

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
DUMFRIES**

[2021] FAI 46

DUM-B152-20

DETERMINATION

BY

SHERIFF COLM P DEMPSEY

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

into the deaths of

DAVID JOHN WALTON AND JOSHUA HATTON-EMERY

Dumfries, 12 July 2021

The Sheriff, having considered the information presented at an inquiry under section 26 of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the Act”) determines:

1. In terms of section 26(2)(a) that the death of David John Walton occurred around 07.35 on 2 May 2019 at the A74(M) Northbound Carriageway, near to the Cauldwellknowe Overbridge, Eaglesfield, Lockerbie, and that the death of Joshua Hatton-Emery occurred at 07.50 on 2 May 2019 at the A74(M) Northbound Carriageway, near to the Cauldwellknowe Overbridge, Eaglesfield, Lockerbie.
2. In terms of section 26(2)(b) the accident which resulted in the deaths of David John Walton and Joshua Hatton-Emery occurred at around 06.10 on 2 May 2019 at

the A74(M) Northbound Carriageway, near to the Cauldwellknowe Overbridge, Eaglesfield, Lockerbie.

3. In terms of section 26(2)(c) that the cause of death of David John Walton was:

1(a) Chest injuries due to 1(b) road traffic collision (driver), and the cause of the death of Joshua Hatton-Emery was 1(a) Multiple injuries due to 1(b) road traffic collision (passenger).

4. In terms of section 26(2)(d) the cause of the accident which resulted in the deaths was a road traffic collision caused by the vehicle being driven by David John Walton, and in which Joshua Hatton-Emery was a passenger, colliding with the rear of an articulated lorry.

5. In terms of section 26(2)(e) there are no precautions which could reasonably have been taken and which might realistically have avoided the deaths or the accident.

6. In terms of section 26(2)(f) there were no defects in the system of working which contributed to the deaths or the accident resulting in the deaths.

7. In terms of section 26(2)(g) there are no other facts and circumstances which are relevant to the deaths.

NOTE

Introduction

[1] A fatal accident inquiry was held at Dumfries Sheriff Court on 10 June 2021 into the deaths of David John Walton and Joshua Hatton-Emery.

[2] Two parties were represented at the inquiry. Ms Margaret McCallum, procurator fiscal depute, appeared for the Crown. Mr Peter Martin, appeared for Charles Taylor Trading Limited. Mr Walton's widow attended the hearing by way of teleconference call. The family of Mr Hatton-Emery did not enter appearance in the proceedings.

[3] No oral evidence was led at the inquiry. A joint minute was entered into by the parties, both of whom invited me to make only formal findings in terms of section 26(2)(a), (b), (c) (d) and (e) of the Act.

The Legal Framework

[4] This inquiry was held under section 1 of the Act. It was a mandatory inquiry in terms of section 2(3) of the Act as Mr Walton and Mr Hatton-Emery were, at the time of the accident which resulted in their deaths, engaged in the course of their employment. Fatal accident inquiries and the procedure to be followed in the conduct of such inquiries are governed by the provisions of the 2016 Act and the Act of Sederunt (Fatal Accident Inquiry Rules) 2017.

[5] In terms of section 1(3) of the Act the purpose of an inquiry is to establish the circumstances of the death and to consider what steps, if any, may be taken to prevent other deaths in similar circumstances. Section 26 requires the sheriff to make a determination which in terms of section 26(2), is to set out factors relevant to the circumstances of the death, in so far as they have been established to his satisfaction. These are (a) when and where the death occurred; (b) when and where any accident

resulting in the death occurred; (c) the cause or causes of the death; (d) the cause or causes of any accident resulting in the death; (e) any precautions which could reasonably have been taken and if they had been taken might realistically have resulted in the death being avoided; (f) any defect in any system of working which contributed to the death or to the accident; and (g) any other facts which are relevant to the circumstances of the death. In terms of section 26(1)(b) and 26(4), the inquiry is to make such recommendations (if any) as the sheriff considers appropriate as to (a) the taking of reasonable precautions, (b) the making of improvements to any system of working, (c) the introduction of a system of working, and (d) the taking of any other steps, which might realistically prevent other deaths in similar circumstances. The procurator fiscal represents the public interest. An inquiry is an inquisitorial process and the manner in which evidence is presented is not restricted. The determination must be based on the evidence presented at the inquiry. It is not the purpose of an inquiry to establish criminal or civil liability.

Findings

[6] Mr Walton was 57 years of age at the time of his death, having been born 25 February 1962.

[7] Mr Hatton-Emery was 17 years of age at the time of his death, having been born 31 August 2001.

[8] Mr Walton was, at the time of his death, engaged in his employment as a delivery driver with Charles Taylor Trading Limited.

[9] Mr Hatton-Emery was, at the time of his death, assisting Mr Walton with his deliveries. Mr Hatton-Emery was not employed by Charles Taylor Trading Limited, there was however a regular ongoing arrangement whereby he would assist Mr Walton and other drivers of the firm with their deliveries. Mr Hatton-Emery would be paid a sum of money by the individual driver. Charles Taylor Trading Limited were aware of the arrangement but sought to discourage it.

[10] On 2 May 2019 Mr Walton was driving his Mercedes Sprinter van, registration WR61 UCX, with Mr Hatton-Emery as the front seat passenger. Neither Mr Walton nor Mr Hatton-Emery were wearing seatbelts. The vehicle was traveling northbound on the A74(M).

