

SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT PERTH

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

FREDERICK MOLLON (born 28.5.48)

Perth, February 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 Frederick Mollon, born 28 May 1948 and last residing at 76 Myrtle Road, Uddingston, died at Ninewells Hospital, Dundee on 2 March 2011 at 2200 hours. Mr Mollon died as a result of a road traffic collision which occurred on the southbound carriageway of the A9 at Garry Bridge on 2 March 2011 at 1400 hours approximately. Mr Mollon was driving his vehicle, a MAN motor lorry, in the course of his employment as a lorry driver with DGG Transport Ltd.

2. In terms of section 6(1)(b) of the said 1976 Act that the causes of death were (a) abdominal injuries, (b) blunt force trauma and (c) vehicular collision (lorry driver). The vehicular collision was caused by Mr Mollon failing to observe and to take the necessary braking or evasive action in sufficient time to avoid collision with a DAF motor lorry, immediately in

front of him. The DAF motor lorry had slowed to a near standstill in preparation to pass a SCANIA motor lorry which had broken down and which was stationary, having pulled into the nearside of the southbound carriageway.

Note

The Evidence

Evidence in the inquiry was led on 29 and 30 November 2011. Miss White, Procurator Fiscal Depute, Perth represented the Crown. Mr Smart, Simpson & Marwick Solicitors represented Yuill and Dodds Ltd, the employers of Simon Lister who was the driver of the SCANIA motor lorry which he was driving in the course of his employment.

The Crown led evidence from Simon Lister, Richard Condon, Stephen Johnston, Andrew Donald, Police Constables Malcolm Kinross, Brian Duncan, Neil Robertson and Douglas Ogilvie and from Dr Clifford Perera.

Witnesses Lister, Condon and Johnston were all drivers of other vehicles on the southbound A9 on 2 March 2011 at the time of the road traffic collision. Andrew Donald is a Vehicle Examiner with the Vehicle and Operator Services Agency (VOSA) based at Perth. The police constables are all officers with Tayside Police. Dr Perera is a Forensic Pathologist at the Centre for Forensic and Legal Medicine, University of Dundee.

The evidence of a number of other witnesses was agreed in an extensive Minute of Agreement.

No evidence was led on behalf of Yuill and Dodds Ltd.

The Submissions

In submissions, both parties were agreed on the findings in terms of section 6(1) (a) and in respect of section 6(1) (b) in respect of the cause or causes of death. The Procurator Fiscal Depute did not address me specifically on the cause of the collision. Mr Smart invited me to

find that the cause of the collision was Mr Mallon failing to notice the DAF motor lorry immediately in front until it was too late to take evasive action.

I was not invited to make any findings in terms of section 6(1)(c), (d) or (e) under reference to the following submissions.

The Procurator Fiscal Depute submitted under section 6(1)(d) that the evidence disclosed no defect in any system of working. No defect was identified in the checks carried out by the various drivers involved in the collision. Tachograph records disclosed no issue in relation to Mr Mollon's hours of work. The evidence of Andrew Donald, 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.

Further and while no finding was sought, the Procurator Fiscal Depute invited me to have regard to four specific factors as follows:

1. Any need to contact the police in a breakdown: PC Duncan gave evidence that he spoke to Simon Lister, driver of the Scania motor lorry, to provide advice about contacting the police in the event of a breakdown. Had the police been contacted, some form of traffic management would have been put in place at the scene. Mr Lister's evidence was to the effect that he did not consider that his breakdown constituted an emergency which necessitated contacting the police. It was accepted that the terms of the Highway Code did not require an individual to contact the police in such circumstances.
2. The possibility of moving the broken down Scania motor lorry to the nearest lay-by: Mr Lister's evidence was that had he driven the vehicle further, greater damage would be caused to the vehicle. In contrast Andrew Donald, VOSA vehicle examiner, spoke to the option of driving the vehicle to lay-by 55 and his understanding that the vehicle was driven there to allow for its recovery.
3. Any issue in relation to the Scania motor lorry being overweight: it was not disputed that when the vehicle left the Inverness weighbridge it was at its plated weight. There was no evidence that the load had been augmented. In terms of Crown Production number 35, an agreed Memorandum, the vehicle as weighed ultimately was within the

permitted margin for weight. As such any question of the vehicle being overweight did not arise and did not contribute to the collision.

