

SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK

[2021] FAI 40

KIL-B518-20

DETERMINATION

BY

SHERIFF PRINCIPAL DUNCAN L MURRAY WS

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

into the death of

THOMAS ROBERT JAMES BROWN

KILMARNOCK 14 JUNE 2021

DETERMINATION

The Sheriff Principal having considered all of the evidence, the productions referred to and the submission of parties, determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016 (“the 2016 Act”) that:–

- F1. In terms of section 26(2)(a): Thomas Robert James Brown, hereinafter referred to as “Mr Brown” born on 7 August 1983, died on 17 January 2019 at approximately 13:45 within a designated layby, by the side of the carriageway of the A77 approximately 500 metres south of the Meiklewood Interchange, Kilmarnock.
- F2. In terms of section 26(2)(b): the accident resulting in the death occurred within said designated layby.

F3. In terms of section 26(2)(c): the cause of death was multiple injuries as a result of a road traffic collision.

No other findings or recommendations fall to be made under any of the other sub-sections of section 26 of the Act.

NOTE

INTRODUCTION

Representation at the Inquiry:

For the Crown: Mr Faure, Procurator Fiscal Depute

**For Morrison Utility Services Limited: Mr Lennox, Kennedys Scotland,
Solicitors**

For David Henderson: Mr Brogan, Digby Brown LLP

[1] This is a mandatory inquiry under sections 2(1) and 2(3) of the Act, into the death of Mr Brown who died on 17 January 2019, the death having occurred in Scotland as a result of an accident while Mr Brown was acting in the course of his employment. The warrant for first citation was granted on 18 December 2020. Preliminary hearings were held by way of conference call on 28 January 2021 and by WebEx on 21 March 2021 and 14 May 2021. As a result of the preliminary hearings parties prepared a joint minute of agreement and no parole evidence required to be led at the inquiry. The Procurator Fiscal Depute read the joint minute when the inquiry called and I have received written

submissions from parties as to the findings I was invited to make. The parties' submissions were in similar terms and sought formal findings.

[2] The Crown comprehensively investigated the death of Mr Brown and no pre-existing morbidities were found, nor were there any untoward toxicology findings. As a precautionary measure the late Mr Brown's blood relatives have undergone genetic screening. This is a tragic and unfortunately unexplained accident. The Crown through their further investigations were able to eliminate most of the variables and established that the vehicle which Mr Brown was driving at the time was mechanically sound; that the road surface was in a good state of repair; that the weather was dry and visible to the extent of 150 yards looking forward. The speed at which Mr Brown was driving immediately prior to the accident was recorded in the vehicle's sensory modules and CCTV captured Mr Brown driving his van approximately six minutes before the accident demonstrates no obvious difficulties, nor does there appear to be any difficulty with the van, which is driving along in traffic and is in its lane. The sensory modules were removed and sent to Fiat Chrysler Automobiles, Turin, Italy for diagnostic testing and this revealed no faults. I therefore accept the parties' submissions that the cause of the accident is simply unknown. I make the following findings in fact in terms of the joint minute:

1. Mr Brown was aged 35 years at the time of his death.
2. Mr Brown was employed as a plant and vehicle maintenance fitter with Morrison Utility Services Limited, based at Whistleburgh Road, Blantyre, Lanarkshire. He was employed by this company for approximately six years.

His responsibilities were to look after, service and repair all the vehicles the company had operating that week with support when necessary. This included the maintenance of his own vehicle.

3. At 12:00 on Thursday 17 January 2019 Mr Brown left his home address. He then drove to work driving his employer's motor vehicle, a white coloured Fiat Ducato motor vehicle registration mark BJ67 KZH. He was driving to Teviot Head, Troon. His route that day took him along the A77 travelling southbound towards Ayr.

4. At about 13:15 on the same date, Mr David Henderson, a lorry driver, took one of his daily rest breaks and parked his white coloured Man flatbed rigid motor lorry registration mark J18 MTV in the designated layby, by the side of the carriageway of the A77 approximately 500 metres south of the Meiklewood Interchange, Kilmarnock.

5. At about 13:45 Mr Brown's vehicle was travelling south in the nearside lane of the southward bound carriageway of the A77. Thereafter his vehicle left the A77 nearside lane and entered the layby at a speed of 56mph when it collided with the rear of Mr Henderson's flatbed lorry. Mr Henderson's lorry was stationary at the time of the collision. The collision was witnessed by a number of motorists who had been travelling in the same direction behind Mr Brown.

