

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT DINGWALL
UNDER THE FATAL ACCIDENTS AND SUDDEN DEATHS INQUIRY ACT
1976

DETERMINATION
By
SHERIFF ALASDAIR LORNE
MACFADYEN
IN
FATAL ACCIDENT INQUIRY
INTO THE DEATH OF
KIERAN RAMSAY

DINGWALL, 10 MARCH 2011

The sheriff having resumed consideration of the Fatal Accident Inquiry into the death of Kieran Ramsay, born 19 June 1987, Determines in terms of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ('the Act') as follows:-

In terms of section 6 (1)(a)

Kieran Ramsay died at 0010 hours on Sunday 17 January 2010 on the B9161 Munloch to Artafallie Road near Bogallan, Ross and Cromarty, when the motor vehicle being driven by him left the road and collided with a tree.

In terms of section 6(1)(b)

The cause of death was non-survivable head injuries sustained in that collision.

In terms of section 6(1)(c)

The accident resulting in the death might have been avoided if the deceased had driven at a much lower speed that was reasonable having regard to the prevailing road conditions which must have been obvious to an observant and careful driver.

In terms of section 6(1)(d)

There were no defects in any system of working which contributed to the death.

In terms of section 6(1)(e)

The deceased was not wearing a seatbelt at the time of the accident. However, given the extent and nature of the damage caused to the passenger compartment, in particular the driver's seat area, by the collision with the tree, the use of a seatbelt by the deceased would not have made any difference to the outcome of the accident.

NOTE

[1] This inquiry was held in terms of section 1(1)(a) of the Act in respect that at the time of the accident which caused the death of Kieran Ramsay, he was in the course of his employment.

[2] Section 6(1) of the Act requires the sheriff to make a determination setting out the following circumstances of the death so far as they have been established to his satisfaction:

- a) where and when the death and any accident causing the death took place;
- b) the cause or causes of death and any accident resulting in the death;
- c) the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
- d) the defect, if any, in any system of working which contributed to the death or any accident resulting in the death; and
- e) any other facts which are relevant to the circumstances of the death.

[3] The only method of establishing those circumstances is by the assessment of the evidence led by the Procurator Fiscal, and any other interested party represented at and participating in the inquiry. In addition, it has often been said, correctly, that a fatal accident inquiry is concerned with fact-finding, not fault-finding.

[4] At this inquiry the Crown was represented by Mr. Phillips, the Procurator Fiscal, Dingwall. The only other party represented was the Highland Council. I was satisfied that the Highland Council, as a local authority with responsibility for the maintenance of the road where the accident occurred, had an interest in the inquiry to justify their being represented. The council was represented by Mr. Tudhope, solicitor, Inverness.

[5] Only the Procurator Fiscal led evidence.

[6] Evidence was led from the following witnesses:

1. Gordon Chalmers, manager Scania (GB) Ltd, Inverness, the employer of the deceased;
2. David Tucker, night-shift chargehand, Co-operative Retail, Dalcross, Inverness-shire;
3. Connor McQuillan, a friend of the deceased;
4. David Maclean, a friend of the deceased and the driver of a car travelling north on the B9161 shortly before the accident;
5. Ashleigh Bell, girlfriend of Mr. Maclean and front seat passenger in his car;
6. Scott Macbeth, driver of a car travelling south on the B9161 who came across the scene of the accident;
7. Glen Mason, ambulance technician who lived in Drumsittal, close to the location of the accident, who happened to come across the scene of the accident and briefly examined Mr. Ramsay, in particular by searching for a pulse, and who came to the conclusion that he had not survived the accident;

8. Alison Fairfield, a paramedic with the Scottish Ambulance Service who, in her capacity as such, attended the accident, examined Mr. Ramsay in the cab of the van and reached the same conclusion as Mr. Mason;
9. Calum Macrae, police constable, Northern Constabulary, the first police officer to arrive at the scene of the accident, who secured the site and took steps to minimise the possibility of any further accident.
10. George Lemmon, police constable, road policing unit, Northern Constabulary and author of collision investigation report;
11. Ian Hay, community works manager, TEC Services, the Highland Council, Dingwall, who had responsibility for winter maintenance of the roads in an area that included the Black Isle where the B9161 was situated;
12. Dr. Natasha Inglis, consultant pathologist, Raigmore Hospital, Inverness, did not give evidence in court. However, her autopsy report in respect of the deceased was incorporated into the evidence by way of an affidavit.