4. Any issue in relation to the Scania motor lorry having a defective tyre: Andrew Donald, VOSA vehicle examiner, spoke to the vehicle having a defective tyre. That tyre was on a different axle to the tyre which had a blow out, resulting in the vehicle having pulled into the nearside of the southbound carriageway of the A9. As such the defective tyre did not contribute to the collision.

On behalf of Yuill and Dodds Limited, Mr Smart submitted that to make any findings beyond the terms of section 6(1)(a) and (b), it would be necessary to find that the position of their SCANIA motor lorry caused the collision. He accepted that the position of the vehicle was a relevant factor but it was not a causal factor. It did not cause Mr Mollon's failure to observe and react to the immediately preceding DAF motor lorry. It was part of the circumstances which led to the DAF motor lorry slowing in front of Mr Mollon's vehicle.

Further, there was no evidence of any defect in the vehicle driven by Mr Mollon or in relevant working practices. Mr Smart concurred with the Crown's position at 3 and 4 above in relation to any issue of overloading or defective tyre.

In relation to factors 1 and 2 above, Mr Smart made the following submissions.

1. Any need to contact the police in a breakdown: there was clear evidence from Mr Lister that he had taken care to assess the situation which he did not assess as an emergency, he had kept the situation under review and vehicles travelling in both directions had been able to pass with care. All witnesses and the Crown accepted that there was no direction in the Highway Code for the police to be contacted in such a breakdown. Had the police been contacted, they would have put in place traffic management which would have been signs to slow approaching vehicles. That was what had taken place in any event. Mr Smart emphasised that in such circumstances it could not be said to be a reasonable precaution, as required in terms of section 6(1)(c), to contact the police.
2. The possibility of moving the broken down Scania motor lorry to the nearest lay-by: Mr Smart sought to distinguish the evidence of Andrew Donald, VOSA vehicle examiner, from that of Mr Lister and the police officers involved in the recovery operation. He

invited me to reject Mr Donald's evidence that the distance from where the SCANIA motor vehicle came to a halt to lay-by 55 was a short distance which the vehicle could have driven safely and that the vehicle was subsequently driven to the lay-by as part of its recovery. He invited me to prefer the evidence of Mr Lister and of PC Kinross. Mr Lister feared there was a tipping risk if the vehicle were moved further and that he had stopped it at a safe place which afforded good visibility to traffic travelling in both directions. PC Kinross spoke to the vehicle's tachograph records which disclosed that the vehicle had not been driven more than a few metres as part of its recovery and so not to the lay-by. The lay-by was approximately $\frac{3}{4}$ of a mile from the vehicle's stopping point. Mr Smart invited me to find that Mr Lister, faced with the situation, had taken all reasonable precautions.

Determination

The evidence in the present inquiry gave rise to very little dispute. Witnesses were subject to limited cross-examination. I found all of the witnesses to be credible and, subject to the one exception noted below, reliable.

The circumstances of the collision were spoken to by Simon Lister, Richard Condrón and Stephen Johnston. Mr Lister (driver of the SCANIA motor lorry) and Mr Condrón (driver of the DAF motor lorry) spoke to the traffic situation which Mr Mollon encountered as he drove southwards on the A9 at Garry Bridge on the afternoon of 2 March 2011.

I accept Mr Lister's evidence that once alerted to a blown out tyre on his vehicle, he manoeuvred his vehicle into the nearside of the southbound carriageway and put on his hazard warning lights. He considered that he had stopped at a section of road which afforded good visibility to other traffic. He contacted his employer to arrange for repair of the tyre and monitored regularly that other traffic on the A9 was able to pass his vehicle safely. For approximately one hour or longer, traffic travelling in both directions successfully passed his vehicle, slowing or stopping to give way to oncoming traffic as required.

