired; he simply made a mistake when he was tired.

[2] In this case I have simply made formal findings. In my view there is no requirement for me to go further. The sole cause of the collision was driver fatigue; the danger of this is well-known to professional and non-professional drivers alike and indeed is regularly seen in admonitions on motorway signs, service stations and indeed, in many cases, even on computerised driver displays with in cars. I do not think there is anything to be gained by my repeating what is obvious and widely known.

[3] All that remains is for the court to offer its condolences to the family of Mr Nisbet.