

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

2013 FAI 2

DETERMINATION

of

SHERIFF FIONA TAIT

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

in respect of

the Fatal Accident Inquiry into the death of

**SCOTT DAVID COOK MCINTOSH
(born 21.8.84)**

Perth, December 2012

The Sheriff, having considered the cause, determines:

1. In terms of section 6(1)(a), Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that Scott David Cook McIntosh, born 21 August 1984 and last residing at Moyhall, David Street, Blairgowrie, died on 6 July 2011 at 1632 hours at Ninewells Hospital, Dundee. Mr McIntosh died as a result of a road traffic collision which occurred at approximately 1255 hours on that date on the A93 Blairgowrie to Braemar road, approximately four miles south of Spittal of Glenshee. He was driving his vehicle in the course of his employment as a tyre fitter.

2. In terms of section 6(1)(b) of the said 1976 Act that the causes of death were (a) intracerebral and brain stem injuries, (b) blunt force trauma and (c) vehicular collision (van driver).

Note

The Evidence

Evidence in the inquiry was led on 17 December 2012. Mrs Ross, Senior Procurator Fiscal Depute, Dundee represented the Crown. Mr Graham, Solicitor represented Stevenson Brothers (Avonbridge) Ltd, the employers of Alistair McGilvray who was the driver of the Volvo FH articulated lorry registration number SK08 BMU with which Mr McIntosh's vehicle collided and which was being driven by Mr McGilvray in the course of his employment.

The Crown led evidence from Bruen Lockett, Alistair McGilvray, William Smith, Alick Williams and from Police Constables Jonathan Godfrey and Michael Douglas.

Witnesses Lockett, McGilvray and Smith were drivers of other vehicles on the A93 on 6 July 2011 at the time of the road traffic collision. Mr Lockett was driving his vehicle on the A93 northbound, travelling behind Mr McIntosh's vehicle, an Iveco Daily van registration number BX06 HZF. Mr McGilvray was driving his vehicle on the A93 southbound and, as noted above, it was his vehicle with which Mr McIntosh's vehicle collided. Mr Lockett's vehicle, a Mercedes van registration number KX10 WRT, subsequently struck Mr McIntosh's vehicle. Mr Smith, coincidentally also driving in the course of his employment with Stevenson Brothers (Avonbridge) Ltd, drove a heavy goods vehicle southbound on the A93, following Mr McGilvray's vehicle behind an intervening car and some 150 to 200 yards behind Mr McGilvray's vehicle.

Alick Williams is a Vehicle Examiner with the Vehicle and Operator Services Agency (VOSA) based at Perth.

The police constables are both officers with Tayside Police. PC Douglas is a Road Crash Investigator with the force's Road Policing Unit.

The photographs taken by Vikki Gordon, Force Support Officer of the Scene Examination Unit, Scottish Police Services Authority Forensic Services, Crown Production numbers 9 to

11, and the terms of a Post Mortem Examination Report, Crown Production number 1, were agreed in a Joint Minute of Admissions.

No evidence was led on behalf of Stevenson Brothers (Avonbridge) Ltd.

The Submissions

In submissions, both parties were agreed on the findings in terms of section 6(1)(a) and of section 6(1)(b) in respect of the cause or causes of death. I was not invited by the Crown to make any findings in terms of section 6(1)(c), (d) or (e) but simply to make formal findings.

Mr Graham on behalf of Stevenson Brothers (Avonbridge) Ltd invited me to make a finding under section 6(1)(c) of the 1976 Act to the effect that a reasonable precaution whereby Mr McIntosh's death and the accident resulting in his death might have been avoided would have been for Mr McIntosh to prevent his vehicle from encroaching onto the southbound carriageway of the A93. He supported his submission under reference to the evidence that Mr McGilvray as driver of the Volvo FH articulated lorry was and remained established on the southbound carriageway at all relevant points. Further, the evidence was that Mr McIntosh's vehicle encroached onto the southbound carriageway.