[7] Some of the witnesses referred to documentary productions. Of particular significance were the collision investigation report written by PC Lemmon, the Highland Council book detailing snow clearing and gritting routes and safety and general guidelines in the Ross and Cromarty area, referred to by Mr. Hay, and a plan of the scene of the accident prepared by the road policing unit of Northern Constabulary.

[8] From the evidence I found that the following facts were proved:

1. Kieran Ramsay was a final year apprentice mechanic. He was a capable young man, having already passed all of the necessary examinations. All that was left was for him to complete the time component of his apprenticeship. In 2009 his employer Scania (GB) Limited recognised his abilities by naming him third year United Kingdom apprentice of the year. His manager, Mr. Chalmers, said that Mr. Ramsay was popular with his colleagues.
2. His capability as a mechanic enabled his employer to include him in their out of hours emergency call-out rota and he was the out of hours mechanic for the seven

days commencing Friday 15 January 2010. There was no evidence of his being tired or overworked on 16 January 2010.

3. On 16 January 2010 David Tucker, night shift charge hand at the Co-op stores, Dalcross, Inverness-shire made a call to Scania (GB) regarding a fault which had manifested itself in one of his employers' Scania trucks vehicles there. That call was received at Scania (GB) Limited's national call centre. Mr. Tucker requested that a technician (mechanic) attend to repair the fault. The request for a technician to attend at Dalcross made its way by the out of hours mobile telephone to the deceased, who lived in Avoch, on the Black Isle. He had his employers' Volkswagen LT35 van, registration number SD06 MSX, at his home.
4. The van was in good mechanical condition and in satisfactory working order.
5. The deceased responded to that call and set out for Dalcross from Avoch. At 2358 hours on 16 January 2010 he sent a text message to the mobile telephone of his friend, Connor McQuillan, confirming that he had had a call-out. He was thus in the course of his employment when he embarked on that journey.
6. The route from Avoch to Dalcross included the B9161 public road from Munlochy until it joined the A9 at Artafallie. The B9161 is in the Black Isle, which forms part of the Ross and Cromarty area of the Highland Council's area of geographical responsibility.
7. The national speed limit for cars for the B9161 was 60 miles per hour.
8. However, the vehicle speed limit on the B9161 for vehicles such as said Volkswagen van was 50 miles per hour.
9. Mr. Ramsay's journey was in a southerly direction along the B9161.
10. At Bogallan on said road, his van negotiated a left hand bend and then entered a straight section of road at the locus (scene of the accident).
11. During that manoeuvre the deceased lost control of the van.
12. The van crossed the northbound lane of the road.
13. Immediately before leaving the road, Mr. Ramsay was driving his works Volkswagen van at a speed of not less than 66 miles per hour.
14. The van then mounted a grass verge to the side of the northbound lane. It then continued to travel in a southerly direction along the verge.

15. The van then travelled across the verge and continued away from the road, down a grass banking.
16. The front of the van then collided heavily with a large tree situated at the foot of the banking. After striking the tree, the van rotated round in an anti-clockwise direction.
17. As a result of the impact with the tree, the van sustained extensive frontal damage. That caused massive intrusion into the passenger compartment of the van in the area of the driver's seat.
18. That resulted in Mr. Ramsay sustaining severe head injuries, which were non-survivable. He died at the scene of the accident at about ten minutes past midnight on 17 January 2010.
19. The deceased was not wearing a seat belt. However, given the extent and nature of the damage caused to the passenger compartment, in particular the driver's seat area, by the collision with the tree, the use of a seatbelt by the deceased would not have made any difference to the outcome of the accident.
20. At the locus the B9161 road ran in a southerly direction towards the A9 which it joined at Artafallie and sloped from west down to east .
21. Drains were present to the eastern side of the road. The purpose of those drains was to allow the removal of any water from the surface of the road.
22. On 16/17 January 2010 those drains had not served to remove all of the water which had gathered on the surface of the B9161 at Bogallan. At the time of the accident, the water on the road surface had frozen into ice.
23. The road conditions on many roads in the Black Isle on 16/17 January were poor. In particular many roads were affected by ice making driving, especially at speed, hazardous. The B9161 was affected by ice at various stretches, including the locus.
24. A prolonged spell of severe cold weather started in the Black Isle, among other areas, in mid-December 2009 and continued beyond 16/17 January 2010.
25. The Highland Council was the Roads Authority for the area including the B9161. Under the Roads (Scotland) Act 1984 they had a duty to take such steps as they

