

SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT AYR

FATAL ACCIDENT INQUIRY

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976

Determination by Sheriff Scott Pattison, Sheriff for South Strathclyde Dumfries and
Galloway

following an Inquiry held at Ayr Sheriff Court into the circumstances of the deaths of Calvin
Hamilton and Shaun McArthur

AYR, March 2014

The Sheriff, having resumed consideration of the Fatal Accident Inquiry into the deaths of Calvin Hamilton and Shaun McArthur, determines in terms of Section 6 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act, 1976 as follows:-

In terms of Section 6(1) (a) – Where and when the death and any accident resulting in the death took place

1) Calvin Hamilton, born 30th November 1990 of 108 Cardross Road, Dumbarton died at 12:38 hours on 1st March 2012 following a road traffic accident on the A77 near to Crossraguel Abbey, Maybole, South Ayrshire.

2) Shaun McArthur, born 27th March 1976 of 29 Cumbrae Crescent South, Dumbarton died at 11:57 hours on 1st March 2012 following a road traffic accident on the A77 near to Crossraguel Abbey, Maybole, South Ayrshire.

3) Both Calvin Hamilton and Sean McArthur were pronounced dead near to Crossraguel Abbey. The accident which led to the deaths of both men took place around 11:25am on 1st March 2012.

In terms of Section 6(1) (b) – Cause of death and any accident resulting in the death

1) That the cause of death of Calvin Hamilton was: multiple injuries due to a road traffic collision in which he was the passenger.

2) That the cause of death of Shaun McArthur was: multiple injuries due to a road traffic collision/accident in which he was the driver.

3) That the cause of the accident which led to the death of both men was the failure, through driver error, of Shaun McArthur to return his vehicle to the southbound carriageway of the A77 after carrying out an overtaking manoeuvre and a resultant collision with an oncoming vehicle.

In terms of Section 6(1) (c) – The reasonable precautions, if any, whereby the death and the accident resulting in the death(s) might have been avoided

1) That the deaths of both men might have been avoided if the deceased Shaun McArthur had returned his vehicle to the southbound carriageway of the A77 after completing his overtaking manoeuvre.

In terms of Section 6(1) (d) – The defect in any system of working which contributed to the death or any accident resulting in the death -

No findings.

In terms of Section 6(1) (e) – Any other facts which are relevant to the circumstances of the death -

No findings.

FINDINGS IN FACT

1) Around 11:25am on Thursday 1st March 2012, Calvin Hamilton and Shaun McArthur, accompanied by Mr McArthur's son, Declan, were travelling south on the A77 road near to Crossraguel Abbey, Maybole, South Ayrshire.

2) Their journey was in connection with their employment. Mr McArthur owned a roofing company and employed Calvin Hamilton. They were on their way to carry out work relating to solar panels. Declan was assisting them that day.

3) Shaun McArthur was driving the van (registration number SA03 WEU). Declan was sitting next to the passenger door of the van and Calvin Hamilton was in the middle seat next to the driver. All were wearing their seatbelts.

4) When approaching the Abbey from the north – that is, when travelling south on the A77 – there is a stretch of straight road, before the Abbey, which has a slight uphill gradient. The road then turns into a sweeping right hand bend at the Abbey. This straight stretch of road affords a driver travelling south a potential view of 0.5 miles to the start of the bend.

5) The speed limits for the road were 60 miles per hour for a standard car, 50 miles per hour for a transit motor vehicle and 40 miles per hour for an HGV.

6) The weather conditions on 1st March 2012 were good. The sun was bright and the roads were dry. Visibility was good.

7) On approaching the Abbey from the north and while on the straight part of the road, Shaun McArthur overtook a vehicle in which Gordon French was travelling. For reasons which are unknown he did not return to the southbound carriageway after carrying out the manoeuvre.

8) At the same time John McKie was travelling north on the road in a Mercedes articulated lorry registered number SF06 DVA. He was driving in his capacity as a driver for William

Grant and Sons Limited, Whisky Distillers. His vehicle was carrying a full load of whisky. As he approached the Abbey his view was of a sweeping left hand bend with limited visibility through the bend. Mr McKie's duties required him to complete two round trips each day between William Grant's premises at Girvan and Bellshill. One round trip would take around four hours which included time for breaks. Mr McKie was very used to the road given that he travelled it twice each day during the course of his employment.