6. No brake lights were displayed on Mr Brown's vehicle immediately before the collision.

7. Mr Henderson, who was asleep within his vehicle, was thrown from his bunk within his cab. He sustained injuries. He was attended to by the emergency services at the scene.
8. Mr Brown was found to be unresponsive and trapped within the driver's seat of the vehicle. The internal cabin had suffered catastrophic intrusion.
9. About 14:30, following medical assessment, Mr Brown was found to have succumbed to his injuries and life was pronounced extinct by Dr Tim Parke, Emergency Trauma Team, at the scene within said layby on the A77 southbound approximately 500 metres south of the Meiklewood Interchange, Kilmarnock.
10. The collision was investigated by officers from The Police Service of Scotland Traffic Division. Police Constables John Denholm and Greg Norwood attended the locus at 13:50 and immediately closed the roadway and implemented diversions. Police Sergeant Ian Thornton attended the locus at 14:17 and assumed the role of Senior Investigating Officer.
11. At the time of the incident it was daylight, overhead conditions were clear, and visibility was good. The sun was low in the sky. Drivers travelling south on the A77 would be travelling towards the sun. The road surface was dry and in a good state of repair. A driver travelling south would have a view of the locus approximately 150 metres in front of her or him. This distance, 150 metres would be if there were no preceding vehicles or weather conditions reducing the driver's field of forward vision.

12. No tyre marks were found on the carriageway surface, nor the layby surface on the immediate approach to the collision site.
13. Mr Brown was removed to the mortuary at Queen Elizabeth University Hospital, Glasgow pending a post mortem examination.
14. Photographs were taken at the scene.
15. Mr Brown's white Ducato van was captured by CCTV travelling in the inside lane of the A77 southbound at 13:38:50 hours. The CCTV footage came from an onboard camera on a bus which was parked by the side of the A77 on the hard shoulder. Mr Brown is seen sitting upright and has one hand on the steering wheel and the other hand is resting on his thigh. There is nothing untoward about his presentation as he drives past the stationary bus. His van continues travelling south on the A77.
16. Immediately before Mr Brown's vehicle left the carriageway and collided with the stationary lorry, which was at about 13:45, he was leaning forward, his chest was close to the steering wheel, his eye line was just above the dashboard.
17. On 29 January 2019 at the Queen Elizabeth University Hospital, Glasgow a post mortem examination was conducted by forensic pathologists Drs Julia Bell and Gemma Kemp. The cause of death was recorded as 1a: multiple injuries due to 1b: road traffic collision.
18. Blood samples were analysed by forensic toxicologists Fiona Mary Wylie and Denise Anne McKeown, and their findings revealed a blood alcohol

concentration of 11 mg/100 mL which is consistent with the post mortem bacterial production of ethanol.

19. There was no obvious pre-existing natural disease (or toxicological reason) to account for Mr Brown having become unwell prior to the crash.

20. On pathological grounds, both forensic pathologists opined it was not possible to completely exclude the role of a pre-existing condition having played a part in the circumstances leading up to the collision, but correlation with the crash investigation may assist.

21. Both pathologists asked COPFS to consider initiating a referral by the GPs responsible for immediate family members for cardiac screening. Tissue samples were retained for genetic testing. The results of the genetic testing are not yet known.

22. Both vehicles were recovered for mechanical and vehicle examinations to be carried out.

23. On 23 January 2019 Police Constables Michael Gaffney and Jon Mochan at Barry Devlin Services at Moorfield Industrial Estate, Kilmarnock carried out a full examination of the white Ducato van which Mr Brown had been driving and found no obvious defects which have contributed to the collision. The extent of the examination was limited because of the extensive damage caused to the van in the collision.

24. Internal sensor modules were removed and sent to Fiat Chrysler Automobiles, Turin, Italy to carry out analysis of the diagnostic contents. This

analysis provided information that the vehicle's battery voltage was 13.3V and had no faults. The front driver seat belt was fastened and the airbags deployed correctly. It was found that the collision occurred 3360 seconds (56 minutes) after the engine was turned on and the vehicle had been travelling at 90 kilometres per hour (56mph) immediately prior to the collision.

25. Mr Brown's van, a white Fiat Ducato van registered number BJ67 KZH owned by his employer and exclusively used by him for work purposes, was mechanically sound.

[3] I would thank Mr Faure, Mr Lennox and Mr Brogan for the assistance they have given to the court in the conduct of this enquiry.

[4] Finally I would join with all parties to offer my condolences to Mr Brown's family and friends.