

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT BANFF

FAI 12

DETERMINATION

by

SHERIFF GORDON FLEETWOOD

in Inquiry into the circumstances of the death of

MS ROBYN AMY OLDHAM

Under the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

APPEARANCE:

For the Crown: Mr. Hutchison, Procurator Fiscal.

Banff 8th March 2010

The Sheriff, having considered all the evidence adduced and the submissions made thereon, determines in terms of section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 as follows:

Section 6 (1) (a)

1. Robyn Amy Oldham, born 17th July 1993, died at about 02.08 hours on 5th September 2007 at the Royal Infirmary Aberdeen, AB25 2ZN.

Section 6 (1) (b)

2. The cause of her death was head injuries sustained as a pedestrian in a road accident on the A947 Turriff to Aberdeen road at Birkenhills, Turriff, Aberdeenshire.

Section 6 (1) (c)

3. There were no reasonable precautions whereby her death might have been avoided.

Section 6 (1) (d)

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

Section 6 (1) (e)

5. Other facts which are relevant to the circumstances of her death are set out in the following Note.

NOTE

(1) Section 1(1)(b) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 provides that where it appears to the Lord Advocate to be expedient in the public interest that an inquiry should be held into the circumstances of a death, the Procurator Fiscal shall investigate and apply to the Sheriff for the holding of an inquiry under the Act into those circumstances.

(2) This inquiry was held following an application by the Procurator Fiscal for the District of Banff in respect of the death of Robyn Amy Oldham. Robyn was a 15 year old schoolgirl who lived with her mother and siblings at an address near the locus of the accident in which she died.

(3) The inquiry in this case was heard over two days: 25th and 26th February 2010.

The Procurator Fiscal called the following witnesses:

- (a) P.C. Carl Wright, Grampian Police, a police officer who attended at the accident.
- (b) Gillian Pauline Ancell, the driver of the car which struck Robyn.
- (c) Charles MacDonald, school bus driver.
- (d) Iris Henderson, who stays near the accident.
- (e) Brian Convery, the driver of a car which was near the locus at the time of the accident.
- (f) Robert Copeland, a Red Cross volunteer who attended the accident.
- (g) James Gall, an Ambulance Care assistant who was instructed to attend the accident.
- (h) Colin Jeffrey, a Paramedic who was instructed to attend the accident.
- (i) P.C. Graham Low, Grampian Police, a police officer who attended at the accident.
- (j) P.C. Andrew Stephen, Grampian Police, a police officer trained in accident reconstruction who was a joint author of Crown Production 1, the collision Investigation Report relevant to the accident.
- (k) Ron Beaty, a person with expertise in the signage and use of school buses.

- (l) Ewen Wallace, Head of Transportation for Aberdeenshire Council.

In addition, affidavits were produced from Dr Duncan Stephen, who produced a toxicology report following on the post mortem examination of Robyn, Dr Kimberly Ann Fraser, the doctor who pronounced life extinct and Dr James Grieve, the pathologist who carried out the post mortem examination of Robyn.

I found all the witnesses to be credible. I did have some concerns with the reliability of some of the evidence I heard and where that has a bearing on my Determination I will refer to that at the appropriate part of the Note annexed hereto.

I am obliged to the Procurator Fiscal for the thorough and sensitive way the issues in this Inquiry were explored by him in the presentation of the evidence, and to the witnesses for their attendance and clear and helpful evidence, when recalling what for some of them was clearly a traumatic and distressing experience.

BACKGROUND

- (1) Robyn Amy Oldham stayed with her mother and siblings at a house in the hamlet of Birkenhills. The family had moved there from England a short time before the accident which caused Robyn's death. Robyn was 15 years old, and a pupil at Turriff Academy at the time of her death. Because she stayed more than three miles from the school she attended, Aberdeenshire Council were obliged to transport her to and from school.
- (2) The Council met this obligation by providing a bus to travel from beyond Birkenhills to Turriff picking up pupils in the morning, and returning them to the appropriate drop off points in the afternoon.
- (3) The journey in this instance was contracted to Stagecoach PLC and the bus was usually driven by Charles MacDonald, a bus driver with many years experience.

- (4) When being used as school buses, vehicles employed under contract by Aberdeenshire council are required to display signs front and rear. These signs are yellow in colour and depict two walking figures. The rear sign on the bus in the case can be clearly seen in Photograph I of Crown Production 9, but are best described as the standard signs in everyday use. When the bus is not being used to transport schoolchildren Aberdeenshire Council require that the sign be removed or covered. The bus in this case did that by using a fold down flap to cover the rear sign. The front sign was displayed at the nearside of the windscreen and was removed from there if the bus was being used other than as a school bus.
- (5) The journey from Turiff to Birkenhills was along the A947 road. This is the main Turiff to Aberdeen road. At Birkenhills it is a two lane undivided carriageway road, running roughly North to South as one approaches Birkenhills.
- (6) On the East side of the road there is a bus stop. This consists of a lay by which allows a bus to pull off the carriageway completely, and a bus shelter. As a driver approaches the bus stop from the North there is clear visibility for a substantial distance. This was the usual dropping off point for Robyn, and was where she was dropped off on 4th September 2008.
- (7) At the time of the accident the national speed limit of 60 mph applied to this stretch of road. I heard evidence that this had now been reduced to 50 mph, but that this reduction was part of a general review of speed limits in rural areas and not connected with this accident.
- (8) On 4th September 2008, the day of the accident there had been rain earlier in the day, but it was dry at the relevant time, although the road surface was damp. The accident occurred during daylight hours and no witness complained of a lack of visibility.