9) The vehicle driven by Mr McKie was an articulated vehicle and consisted of a Mercedes Axor lorry and a cylinder shaped tanker unit which could be uncoupled. When full of whisky, the tanker weighed around 43 tonnes.

10) On 1st March 2012 Mr McKie was working a shift which began at 6:00am and finished at 4:00pm. He set off in his lorry at around 6:00am from Girvan with a full whisky tank. He dropped off the full tank, picked up an empty tank and returned to Girvan where he took a break. Around 11:00am that day he set off from Girvan again to begin his second round trip of the day. He had ample time to get to Bellshill and was in no rush.

11) When he came round the left hand bend, Mr McKie saw Shaun McArthur's vehicle a short distance away and coming towards him in the northbound lane. Mr McKie applied his brakes and steered towards the southbound carriageway to try to avoid colliding with Shaun McArthur's vehicle.

12) At this time Shaun McArthur became aware of Mr McKie's vehicle. He shouted out, this was heard by his son Declan, and attempted to steer back into the southbound lane.

13) The two vehicles collided around the centre line of the road and the white transit van was pushed back towards and across the southbound carriageway by Mr McKie's lorry. The vehicles came to a stop in the grounds of Crossraguel Abbey.

14) Witnesses stopped, offered assistance and called the emergency services, who attended straightaway. Both Mr McArthur and Mr Hamilton were severely injured.

15) Around 11:30am on 1st March 2012 Watch Commander Greg Fleming of Strathclyde Fire and Rescue was on duty within Ayr Fire Station when he received a call to attend at the A77 near to Crossraguel Abbey, Maybole. He attended there with a fire and rescue crew and found the accident which had occurred involving the whisky tanker and Mr McArthur's van. He assumed control of the incident and was advised the two men remained trapped in the van and he directed fire officers to administer first aid until the arrival of paramedics.

16) Around 11:38am on 1st March, Laurence Wall, paramedic, was on duty at Ayr Hospital when he received a call to attend the accident. He attended immediately and arrived at 11:49 hours. He was directed by Greg Fleming of Strathclyde Fire and Rescue to Mr McArthur's van and was advised that there were casualties within the van.

17) Laurence Wall attended to Shaun McArthur. He had already succumbed to his injuries. Life was pronounced extinct by Mr Wall at 11:57am.

18) Alexander Hendry and James Cathcart, paramedics, also attended at the accident and arrived at 11:55am. They found Calvin Hamilton, severely injured and semi-conscious, trapped in the van. Despite the administration of supportive therapy, Calvin Hamilton's condition deteriorated and he suffered cardiac arrest. He was removed from the van by fire and rescue officers. He was thereafter intubated and ventilated by Ronald Lilly, Clinical Governance Manager, Scottish Ambulance Service and cardio-pulmonary resuscitation was commenced by the Alexander Hendry. However Mr Hamilton was unresponsive to CPR and life was pronounced extinct by Alexander Hendry at 12:38 hours.

19) A post-mortem examination was carried out on the body of Calvin Hamilton at Crosshouse Hospital, Kilmarnock on 5th March 2012 at 11:30 hours by Dr Jane Paxton, BSc, MBCHB, FRCPath, Consultant Pathologist and Dr Joyce Lang, MBCHB, FRCPath, Consultant Pathologist. The cause of death was certified as (1a) multiple injuries due to (1b) road traffic accident (passenger).

20) A post-mortem examination was carried out on the body of Shaun McArthur at Crosshouse Hospital, Kilmarnock on 5th March 2012 at 11:30 hours by Dr Jane Paxton and Dr

Joyce Lang. The cause of death was certified as (1a) multiple injuries due to (1b) road traffic accident (driver of vehicle). During the post-mortem two samples of mixed blood and urine were taken from the body of Shaun McArthur and retained for analysis for alcohol, prescription and illicit drugs.