I gave the Crown the opportunity to respond to the proposed finding under section 6(1)(c). While the factual basis for the proposed finding was not disputed, the Crown expressed doubt about whether the proposed finding fell within the ambit of section 6(1)(c).

Determination

The evidence in the present inquiry gave rise to no dispute. Witnesses were subject to either no or extremely limited cross-examination. I found all of the witnesses to be credible and reliable.

The immediate circumstances of the collision were spoken to by Bruen Lockett, Alistair McGilvray and to a lesser extent by William Smith. Mr McIntosh's vehicle had been proceeding northbound on the A93 when it crossed onto the southbound carriageway,

colliding with Mr McGilvray's Volvo FH articulated lorry. The collision occurred as Mr McIntosh's vehicle negotiated a left hand bend. The offside front of Mr McIntosh's Iveco Daily van collided with the offside front of Mr McGilvray's Volvo FH articulated lorry, with the van being stopped, then pushed backwards and rotating clockwise to come to rest on the verge of the northbound carriageway. Mr Lockett, driver of the Mercedes van immediately behind Mr McIntosh's van, braked hard, travelling a distance between the other two vehicles, with his van's nearside colliding with the front of the damaged Iveco Daily van and being brought to a stop on its impact.

Police Constable Michael Douglas, joint author of the Crash Investigation Report, Crown Production number 4, spoke to Mr McIntosh's vehicle being about 0.8 metres across the centre line onto the opposing carriageway at the time of the impact. Further, while investigation of the scene indicated that Mr McGilvray's Volvo FH lorry had crossed the centre line onto the northbound carriageway to negotiate the previous tight bend, it had returned to its carriageway, that is the southbound carriageway, by the time of the impact.

PC Douglas spoke to the tachograph equipment and tracker system fitted respectively to the Volvo FH lorry and Iveco Daily van disclosing that both vehicles were travelling at normal speeds. Otherwise there was insufficient data from the evidence at the scene to calculate speeds. Mr Lockett's evidence was that Mr McIntosh was tailgating a car earlier on his journey and Mr McGilvray spoke to his assumption that Mr McIntosh must have driven too quickly around the bend. In contrast, PC Douglas posited that there were a number of possible explanations for Mr McIntosh's vehicle crossing onto the opposing carriageway including avoidance of a large puddle on the approach to the bend, driving into the bend too fast and lastly, being startled on encountering the Volvo FH lorry on taking the bend, resulting in heavy braking. From the scene, the precise reason could not be ascertained.

The evidence of Alick Williams, VOSA vehicle examiner, was to the effect that examination of all of the vehicles involved in the collision disclosed no defects which contributed to or caused the collision.

From the evidence, I necessarily conclude that for some unascertained reason Mr McIntosh's vehicle crossed the centre line from the northbound carriageway onto the southbound carriageway, placing it partially in the wrong lane as it emerged from the left hand bend and

causing it to collide with the Volvo FH articulated lorry. Mr McGilvray as driver of the Volvo FH lorry reacted immediately on seeing Mr McIntosh's van by swinging his vehicle to the left and onto the grass verge. The Volvo FH lorry had almost been brought to a stop by the point of impact. I am satisfied that Mr McGilvray had no opportunity to avoid the collision and took all necessary steps to bring his vehicle to a safe stopping position.

I referred above to the finding under section 6(1)(c) of the 1976 Act proposed by Mr Graham on behalf of Stevenson Brothers (Avonbridge) Ltd. I both expressed some surprise at the proposed finding and sought comment on it from the Crown. It seems to me that the proposed finding is in effect simply the negative of the cause of the collision, that is the crossing by Mr McIntosh's vehicle onto the opposing carriageway. The reason for that cannot be ascertained. I cannot be satisfied that there was any reasonable precaution which might have been taken or been in place or which in the future would prevent a similar collision. It follows that I do not think that the proposed finding would be appropriate in terms of the statutory framework of the 1976 Act.

Finally, I should like to extend my sympathy to Mr McIntosh's parents and to his sister. Mrs McIntosh and her daughter showed considerable dignity throughout the inquiry which would undoubtedly be upsetting.