- considered reasonable to prevent snow and ice endangering the safe passage of pedestrian and vehicles over public roads.
26. In furtherance of that duty the Highland Council operated a policy for winter maintenance of roads in their geographical area of responsibility. That included the making of a decision whether or not to apply salt or sand, or a combination of same on road surfaces in order to minimise danger to vehicles or pedestrians.
 27. The making of that decision depended on the prevailing weather conditions, the forecast weather conditions and the condition of the roads in question, including salination levels, i.e. the amount of salt present on the road from time to time.
 28. Assessment of the prevailing and likely weather conditions and temperature was made on the basis of: broadcast weather forecasts, a weather forecast for the Highland Council's area of responsibility obtained from a professional weather forecasting service, comparison of that with the conditions actually prevailing, information received from sensors located at various sites detailing road and air temperatures, and salination levels.
 29. The nearest sensor to the locus was situated at Munloch, less than seven kilometres from the scene of the accident.
 30. On Friday 15 January 2010 salt was applied to the B9161 to a salination level of 3, being the maximum amount of salt ever considered necessary.
 31. The B9161 was classified as a priority 1 route for winter maintenance. That meant that the Roads Authority treated it as a main route which would be treated before roads of any of the three lower priorities.
 32. On 16 January 2010, according to the sensor reading at Munloch the salination level continued to be at level 3. There was no rainfall in the area on 16 January 2010. Accordingly it was considered by the Roads Authority that no further salting of the road was required.
 33. Temperatures however continued to be low, near to zero degrees centigrade.
 34. Normally no salting or gritting operations are carried out after 2100 hours.
 35. The system for assessment of the conditions of the roads and the need for further salting was operated in such a way as to comply with the Highland Council's winter roads maintenance policy.

36. The operation of that policy did not and could not ensure that every road would be free of ice.
37. The van being driven by the deceased left the road because he was driving it too fast for the prevailing road conditions.
38. The speed at which the van then went on to collide with a large tree led to the extensive damage to the passenger compartment of the van, which in turn led to the deceased sustaining serious head injuries which were not survivable.
39. The facts that road conditions were icy and driving a motor vehicle thereby hazardous were obvious to all drivers on the B9161 on 16/17 January 2010.

[9] There were no eye witnesses to the accident. However, the accident scene was discovered in what could only have been a matter of minutes after its occurrence. Unfortunately that did not afford any opportunity to do anything for Mr. Ramsay as he had already died. However, it did allow for early investigation of the circumstances of the accident and for inspection of the scene, in particular by the collision investigation team of Northern Constabulary. They carried out an examination of the accident scene at 0130 hours on Sunday 17 January 2010. That early opportunity to examine the scene of the accident enabled me to attach a great deal of weight to the collision investigation report and the evidence of its author, PC Lemmon.

[10] Constable Lemmon's firm conclusion was that the responsibility for the accident rested entirely with the deceased. His reasoning was that Mr. Ramsay had failed to take into account that he was driving during a period of prolonged adverse weather which had affected road conditions, and that he had driven at excessive speed. That led, he concluded, to loss of control of his vehicle with the result that he could not keep it on the road and its colliding at speed with a tree. I found that conclusion to be compelling and consistent with all of the evidence.

[11] It was clear from the evidence that the fact that road conditions might be expected to be hazardous was something of which the deceased ought to have been aware. He must have driven on the B9161 most days, if not every day. The spell of bad weather had

endured for a period of about a month prior to the date of the accident. Nevertheless, it seems that he chose to drive at a high speed along a stretch of such a road late at night.