21) The samples of blood and urine from Shaun McArthur's body were analysed by Robert Arthur Anderson, BSc, PhD, CChem, FRSC, Senior Lecturer/Forensic Toxicologist at the University of Glasgow, for the presence of drugs and alcohol. A low concentration of alcohol was detected which would not have caused any impairment. An inactive metabolite of cannabis was also detected which would not have caused impairment.

22) There is a remote possibility that Shaun McArthur may have suffered a sudden cardiac or neurological event which could have contributed to the accident. This is extremely unlikely to have occurred.

23) On 1st March 2012 police constable Lorraine McDonald, John Denholm and Ewan Thomson attended the accident in their capacity as specialist crash investigators. They examined the scene and surveyed it using electronic measuring equipment. They subsequently produced a Crash Investigation Report and a scale plan drawing.

24) On 2nd March 2012 at the premises of Kerr and Smith, Walker Road, Ayr, police constables Lorraine McDonald and Ewan Thomson examined the Ford Transit van registered number SA03 WEU for the purpose of establishing the damage sustained by the vehicle. It was extensively damaged. Examination of the three seat belts indicated that all three occupants had been wearing their seatbelts at the time of the accident.

25) On 1st March 2012 at the scene of the accident police constables Lorraine McDonald and Ewan Thomson examined the Mercedes heavy goods vehicle registered number SF06 DVA and trailer for the purpose of establishing the damage sustained by the vehicle. The tractor unit was found to have suffered moderate damage and the trailer minor damage.

26) On 2nd March 2012 at the premises of Kerr and Smith, Walker Road, Ayr, mechanical examination of the Ford Transit van registered number SA03 FEU was carried out by police

constables Ian McAllister and Gary Hay. Both are qualified vehicle examiners with Ian McAllister holding a SCOTVEC qualification and said Gary Hay holding a SQA qualification. No defects were found in the vehicle which would have contributed to the accident.

27) On 5th March 2012 at the premises of William Grant and Sons, Distillers Limited, Girvan, mechanical examination of a Mercedes heavy goods vehicle registered number SF06 DVA and associated semi-trailer was carried out by George McIntyre, vehicle examiner, Vehicle and Operator Service Agency, Bishopbriggs. No defects were found which would have contributed to the accident.

28) The tacograph chart from the Mercedes goods vehicle being driven by Mr McKie was analysed by police constables Ian McAllister and Caroline Ramsay. It had been inserted at 05:35am on 1st March 2012 and Girvan was the starting location. The vehicle had travelled 216 kilometres prior to the driver taking a rest break of 48 minutes at 10:00am. The vehicle had then travelled a further 17.5 kilometres prior to the collision. The point at which the vehicle had begun to brake was 11:23am and the vehicle's approximate speed at that point was 43 miles per hour. At the point of impact the vehicle was travelling at 31 miles per hour.

29) Mr McKie was driving the heavy goods vehicle appropriately at the time and was not travelling at a speed that which was excessive for the conditions.

NOTE

INTRODUCTION

1) This was a mandatory Fatal Accident Inquiry in terms of Section 1(1) (a) (i) of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 ("the Act") in that the deceased, Mr Calvin Hamilton and Mr Shaun McArthur died while in the course of their employment.

2) Section 6(1) of the Act requires the Sheriff to make a Determination setting out the following circumstances of the deaths so far as they have been established to his or her satisfaction:

- a) Where and when the death and any accident causing the death took place;
- b) The cause or causes of death and any accident resulting in the death;
- c) The reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided;
- d) The defects, if any, in any system of working which contributed to the death or any accident resulting in the death;
- e) Any other facts which are relevant to the circumstances of the death.

3) I heard evidence over three days, between 9 and 11 December 2013 in Ayr Sheriff Court.