CIRCUMSTANCES OF THE ACCIDENT

- (9) At or about 3.45 to 4.00 pm on 4th September 2008 school bus Reg. No. M536 RSO arrived at the bus stop on the east side of the A 947 at Birkenhills. The bus pulled into the lay by there and was completely off the southbound carriageway of

the road. Robyn and one other pupil alighted at this stop. Robyn was sitting near the front of the bus and was the first to alight. The other pupil was seated near the back of the bus and alighted some time after Robyn. During this process the attention of Mr MacDonald, the bus driver, was on the progress down the bus of this second pupil. He was aware that on leaving the bus Robyn had gone to her left, towards the rear of the bus.

- (10) At this time Gillian Ancell was driving Mercedes motor car X884 NRS southwards on the A947 approaching Birkenhills. She became aware of the presence of the bus within the bus stop when some distance away from it. She was not aware at that stage that it was a school bus. She did give evidence, which I accept as truthful and reliable, that the presence of a bus in the bus stop put her on guard for the presence of pedestrians.
- (11) At the time the bus came into view Gillian Ancell's car was travelling at or about 50 to 55 mph.
- (12) Ms Ancell was aware of a person at the rear of the bus, on the pavement. This turned out to be Robyn. She watched Robyn move towards the carriageway and then stop and appear to interact with a person in the rear seat of the bus. As Robyn initially moved towards the carriageway Ms Ancell took steps to reduce the speed of her vehicle. Whether this was by decelerating or braking was unclear on the evidence. When Robyn stopped to interact with a passenger on the bus Ms Ancell noted this, but kept Robyn in sight and in mind.
- (13) When Ms Ancell was a short distance away from Robyn, Robyn walked or ran into the path of Ms Ancell's vehicle. She collided with the near side of the vehicle, probably being caught first of all by the front of the car, then striking her head on the windscreen and the pillar to the near side of the windscreen,
- (14) On seeing Robyn move towards the carriageway Ms Ancell braked hard and swerved to the right, away from the direction Robyn was approaching from, but could not avoid a collision. The speed of Ms Ancell's vehicle at the time of the collision was about 30mph.
- (15) The evidence was unclear whether Robyn walked or ran onto the carriageway. Ms Ancell's recollection was that she ran. Brian Convery, who was

driving a car behind Ms Ancell gave evidence that she walked out, but he was convinced that Robyn came from behind the front of the bus, evidence I cannot accept, as it is contrary to other evidence I preferred and to the Accident Reconstruction Report, which I accept as reliable. In either event I was satisfied that Ms Ancell was left with no time to react so as to avoid a collision.

- (16) Ms Ancell's vehicle came to a halt in the northbound carriageway of the A947. She immediately alighted and sought to assist Robyn.
- (17) Mr MacDonald, the bus driver, had not seen the accident but had heard a bump and a screech of brakes. He was unsure of the order of these two events. He saw the result of the collision and immediately sought to render first aid, which he is trained to provide.
- (18) By fortunate chance Mr Copeland, a Red Cross volunteer came upon the accident and was able to assist until an ambulance crewed by Mr Gall and Mr Jeffrey attended about 25 minutes after the accident. An air ambulance was summoned and attended and took Robyn to Aberdeen Royal Infirmary.
- (19) When at Aberdeen Royal Infirmary it was established that her injuries were not survivable and Robyn died at about 02.08 am on 5th September 2008.
- (20) Post mortem examination revealed head injuries on a massive scale, consistent with the accident Robyn suffered.

SECTION 6 (1)(e)

- (21) I am not prepared to make any recommendations under Section 6(1)(e) of the Act but there are observations derived from the evidence that I was invited to comment on by the Procurator Fiscal, and on which I feel it is appropriate to comment. This relates to evidence given by Mr. Beaty and Mr. Wallace.
- (22) Mr. Beaty is a retired gentleman who suffered the misfortune of having a granddaughter seriously injured in 2004, when she was knocked down leaving a school bus. Since then Mr. Beaty has campaigned tirelessly for improved safety on and around school buses