[12] The Highway Code advises drivers on driving in adverse weather conditions, with particular reference to icy and snowy weather. Extracts were quoted at paragraphs 9.18 and 9.19 of the collision investigation report, including Rule 230, which says:

‘Drive with care even if the roads have been treated. Be prepared for the road conditions to change over relatively short distances.’

[13] Rule 231 goes on to say:

‘Drive extremely when the roads are icy. Avoid sudden actions as these could cause loss of control. You should

- drive at slow speed in as high a gear as possible; accelerate and brake very gently
- drive particularly slowly on bends where the loss of control is more likely. Brake progressively on the straight before you reach a bend. Having slowed down, steer smoothly round the bend, avoiding sudden actions.
- check your grip on the road surface when there is snow or ice by choosing a safe place to brake gently. If the steering feels unresponsive this may indicate ice and your vehicle losing its grip on the road. When travelling on ice, tyres make virtually no noise.’

[14] All of the information led at the inquiry points to the deceased having failed to take account of that advice. There was evidence of other drivers having successfully negotiated the bend where the deceased’s vehicle went off the road.

[15] David Maclean, aged 22 years, said that he managed round the bend without any difficulty. He had been travelling north. However earlier that evening he had also travelled through the locus in a southerly direction and had then negotiated the bend. It was perhaps significant that he said that he did so, when travelling north, at the relatively

slow speed of between 20 and 30 miles per hour. Mr. Maclean described the road as being icy in the Munloch area. He said that the conditions improved as he approached the location of the accident. However he did say that the bend in question was 'maybe a wee bit slidy'. He noticed frozen water to the side of the road there.

[16] Mr. Maclean, who was a friend of the deceased recognised his Scania van travelling in the opposite (southerly) direction and attempted to warn him of the icy condition of the road by flashing lights, either his headlights or his hazard warning lights, at Mr. Ramsay. It was of course impossible to say whether the deceased noticed the warning or understood it as such. Mr. Maclean was concerned about the condition of the road for the whole length of the B9161 between Munloch and Artafallie where it joined the A9.

[17] Mr. Maclean's passenger, his girlfriend Ashleigh Bell, aged 20 years, described the road conditions on the B9161 from the A9 to Munloch (i.e. including the location of the accident) as pretty slippery and not good. She said that Mr. Maclean slowed down because his car was sliding on the road. She shared Mr. Maclean's concern regarding the state of the roads and in fact sent a text message warning of the ice to Scott Macbeth whose car she and Mr. Maclean had recognised when they passed it as Mr. Maclean was driving south towards the locus.

[18] Mr. Maclean and Miss Bell are to be commended for their practical consideration for other road users by giving these warning of the treacherous conditions ahead.

[19] Scott Macbeth, aged 18 years, was driving along the B9161 towards the A9, i.e. in the same direction as the deceased. He was travelling to Inverness. He found the road conditions to be bad. He lost control of his vehicle when negotiating the bend near the scene of the accident. His brother, who was a passenger in his car, was sufficiently concerned to ask what had happened and Mr. Macbeth replied that it had been caused by the ice. Interestingly, this witness, who lost control of his vehicle at the same bend just after which the deceased's van went off the road, said that he had been travelling at 'no

more than 50 to 55 miles per hour'. That was considerably in excess of the speed of, for example, Mr. Maclean, who had managed to negotiate the bend without difficulty.

[20] Mr. Macbeth was candid enough to admit that if a vehicle had been travelling in the opposite direction when he lost control of his car, there would probably have been a collision. He also indicated that he had not slowed down to negotiate the bend.

[21] Glen Mason was a local resident who, coincidentally, was an ambulance technician employed by a private ambulance service in Inverness. He came across the scene of the accident and said that he safely negotiated the bend at a speed of between 40 and 45 miles per hour. He described the road surface as 'pretty slippery'. On seeing that an incident of some sort had occurred, he stopped his vehicle and got out in order to offer assistance. As he walked on the road, he lost his footing and fell on to his side due to the covering of ice.