4) The following witnesses gave evidence at the Inquiry:-

- 1. Lesley McDermott, the mother of Calvin Hamilton;
- 2. Declan McArthur, the son of Shaun McArthur, who was travelling in the van with his father and Mr Hamilton when the collision occurred.
- 3. John McKie, a tanker driver for William Grants, who was driving the whisky tanker with which the Ford Transit van collided;

4. Gordon French, the driver of a heavy goods vehicle owned by Broomhall Feeds who was driving southbound on the A77 behind the Ford Transit van at the time of the collision;

5. George McGill, who was driving his car northbound on the A77 behind the whisky tanker at the time of the collision;

6. Hamilton McGill, who was travelling as a passenger in his father, George McGill's car, northbound on the A77 behind the whisky tanker at the time of the collision;

7. Police constable John Denholm, the author of the Police Crash Investigation Report relating to the collision.

5) The Crown was represented by Procurator Fiscal Depute Gail Adair. The interested parties who were represented at the Inquiry were:-

1. Mr McArthur's family, represented by Lindsay Roger, Advocate and Peter Young, solicitor;

2. William Grant and Sons Limited, represented by Anna Austin, solicitor;

3. Zenith Insurance, insurers of the Ford Transit van, represented by Victoria Anderson, solicitor.

6) Parties had agreed a minute of Uncontroversial Evidence. I have included the salient points of this within my findings in fact. Upon conclusion of the evidence I invited parties to make written submissions after calling for the notes of the Inquiry to be extended. After considering the helpful written submissions I asked for a hearing to be fixed to allow parties to respond to certain of the issues raised in the written material. This hearing took place on 8 April in Ayr Sheriff Court.

THE EVIDENCE

7) I took the view that all of the witnesses who gave evidence at the Inquiry were sincerely doing their best to tell the truth. The evidence available to the Inquiry was a mixture of eye-witness, expert and professional evidence.

8) Lesley McDermott, Calvin Hamilton's mother and Declan McArthur, Shaun McArthur's son confirmed that both men were at their work that day and were travelling to Ayrshire to fit solar panels. It was Shaun McArthur's van and he was driving with Declan in the passenger seat and Calvin in the middle seat.

9) The collision between Mr McArthur's van and the lorry Mr McKie was driving on behalf of William Grants was witnessed by Declan McArthur, Gordon French and George and Hamilton McGill. All of the eye-witnesses, except Declan, gave evidence that Shaun McArthur was on the northbound carriageway, that is in the wrong lane, immediately before the collision and that for some reason he did not return to the southbound carriageway, the proper lane, after carrying out an overtaking manoeuvre. There can be no criticism of the overtaking manoeuvre itself on the basis of the evidence available to the Inquiry other than that the conclusion of it Mr McArthur did not return to the correct lane.

10) Gordon French was driving southbound on the A77 at the time of the collision in a Volvo HGV. He was familiar with the A77 road at that location and was delivering animal feed to Merkland Farm Feeds at Kirkoswald.

11) On the long stretch of straight road prior to Crossraguel Abbey two cars and then Mr McArthur's Ford Transit van (registration number SA03 WEU) overtook him. The stretch is apparently a common overtaking place. Mr French estimated his speed as being 40 miles per hour at that location. The two cars returned to the correct side of the road and disappeared from view. However Mr McArthur's van failed to return to the correct side of the road after the overtake. Mr French repeatedly flashed his lights in an attempt to warn the van that it was on the wrong side of the road and to indicate that it was safe to return to the proper lane. But the van remained on the wrong side as it approached the right hand

bend at the Abbey. Mr French was at pains to point out that the vehicle was not being driven erratically and that there was nothing wrong about the way it was being driven other than it did not return to the correct lane.

12) Mr French then saw Mr McKie's tanker approaching from the opposite direction. He saw it over the hedging due to his elevated position in his vehicle. He kept flashing his lights trying to warn the van that it was on the wrong side of the road and slowed down to anticipate what he thought was an inevitable collision.

13) George McGill was travelling northbound on the A77 with his son Hamilton McGill whom he had picked up from Cairnryan. He was travelling directly behind the tanker driven by Mr McKie. He felt that the tanker was being driven perfectly and that it was on the correct side of the road. He had no concern with the way the tanker was being driven. He had no concerns with the speed of the tanker and felt that it was appropriate for the road. He thought it might have been travelling at around 50 miles per hour but conceded that if there was other evidence indicating a speed of around 40 miles per hour that the tanker might have been travelling at around that speed. He gave evidence that as he approached the left hand bend at the Abbey that he saw something on his and the tanker's side of the road and that it smashed right into the tanker. At that time he didn't know whether it was a car or a van.