[11] As a result of a fatal road traffic collision on the evening of 1 May 2019, the northbound carriageway of the A74(M) was closed north of junction 20 with traffic being diverted from the carriageway at junction 20, Eaglefield. There was a coned taper in place which reduced the carriageway from three lanes to one. The taper was lit and the lighting was in working order.

[12] The view for drivers approaching the diversion on the northbound carriageway was clear and unobstructed with the road extending straight for 0.45 miles prior to the point of collision.

[13] At around 06.10 Neil Watson was driving his Mercedes Actros articulated lorry northbound on the A74(M). As he approached the diversion at junction 20 Eaglefield, Mr Watson began to slow his vehicle which was positioned in lane one. Traffic was queuing ahead waiting to leave the carriageway. At the time of the collision

Mr Watson's vehicle was travelling at 2 mph and was directly underneath the Cauldwellknowe overbridge. At this time, for reasons unknown, Mr Walton has allowed his vehicle to collide with the rear of the Mercedes Actros articulated lorry.

[14] The collision caused extensive damage to both vehicles. The engine and driving controls of the Mercedes Sprinter van were forced upwards and into the passenger cab of the vehicle. As a result of the damage both Mr Walton and Mr Hatton-Emery were trapped inside the vehicle. Mr Walton was initially conscious and breathing, Mr Hatton-Emery could not be seen due to the high level of intrusion into the cabin of the vehicle.

[15] The Scottish Fire and Rescue Services attended at the scene and used machinery to separate the vehicles which allowed ambulance staff access to the occupants.

[16] Following the separation of the vehicles, Mr Walton lost consciousness and went into cardiac arrest. Despite the efforts of ambulance staff, Mr Walton did not regain consciousness and he was pronounced dead at the scene at 07.35.

[17] Mr Hatton-Emery was found by ambulance staff to have sustained non survivable injuries and he was pronounced dead at the scene at 07.50.

[18] Police Constables Colin Ramage and Ewan Thomson conducted a collision investigation. Their report is dated 30 July 2019. The officers carried out a reconstruction of the accident from which it was revealed that there were no signs of braking or steering input from the driver of either vehicle. The conclusion of the report found that the collision occurred as a result of Mr Walton, the driver of the Mercedes Sprinter van, allowing his vehicle to collide with the rear of the Mercedes Actros articulated lorry driven by Mr Neil Watson. Standing the time of day when the collision

occurred, and the lack of any avoiding actions by Mr Walton, it could not be discounted that Mr Walton had fallen asleep at the wheel of the vehicle. The collision investigation report is Crown Production 4. It is a true and accurate report.

[19] On 16 May 2019 at the Queen Elizabeth University Hospital, Glasgow, Doctors John Williams and Gillian Wilson, forensic pathologists, conducted a post mortem examination of David John Walton and concluded the cause of death to be at 1a. Chest injuries due to 1b Road traffic collision (driver). The post mortem examination report is produced as Crown Production 1. It is a true and accurate report.

[20] On 16 May 2019 at the Queen Elizabeth University Hospital, Glasgow, Doctors John Williams and Gillian Wilson, forensic pathologists, conducted a post mortem examination of Joshua Hatton-Emery and concluded the cause of death to be at 1a. Multiple injuries due to 1b Road traffic collision (passenger). The post mortem examination report is produced as Crown Production 2. It is a true and accurate report.

[21] Blood and urine post mortem samples from David John Walton were tested by forensic toxicologists Dr Hazel Torrance and Ms Denise McKeown. Their joint report dated 22 July 2019 revealed the presence in the blood sample of the inactive metabolite of the active drug present in cannabis. The finding indicates the use of cannabis. The inactive metabolite continues to be detectable for some time after the cannabis is used.

[22] Blood and urine post mortem samples from Joshua Hatton-Emery were tested by forensic toxicologists Dr Hazel Torrance and Ms Denise McKeown. Their joint report dated 24 July 2019 revealed the presence in the blood sample of the inactive metabolite of the active drug present in cannabis. The finding indicates the use of cannabis. The

inactive metabolite continues to be detectable for some time after the cannabis is used. The blood sample also revealed a low concentration of alcohol which could have been due to post-mortem bacterial production.

[23] On 1 November 2018 police officers Thomas Kirkpatrick and Andrew Aitken, both attached to the Road Policing Unit at Lockerbie Police Station, examined Mr Walton's Mercedes Sprinter motor vehicle at a yard in Carlisle where it had been taken after the collision. The examination revealed that the nearside inner rear tyre had insufficient tread depth. They concluded "that the mechanical condition of the vehicle was not a contributory factor in the collision". The vehicle examination report is produced as Crown Production 5. It is a true and accurate report.

Conclusion

[24] The cause of the accident is a matter of inference. On the available evidence the conclusion to which I am drawn is that Mr Walton fell asleep at the wheel and allowed his vehicle to collide with the rear of the Mercedes Actros articulated lorry.

[25] Given the circumstances of the deaths of Mr Walton and Mr Hatton Emery, I am satisfied, as submitted by all parties, that only findings in terms of paragraphs (a) (b) (c) (d) and (e) of section 26(2) of the Act should be made in this case. In my view there is no requirement for me to go further. The sole cause was driver fatigue; the danger of which is well known to professional and non-professional drivers alike.

[26] Finally, I extend my sincere condolences to the family and friends of Mr Walton and Mr Hatton-Emery.