[22] Police Constable Calum Macrae, stationed at Fortrose received a call-out to the accident. In order to get there, he travelled along the same route as the deceased. He said that at the bend in question on the B9161 the road was covered in ice. That was very obvious to him. As he was aware that he was approaching the scene of a road traffic accident, he was driving slowly. Nevertheless he said that even if he had not been looking out for a vehicle, he would have reduced his speed at that place. He recalled that it had not been raining earlier that night and he did not recall that any snow had fallen, although there might have been a snowfall.

[23] All of that evidence pointed towards the following:

- it should have been obvious to a driver having proper regard to the road on which he was travelling that there was likely to be ice on the road surface;
- in the prevailing circumstances, it was reasonable to expect there to be ice on the road and to expect that driving conditions would thereby be rendered difficult and hazardous.

- An obvious precaution would be to drive slowly and certainly at a speed well below 66 miles per hour.

[24] The collision investigation report says at paragraph 9.21:

‘The road conditions at the locus were undoubtedly a contributory factor in this collision. Some drivers only adjust their driving style in bad weather conditions after experiencing an unnatural movement of their vehicle.’

[25] The question of the condition of the road and steps taken by the roads authority were addressed at the inquiry. Evidence was led from Ian Hay, community works manager employed by TEC Services, the Highland Council (TEC being an acronym of the words transport environmental and community). Mr. Hay’s responsibilities included the maintenance and safety of roads in the geographical area of responsibility of the Highland Council. He explained that the council, had a policy of winter maintenance of roads and his responsibility was to operate that policy according to resources available. The policy was to be found in the book entitled ‘ROSS AND CROMARTY AREA WINTER MAINTENANCE ROADS 2009-2010’ produced by the Highland Council TEC Service. That book was a production at the inquiry.

[26] Mr. Hay was aged 59 years. He had been engaged in this area of work for twenty five years and had been a manager for seven years. At the weekend decisions on whether and where to apply salt or grit on the roads depended on an assessment of the actual and likely weather conditions. That assessment was based on a number of information gathering sources, viz.

- A professional weather forecast obtained from a weather forecasting service;
- Assessment of the actual prevailing weather conditions;
- Listening to the broadcast weather forecast;
- More detailed information obtained from the professional forecast provider. Such information could be sought by the council should the prevailing conditions seem to be inconsistent with the most recent forecast received.

- Information received from sensors located throughout the Highland Council area. These sensors, situated in roads at various sites describe prevailing road surface temperature, air temperature, salination level (i.e. amount of salt on the road surface), wind speed and direction and humidity. The nearest sensor to the accident site was on the A892 at Munloch. That was seven kilometres from the accident site and situated on a road that received a similar level of treatment to that received by the B9161.

[27] Regard was also had to the actual existing road conditions and the resources available, namely manpower and raw material.

[28] Armed with all of the information obtained from these sources, an official of the council had to make a decision whether and where to instruct the salting of roads. On the 16 and 17 January 2010 the officer with that responsibility in respect of the geographical area including the Black Isle was Mr. Hay. The information which he had available to him was that the salt level on the A892 was recorded as 'Salt 3'. That had been the position after the last application of salt to the roads, including the B9161, on Friday 15 January 2010. That was the highest amount of salt and the conclusion drawn from that was that there was nothing to be gained by the application of any further salt on the A892 or the roads in its vicinity, including the B9161. That was to say that the salination level could not be improved upon.

[29] There was no rainfall in the area including the B9161 on Saturday 16 January 2010 and indeed the weather forecast had been changed to remove the possibility of rainfall. In the circumstances Mr. Hay decided that no further application of salt was required on Saturday 16 January 2010.

[30] Nevertheless it was clear that there was frozen surface water on the road at the location where the deceased lost control of his vehicle. Mr. Hay explained that the council were responsible for the maintenance of roads and beyond that to any boundary wall or fence or, in open ground, to three feet from the edge of the road. Accordingly

that responsibility included any roadside drains. He said that there was a programme of drains maintenance but volunteered that the council also had to respond to complaints or find problems themselves.