14) Mr McKie advised that he was working for William Grants at the time and had been since 2005. He was on the second run of the day between William Grants' premises and Bellshill and was very used to the route which he took twice each day. One round trip would typically take around four hours, including breaks. He was driving an articulated vehicle consisting of a Mercedes Axor lorry and a cylinder shaped tanker unit. When full of whisky, the tanker weighs around 43 tonnes. He had set off from Girvan on his second trip of the day at around 11:00am. He said that he had ample time to get to Bellshill and was in no rush. He gave evidence that as he was approaching the white cottage across from the Abbey at roughly 40 miles per hour and on the correct side of the road that a white van came round the corner towards him on his side of the road, in the centre of the lane. He was unable to estimate how close the van was to his tanker but he felt that it was plainly too

close. He said that there was no possibility that any of his wheels were on the wrong side of the road. He hit his brakes and instinctively veered his tanker to the right to try to avoid a collision. This was confirmed by Gordon French who said that he thought that the tanker had made a correction or deviation to try and avoid the accident.

15) Hamilton McGill was looking at his phone as his father's car approached the bend at the Abbey but on hearing an exclamation from his father he looked up and saw a bit of the van and by that time it had almost hit the tanker. He then saw the impact. He gave evidence that he thought that around two-thirds of the van was on the wrong side of the road at the point when he looked up. He thought he saw the tanker's brake lights coming on right at the point of impact but said that the tanker driver wouldn't have had time to slow down. Declan McArthur had a different recollection and gave evidence that his father was on the correct side of the road at the point of impact and that he had not overtaken another vehicle. He felt that Mr McKie's vehicle was on the wrong side of the road at impact and thought that his father swerved first to the right and then to the left before impact and to avoid a collision.

16) Police constables John Denholm and Lorraine McDonald were tasked with conducting a collision investigation. Constable John Denholm was an experienced and fully trained collision investigator. He produced a scale plan and a full report in which he reached conclusions and expert opinions based on his examination of the vehicles, the scene of the collision including the various tyre marks, scuff marks and gouge marks in relation to the relative positions of the vehicles.

17) He concluded that there were no mechanical defects in either vehicle which could have accounted for the collision. He also concluded that the physical evidence, the relative positions of the vehicles, including their resting positions within the grounds of Crossraguel Abbey and the tyre marks, scuffs and gouges were consistent with the accounts of the civilians who gave evidence that the Ford Transit van was being driven on the wrong side of the road just before the collision. He concluded that the collision was caused by the Ford Transit motor vehicle being in the northbound lane after carrying out an overtaking manoeuvre and continuing to travel south on the northbound lane. The driver of the

northbound Mercedes articulated goods vehicle (Mr McKie) was confronted with the Ford Transit van and tried to take evasive action. The driver of the Ford Transit then took similar action resulting in the collision. Constable Denholm reached the view that Mr McArthur had driven the Ford Transit dangerously by failing to return to the correct side of the road after overtaking and approaching a bend beyond which he was unable to see that the road ahead of him was clear of obstructions or approaching traffic.

18) Constable Denholm also analysed Mr McKie's tacograph chart from the Mercedes vehicle. This found that the tacograph was inserted at 05:35am on the 1st March 2012 and that Girvan was recorded as the starting location. The vehicle was recorded to have travelled 216 kilometres prior to the driver taking a rest break of 48 minutes at 10:00am. It had then travelled a further 17.5 kilometres prior to the impact. The point at which the vehicle had begun to brake was recorded at 11:23am and the approximate speed at this point was recorded as 70 kilometres per hour or 43 miles per hour. At the point of impact the speed of the vehicle was 50 kilometres per hour or 31 miles per hour.