- (23) Mr. Wallace is Head of Transportation for Aberdeenshire Council, and as such is responsible for the operation of school buses in Aberdeenshire. He is a Chartered Civil Engineer and has been involved with transportation issues virtually since he qualified in 1994.
- (24) Mr. Beaty feels strongly that many accidents involving school transport come about because drivers do not pay sufficient attention to school buses. As I understood his evidence he believes this is because, at least in part, of inadequate signage on these buses.
- (25) Presently each local authority determines what signs should be on school transport, subject to certain statutory minimums laid down by the Westminster Parliament. Mr. Beaty would like to see all authorities required to use the same signs so there would be no confusion from area to area. He would also like strict adherence, by contractors, to the requirement that signs were not displayed when the vehicle was being used for other purposes.
- (26) As an example of what Mr. Beaty would like to see the Crown produced production 3, a photograph of a bus used by a local authority in Yorkshire. This is yellow in colour with a red sign prominent on its front, indicating its purpose and incorporating flashing lights.
- (27) In addition Mr. Beaty would like to see the law changed to forbid the overtaking of stationary school buses by other vehicles. This was the law, he said, in many states in the USA. Both the Procurator Fiscal and the court pressed him, gently, on this proposal and it became clear that this is, at best, an idea in progress. He was unsure, for example, whether the prohibition would apply to emergency vehicles or to buses which were wholly off the carriageway in designated bus stops.
- (28) Mr. Wallace advised the court that throughout Aberdeenshire 13, 000 pupils were transported to and from school daily. There were about 2,100 pick up points, and about the same number of drop off points. About 100 contractors were involved and 800 vehicles ranging from 55 seater buses to taxis for one or two pupils were used. Routes were revised annually as requirements changed and contracts were regularly re-negotiated. The terms of these contracts covered such

- matters as signage, and the covering of signs when the vehicles were being used for purposes other than the transportation of schoolchildren. Such matters were regarded as relevant when contracts were re-negotiated. A “penalty points” system for failing to comply with the terms of a contract was in place and contractors who failed to comply could have their contracts terminated. It was clear from the evidence of Mr. MacDonald that his employer both knew of the requirement to cover or remove signs, and instructed their drivers on compliance.
- (29) It was clear from his evidence that Mr. Wallace and Aberdeenshire Council took the death of Robyn, and another pupil at about the same time, seriously.
- (30) Since the accident the council have investigated improving the signs on buses. They have ascertained that so long as the familiar yellow sign with two figures is included they can add to it and a pilot scheme is underway, involving the use of larger, more prominent signs, surrounded by red and yellow stripes. Contractors have been alerted that the council’s requirements may change and they will be given time to adapt, if the scheme is adopted.
- (31) A pilot scheme involving “Interactive bus stops” is underway. This involves fitting a transponder to pupils’ schoolbags which will cause lights to flash at a bus stop when children are present.
- (32) Mr. Wallace would not venture an opinion on the success or otherwise of these pilot schemes as both were still running and no formal evaluation had been carried out.
- (33) Additionally an educational campaign “BusStop!” campaign has been pursued throughout the Council area. This involves a poster campaign or display in schools, the issue of a booklet to households which require transport and the showing of a DVD in schools. The DVD was played during the evidence. It is in two parts, the first showing a reconstructed accident, and its effects, and the second a moving and memorable interview with Robyn’s mother explaining the effect on her and her family of Robyn’s death.
- (34) I was impressed by the dedication of Mr. Beaty in pursuing his campaign. I am unable to incorporate any of his evidence into a recommendation under

section 6(1)(e) though. The reasons for this are two fold. First I do not see that the signage on the bus Robyn alighted from was a contributory factor in the accident. I am aware of the very frank evidence of Ms Ancell that she did not realize it was a school bus but must balance that against her evidence that she was put on guard by the mere presence of a bus in the bus stop. That said, it was clear from the evidence I heard and accepted that once Robyn entered the carriageway the collision was unavoidable.

(35) Secondly, although I understand the basis for Mr. Beaty's suggestion that the overtaking of stationary school buses be made unlawful I do not feel able to make a recommendation along those lines. Mr. Wallace, in his evidence, did not dismiss such a change in the law but pointed out several reasons why it may not be appropriate.

(36) In particular he felt that in a rural area, as here, where a bus stopped many times in a relatively short distance driver frustration could lead to other dangers, for instance overtaking at a dangerous place whilst the bus was in motion.

(37) On the evidence I heard I was not persuaded that a change in the law, such as Mr. Beaty suggested could be recommended. Whether Mr. Beaty's continuing campaigning on this issue results in a change to the law is a matter for another day.

(38) I was impressed by the extensive and appropriate steps taken by Mr. Wallace, on behalf of the, council to try to avert a similar tragedy. These steps, looked at in their entirety appear to me to a proper and proportionate response by the Council. Given what is being done I see no need for any recommendations under section 6 (1)(e).

(39) Finally, I would like to repeat the courts condolences to Mrs. Oldham and Robyn's siblings for their irreplaceable loss.

Gordon Fleetwood

Sheriff of Grampian, Highland and Islands at Banff