Similarly, I accept Mr Condrón's evidence that from a distance of 600-700 yards on the approach to the stationary SCANIA motor lorry, he observed the three lorries in front of him indicating to pull out to pass the SCANIA and that he realised the SCANIA had broken

down. Mr Condron observed oncoming traffic, started to slow his vehicle, checked his mirror and on observing vehicles behind him, including Mr Mollon's MAN vehicle immediately behind him, put on his hazard warning lights. At that point Mr Mollon's vehicle was 400-500 yards behind Mr Condron, at what Mr Condron described as a safe driving distance. To allow oncoming traffic to pass the stationary SCANIA motor lorry, Mr Condron slowed his vehicle to a standstill, his hazard warning lights signalling, and his vehicle was hit by the MAN vehicle driven by Mr Mollon. The force of the collision lifted the rear wheels of the DAF motor vehicle off the ground and pushed it into the stationary SCANIA motor lorry. Mr Condron had driven from Inverness in close proximity to Mr Mollon's MAN motor lorry and Mr Mollon's driving had given rise to no concern. In the period prior to the collision, Mr Condron had no indication that Mr Mollon would be unable to stop or would not stop at a safe distance.

Stephen Johnston spoke to driving his motor car behind Mr Mollon's vehicle. He noticed a van two vehicles in front of him (Mr Condron's DAF vehicle) braking from its brake lights and he slowed his vehicle. He saw the SCANIA motor lorry up ahead on the left hand of the carriageway and observed lights flashing on Mr Condron's vehicle whether those were hazard warning lights or an indicator. Mr Johnston noted that Mr Mollon's vehicle, immediately in front of him, did not slow down and no braking lights came on. Although Mr Johnston had stopped his vehicle in response to the traffic situation ahead of him, Mr Mollon's vehicle continued without braking, pulling out only slightly towards the centre of the road immediately prior to colliding with the DAF motor lorry. Very unfortunately, Mr Johnston recalled that he was instantly aware that Mr Mollon's vehicle would collide with the DAF motor lorry. Again, I have no hesitation in accepting Mr Johnston's evidence.

From the evidence of these three witnesses, I necessarily must conclude that Mr Mollon failed to react, except at the very last minute, to the traffic situation ahead of him. The drivers of the vehicles immediately in front of and behind Mr Mollon's vehicle, respectively Mr Condron and Mr Johnston, both observed the stationary SCANIA motor lorry and reacted appropriately and safely to its presence. I accept Mr Lister's evidence that similarly drivers travelling in both directions had safely negotiated the hazard his vehicle presented for approximately one hour before the collision, alerted by his hazard warning lights.

It is appropriate for me to comment on whether it would have been a reasonable precaution for Mr Lister either to have contacted the police or to have attempted to move his vehicle to lay-by 55. I cannot find that either step would have been a reasonable precaution. I note the absence of any such requirement within the Highway Code but also observe that the police would have instigated a traffic management system similar to that put in place by Mr Lister and safely responded to by a number of drivers. Similarly, given Mr Lister's concerns about his vehicle tipping if moved further and the actual distance to lay-by 55, I do not find such a step would be a reasonable requirement. While otherwise an impressive witness, I consider that Andrew Donald, the VOSA vehicle examiner, was mistaken in his recollection that the SCANIA motor vehicle was driven to lay-by 55 in the course of its recovery. I prefer the evidence of Mr Lister and of PC Kinross, having regard to the vehicle's tachograph records, that the vehicle was not driven.

Finally, I should like to extend my sympathy to Mrs Mollon, to her sons and family. It was clear to me that Mr Mollon had an exemplary work record and the parties a long marriage. Both Mrs Mollon and her family showed considerable dignity throughout the inquiry which was undoubtedly upsetting.