19) Constable Denholm also spoke to the fact that there were no warning road signs at the location, that is on the long straight stretch of road heading southbound warning of the bend ahead. Nor were there "throwback lines" which are only ever positioned on roads before double white lines. The function of throwback lines is to warn drivers to get back to their own side of the road. Constable Denholm also confirmed the location with reference to the plan and photographs. When travelling northbound on the A77, Crossraguel Abbey is on the right hand side. On the left hand side of the road shortly before the Abbey is a white cottage. When travelling northbound, the road at that point can be described as a sweeping bend to the left which drivers can only see partly around. The road at this point also goes slightly downhill. Constable Denholm said, in the context of the view of an HGV driver, that a northbound driver's view through the left hand bend is obscured by the stone garden wall of Crossraguel Cottage and the hedges and trees overgrowing the wall. He did not consider that the line of sight on approach would necessarily be better in a heavy goods vehicle than in a car due to the position of the white cottage and surrounding trees. He

thought that even in a heavy goods vehicle the driver would struggle to see through the bend.

20) The medical and pathological evidence was agreed. The pathologist conceded that there was a remote possibility that Shaun McArthur suffered some cardiac or neurological event immediately prior to the accident. Parties accepted the pathologist's contention that this was extremely unlikely in the circumstances as proved. Further if evidence was accepted that Shaun McArthur shouted out immediately prior to the collision then the pathologist thought that this would make the possibility of such an event being even more remote.

SUBMISSIONS

21) I was very grateful for both the written and oral submissions made by the parties. In the main, there were no differences between parties in terms of the appropriate findings which the Court should make in terms of Section 6(1) (a) and (b) – and indeed in relation to Sub-Sections (d) and (e). The main difference between parties was in terms of Section 6(1) (c) and the reasonable precautions, if any, whereby the deaths and the accident resulting in the deaths might have been avoided. Miss Rodger for Nicola McArthur did not invite me to make a finding that Shaun McArthur's vehicle was travelling on the wrong side of the road prior to the collision between his vehicle and the tanker but simply stated that should the Court make such a finding that the Court would be unable to make a finding as to why the vehicle was travelling on the wrong side of the road. Mrs Adair, for the Crown and Miss Austin for William Grant and Sons both submitted that the Court should find that the cause of the accident resulting in the deaths was the failure of Shaun McArthur to return his vehicle to the southbound carriageway after carrying out the overtake manoeuvre and the resulting collision with an oncoming vehicle, this position being consistent with the views of the civilian witnesses, in the main, and the expert evidence of Constable Denholm. Both the Crown and Miss Austin also invited the Court to take the view and to make a formal finding that the deaths might have been prevented if the deceased Shaun McArthur had returned his vehicle to the southbound carriageway after carrying out the overtaking manoeuvre. Miss Rodger felt that such a finding would be outwith the parameters of the purpose of Section 6(1) (c) which is to identify those aspects of an incident by which the accident and/or

the deaths might have been avoided. She submitted that the submission by the Crown and Miss Austin was ill-founded and ought to be disregarded by the Court.

22) Miss Rodger also invited the Court to make a finding that Mr McKie, the driver of the tanker, was travelling in excess of the 40 miles per hour speed limit, when approaching the locus. She founded upon the agreed evidence relating to the tanker's tacograph which records that at the point that he began to brake he was travelling at 43 miles per hour. She also referred to the evidence of George McGill who stated that he thought he was travelling behind the tanker at around 50 miles per hour though he conceded that if there was other evidence indicating a speed of 40 miles per hour that the tanker might have been travelling at that speed, namely 40. In amplification of this position at the hearing on 8 April Miss Rodger stated that she did not seek to criticise the driving of Mr McKie in any way.

23) Miss Austin, for William Grants, was concerned by this submission and sought to lodge a supplementary submission and asked the Court to fix a hearing on the matter. She submitted that parties had agreed the approximate speed at which the tanker had begun to brake as being 43 miles per hour. The actual speed at which the tanker was travelling at the point at which it began to brake was not evidence which had been agreed. She also submitted that Mr McGill's evidence could not be relied upon in making a finding that the tanker was travelling in excess of 40 miles per hour. He had firstly said in his evidence that he was driving at roughly 50 miles per hour while behind the tanker but later conceded that if evidence was heard that the tanker had been travelling at about 40 miles per hour that that "would probably be about right enough." He also stated that the tanker was being driven perfectly as far as he was concerned and that he had no cause for any concern. Miss Austin submitted that the tanker was driving at a safe speed and a safe manner in approach to the locus and submitted that the Court should make a finding in fact in that regard. She also submitted that there was no evidence to support any finding that the braking and steering action taken by Mr McKie immediately prior to the collision had in anyway caused the collision or the resulting deaths.