[31] The police examination of the scene, as recorded at paragraphs 4.9, 4.10 and 4.11 of the collision investigation reported that the road surface was damp and affected by running water and patches of ice in places. A steady flow of water was present, running in a northerly direction down the edge of both sides of the road. The water flow was more prominent to the side of the southbound lane of the road. On the straight section of road, the water flow was confined to the area between the base of the grass verge and the edge of the carriageway line. On the left hand bend approaching that straight section, the water flow had extended on to the southbound lane. Ice had formed in parts of this area to the edge of the road surface.

[32] The water that flowed by the side of the northbound lane had crossed over on to the southbound lane, and had resulted in an area of ice forming, which covered the full width of the southbound lane and encroached onto the northbound lane. The area of ice covered an area of approximately 5.76 metres long by 3.07 metres wide.

[33] There was no conclusive evidence as to how that water, which had frozen, came to be on the surface of the road. It seemed clear that the drains, which were located to either side of the road had not served to clear all of the surface water. Mr. Hay agreed that this amount of ice on a road could be characterised as a normal exigency of severe winter weather. It could also have been a consequence of snow melt, which subsequently froze. It may have been the case that the drains could remove surface water from the road in normal circumstances but not during or after severe winter conditions. However, Mr. Hay described the amount of frozen surface water on the bend, as described and as seen in the photographs produced, as not being severe.

[34] With regard to complaints from members of the public, Mr. Hay accepted that complaints had been received about the condition of a stretch of the B9161. However, he

stressed that these had related to a different section of the road. The council had received no complaint about the stretch of the road where the accident had occurred. He was of the view that the road surface at the accident scene was sufficiently protected to allow the safe passage of carefully driven vehicles.

[35] Mr. Hay was of the view that there was nothing else within the council's policy which he could have done to make the road any safer over the weekend of 16/17 January 2010.

[36] Mr. Hay was an impressive witness. He gave his evidence in a clear and careful manner. He demonstrated his depth of knowledge and experience in the maintenance of roads in Ross and Cromarty during severe winter weather. He described a system of working operated by him and the gritting teams under his direction in line with a council policy designed to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads within the geographical area for which he was responsible. That policy was in line with the policy for such conditions throughout Scotland. I was satisfied that he was operating the policy in an entirely satisfactory way. There was no detailed scrutiny or discussion of the policy itself at the inquiry. In any event, it must be borne in mind that the evidence led pointed towards drivers of other motor vehicles being able successfully to negotiate the bend at Bogallan and that, other than the deceased, the only witness who had encountered any difficulty there, to the extent of losing control of his vehicle, had been driving at between 50 and 55 miles per hour at the relevant time.

[37] The solicitor for the Highland Council submitted that it was not practicable or even possible for a local authority to keep all roads free of ice. In my view, that submission was well-founded. To suggest otherwise would not be reasonable.

[38] Similarly while it was clear that the drains had not served to remove all of the water from the surface of the road, the situation did not seem to be so extreme as to amount to anything justifying a finding of a defect in a system of working or that any more precautions could reasonably have been taken than the operation of the council's policy

for winter road maintenance. The situation had to be judged in light of the prolonged spell of severe winter weather, low temperatures and the general picture of roads anywhere during that spell being liable to be icy.

[39] It seemed from the evidence that this bend was no more dangerous than any other stretch of road might have been on 16/17 January 2010 and that the steps taken by the local authority were reasonable and amounted to a system of working which bore no causal connection with the accident. Other drivers managed to negotiate the bend. In particular those who drove round it at slow speeds did so without difficulty. The Highway Code recommends slow speed in wintry conditions. Had Mr. Ramsay driven at a much slower speed than 66 miles per hour, then that was a reasonable precaution which might have avoided his losing control of the van. The Procurator Fiscal submitted that a finding to that effect in terms of section 6(1)(c) might be made. I agree that that can be characterised as a reasonable precaution, the taking of which might have avoided the accident.

[40] Although it made no difference to the outcome of the accident, so far as Mr. Ramsay was concerned, I think that the fact that he was not wearing his seatbelt is a fact relevant to the circumstances of the death, if only to remind other road-users of the usefulness of doing so in most circumstances.

[41] Mr. Ramsay was clearly a capable and popular young man. His tragic death robs his family and his friends of his company and support. I express my condolences to them.