

SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES & GALLOWAY AT
LANARK

DETERMINATION

By

NIKOLA CAROLINE STEWART

Advocate, Sheriff

In Inquiry into the circumstances of the death of

CONOR McSHERRY

In terms of section 6 of the Fatal Accidents and Sudden

Deaths Inquiry (Scotland) Act 1976

LANARK, 28 May 2010

The Sheriff, having resumed consideration of the Inquiry, DETERMINES as follows:

1. In terms of section 6(1) (a) of the Act that Conor McSherry, who was born on 7 February 1993, died at 09.07 hours on 18 June 2009 on the A706 Stanmore Road at Cleghorn, as a result of having sustained injuries in a road traffic accident which occurred at that locus.
2. In terms of section 6(1) (b) of the Act, that the cause of death was head and neck injuries due to a road traffic accident in which he was involved as a pedestrian. .

NOTE

Conor McSherry died on 18 June 2009 having sustained an accident in the course of his employment with Millers Dairy Ltd, 53 Sandy Road, Carluke as a milk boy. On that date he was one of two milk boys delivering milk from a Ford Transit delivery van, registration number SB05 FLC, to private houses. The delivery van was owned by the Dairy and driven by Benjamin Turnbull. Also on board the van was Conor's friend Douglas Ritchie. Work for Conor and the rest of the staff on the van, had commenced at about 4.30 am.

At or about 7.30 am Mr Turnbull parked the delivery van in the driveway to Mill House in order to facilitate the delivery of milk to an address on the other side of Stanmore Road. The van was parked facing the A706 a few yards from the carriageway. The A706 at its intersection with the access road to Mill House, runs east to west and consists of a two lane undivided carriageway with one lane for traffic travelling in each direction. The road is bounded on either side with grass verges of varying width. There are no footways at the locus. To the west, approximately 100 metres from the locus, access to Cleghorn Bridge is controlled by traffic lights.

At or about 7.35 am Mr Francis Keenan, a professional bus driver, was driving a Ford Transit minibus registration number SD52 YRL from Lanark to Forth, over Cleghorn Bridge. Having been stopped by a red light on the bridge, he then proceeded over the bridge, negotiated a right hand bend and travelled at a speed well within the national speed limit towards the locus. He had a clear view of the road ahead which was empty of traffic. There were no adverse road or weather conditions in operation. He was aware of the parked delivery van and saw Mr Turnbull and Darren Scoular, the

other delivery boy, in the front seat of the van. He saw no-one at the outside of the van. As he passed the access road to Mill House, he felt a bump. He saw nothing which might have caused it. He slowed down and stopped the bus some distance further up the A706. Alighting from it, he saw, for the first time, Conor lying on the road at the side of the bus.

The view of the carriageway from the front seat of the delivery van was obscured to the right of the vehicle by the entrance wall to the driveway and by vegetation. The delivery boys were nearing the end of their shift and were in high spirits. Conor alighted from the left side door of the vehicle to make the delivery. He was joking and laughing as he did so. He was not wearing a high visibility vest, contrary to company requirements. He was seen by those in the delivery van to run past them and straight into the eastbound carriageway without stopping. He saw the oncoming vehicle too late to avoid it. The mini bus driven by Mr Keenan struck him at bumper level, forcing him to the ground where he was run over by the bus. Mr Keenan had no opportunity to see him, never mind take avoiding action. No criticism can be levelled against Mr Keenan or the vehicle he was driving.

Having been struck by the front of the mini bus, Conor was thrown forward onto the carriageway before being caught under the vehicle and dragged some distance. He sustained multiple abrasions to his body, in particular to his face, upper limbs, buttock and upper back. Internally, he sustained extensive haemorrhage into the scalp associated with several skull fractures, including a comminuted fracture of the base of the skull and a partial thickness fracture through the lower cervical spine. Bruising was evident to the base of the brain. A staff nurse attending in the immediate

aftermath of the accident found Conor unresponsive and could not detect any breathing. Albeit life was pronounced extinct at the scene by Dr Mascarenhas, police surgeon, at 09.07 hours, Dr McAdam, Consultant Forensic Pathologist was clear that death would have been instantaneous.

Whilst Conor was in breach of management rules in that he was not wearing a high visibility vest as he made his delivery, the taking of such a precaution would not have prevented this fatality. Conor was wearing a white top. A flash of white was seen by Mr Simm and Mr McInnes who were in a vehicle directly behind Mr Keenan's. Conor was, to that extent, visible to road users. It was a clear morning. Conor was not seen by Mr Keenan because he emerged at speed from behind the milk delivery van directly into the path of the mini bus, not because his clothing did not stand out.

The mood in the delivery van was jocular and high spirited. On board was a friend of Conor's, Douglas Ritchie, who was not engaged in the delivery of milk. It would be speculative to consider whether or not the presence of a spectator added to the mood. The driver, Mr Turnbull, clearly experienced difficulty in trying to impose adherence to rules on his young crew. Anyone who works with young boys will recognise the difficult balancing act between maintaining good relations and preventing a surfeit of foolhardiness. No criticism attaches to Mr Turnbull in respect of his actions that day.

There was no suggestion that Conor was not fully conversant with road safety issues. The Dairy had reminded him of potential hazards and the steps he should take to avoid them. He simply momentarily lost sight of them. He had some experience of the job he was carrying out. No-one expected him to act as he did. Whilst the

evidence does not support the making of formal recommendations I would hope that Miller Dairy Ltd, together with all businesses who operate similar van delivery services using young employees, would consider carefully whether greater formality in terms of strict rules compliance and the carrying of guests might delineate more clearly the responsibility of their drivers and make it easier for drivers to combine any supervisory role with their driving function.