24) Miss Rodger, founding upon a description of the locus and the confirmation by Constable Denholm that the road's centre lines were not solid lines but were long, broken

lines and that to the best of his knowledge there were no solid lines in the area of the accident nor any “throwback arrows” on the road to warn drivers to return to their own side of the road, made certain submissions in relation to road signage and lining. She submitted that the presence of solid white lines and throwback arrows might have alerted drivers to return to the correct side of the road after overtaking, and might have resulted in the accident being avoided. She submitted therefore that the placement of warning signs, solid white lines and throwback arrows were a precaution which would have been reasonable in the circumstances.

25) In relation to the competence and the appropriateness of the Court making a finding in terms of Section 6(1) (c) of the Act the Crown and Miss Austin made reference to the approaches taken by a number of Sheriffs in Fatal Accident Inquiries. In his determination of 17th January 1986 in the death of James McAlpine, Sheriff Kearney stated:-

“In relation to making a finding as to the reasonable precautions, if any, whereby the death and any accident resulting in the death might have been avoided it is clearly not necessary for the Court to be satisfied that the proposed precaution would in fact have avoided the accident or the death, only that it might have done, but the Court must, as well as being satisfied that the precaution might have prevented the accident or death, be satisfied that the precaution was a reasonable one. The phrase “might have been avoided” is a wide one which is not, so far as I am aware, been made the subject of judicial interpretation. It means less than “would, on the probabilities have been avoided” and rather directs one’s mind in the direction of the lively possibilities.”

26) Both Mrs Adair and Miss Austin submitted – founding upon a number of Shrieval determinations – that the Inquiry is entitled to be wise with hindsight and to consider retrospectively the actions on the basis of information and evidence available at the time of the Inquiry.

27) I also understood their submissions in relation to the issue of the failure of Shaun McArthur to return his vehicle to the correct side of the road to be that, logically, if that

failure was the essential cause of the collision then it should follow that if he had returned to the correct side of the road that that would have amounted to a reasonable precaution.

DISCUSSION/DETERMINATION

28) I have considered the evidence and the submissions made with care.

29) There is no dispute concerning the formal findings in this matter, namely, the date, place and time of death and the fact that the deaths took place as a result of multiple injuries caused by a road traffic accident and I have recorded formal findings in terms of the minute of agreement.

30) The more controversial issues in this set of circumstances are the extent to which the driving of Shaun McArthur and Mr McKie might be said to have contributed to the collision between the vehicles which was of course the proximate cause of the fatalities. All of the civilians who witnessed all or part of the collision between the vehicles, except for Declan McArthur, agree with the evidence of the expert witness Police Constable Denholm that the accident was caused by Shaun McArthur failing to return to his correct lane after completing the overtaking manoeuvre. I can find no reason to doubt or disbelieve the evidence of the civilian witnesses in this regard and there was no real challenge to the opinion evidence of Constable Denholm. I therefore have found that Mr McArthur's driving – and his failure to return the vehicle to the correct lane – did cause the collision.

30) Declan McArthur appeared to clearly recollect that his father was on the correct side of the road at the point of impact and that he had not overtaken another vehicle. I have thought carefully about Declan's evidence. Giving evidence in these circumstances must have been very difficult for him. I believe he was doing his best to assist the Court. I noted from Declan's evidence that he was looking at his mobile telephone and texting in the minutes immediately prior to the collision. I consider that it is quite possible that Declan only raised his eyes just before the impact itself once his father had shouted out and as he was steering back to the southbound lane to attempt to avoid the collision (and I note that Mr McKie was doing the same from the opposite side). Declan's evidence is therefore

entirely understandable and he may well simply have arrived at the wrong conclusion and failed to notice that his father had in fact overtaken the other vehicle.

31) A Fatal Accident Inquiry is not about the attribution of blame; instead the goal is to ascertain the cause of a death or deaths and I have reached a clear view in these circumstances. For the purposes of clarity I should say that there is no evidence that any alcohol or drug taking contributed to the accident and collision in any way. There is also no basis for concluding that the driving of Mr McKie contributed to the accident. Again the civilian witnesses and the expert evidence concur on this point, namely that he was driving appropriately in the conditions and in particular I find that he was not driving too fast for the conditions that day. Mr McKie presented as a careful witness. The evidence was of him braking after he saw Mr McArthur's vehicle coming towards him and I can find no basis for finding that either his speed, manner of driving or braking action contributed to the collision. I note Counsel's contention in relation to the evidence of George McGill. Mr McGill conceded that if there was other evidence indicating a speed of around 40 miles per hour that the tanker might have been travelling at around that speed. The tacograph analysis bears this out and I have found - consistent with the agreement by parties - that the approximate speed of the vehicle at the time of impact was 43 miles per hour. I find no basis for a conclusion that the speed of Mr McKie's vehicle in any way contributed to the crash. It is not possible to determine the actual as opposed to the approximate speed of his vehicle and there was no evidence of the calibration of the tacograph device or any evidence as to any expected margin of error.

32) There is no way of knowing why Shaun McArthur remained in the wrong lane after his overtake. It is not appropriate to speculate or guess as to why this was the case and there is no evidence which allows me to make a finding to explain it.

33) I accept Declan's evidence that his father shouted out just before impact and to that extent the possibility of some form of cardiac or neurological event having occurred is very unlikely indeed and I find no basis for holding that such an event in fact took place.

34) This takes me to the issue of reasonable precautions in terms of Section 6(1) (c). Having found that the collision was in fact caused by Mr McArthur's failure to return his vehicle to the correct lane in time the issue arises as to whether I should make a finding that it would have been a reasonable precaution which might have prevented the deaths had he in fact returned the vehicle to the correct lane after the overtaking manoeuvre. The Procurator Fiscal and Miss Austin invite me to make such a finding. Miss Rodger for Nicola McArthur submitted that such a finding would be ill-founded as the purpose of Section 6(1) (c) is not the same as the purpose of Section 6(1) (b). She submitted that the purpose of Section 6(1) (c) is to identify those aspects of an incident by which the accident and/or the deaths might have been avoided. As I understood her submission it was that Section 6(1) (c) seeks to strike at systemic failures and has one eye on the future whereby other deaths in the future might be avoided through learning lessons from the circumstances which have arisen in a particular case. I can see the reasoning behind this submission but I consider that the wording of Section 6(1) (c) and its purpose is sufficiently wide to allow the Court to make a finding that it would have been a reasonable precaution which might have avoided the deaths for Shaun McArthur to have returned his vehicle to the correct lane after the overtaking manoeuvre. It would be odd not to make such a finding having found that the manner of his driving caused the collision. Such a finding stands to reason and logically flows from my findings of the cause of the collision and the deaths.

35) In relation to the issue of signage on the roadway at that part of the A77 and whether the placement of warning signs, solid white lines and throwback arrows are precautions which would have been reasonable in the circumstances I note that the Inquiry did not hear evidence from any expert witness recommending that this should be the case. Indeed it seems to me from the evidence which the inquiry heard that it would have been obvious to a careful and competent driver who was focussing on the road conditions that he or she should return the vehicle to the correct lane after conducting an overtaking manoeuvre at that location. In the absence of a detailed discussion at the Inquiry and expert evidence on the point I cannot find a basis for any specific findings or recommendations that particular signage or lines would have amounted to reasonable precautions in terms of the Act. I would expect that the local authority and the police would wish to review the issue of

signage as a matter of good practice following a fatal accident on a road within their area and suggest that the Crown should share this determination with them to that end.

CONCLUSION

36) The bereaved relatives of Mr Calvin Hamilton and Shaun McArthur were present throughout the Inquiry. I have no doubt that this will still be a difficult time for them. They will still be grieving those they have lost and who died in such a tragic manner and untimely way. I offered them my sympathies during the Inquiry and wish to record my sincere condolences to them and their loved ones.

Sheriff Scott Pattison

Sheriff of South Strathclyde, Dumfries and Galloway at Ayr

April 2014