

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

DETERMINATION

By

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Sheriff of Lothian and Borders at Livingston

Inquiry into the circumstances of the death
of

IAN DIVERS

In terms of section 6 of the Fatal Accidents
and Sudden Deaths Inquiry (Scotland) Act
1976 (the "Act")

Party to the Inquiry:

The Procurator Fiscal represented by Brian Robertson, Procurator Fiscal Depute

LIVINGSTON

30 August 2013

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

Place and time of death:

In terms of section 6(1)(a) of the Act that Ian Divers, who was born on 20 November 1969 and late of 12 Abercorn Road, Newton, EH52 6GB, died between 1300 and 1401 hours on 23 August 2012 at Unit 3, East Philpstoun Farm, Philpstoun, West Lothian.

Cause of Death:

In terms of section 6(1) (b) of the Act the cause of death was compression of the chest due to the weight of a car.

Other circumstances:

A formal hearing was held in this inquiry on 12 August 2013. Although properly intimated and advertised in terms of the Act there was no appearance other than by the Procurator Fiscal Depute. I was told that Mr Divers' family had made it clear they did not wish there to be an inquiry; it was their position that Mr Divers was not engaged in his occupation at the time of his death and that therefore there was no requirement for an inquiry in terms of section 1 of the Act.

That was, explained the Fiscal, a matter that would fall to me for determination. Even if I was satisfied that Mr Divers was not so engaged, said the Fiscal, the inquiry having been called I would still require to issue a determination in terms of section 6 and make such findings as I considered appropriate.

The inquiry proceeded on that basis. I heard evidence from a number of witnesses -

Kenneth Mackenzie, who rented a unit next to the garage rented by Mr Divers, and who, along with one of his customers, Stuart Jackson (from whom I also heard) found Mr Divers' body.

I heard from Clair Greenhill, a paramedic, and Brian Forbes, an ambulance technician, who jointly pronounced Mr Divers' life extinct.

Finally I heard from Katie Dunlop an Inspector with the Health and Safety Executive who spoke to her report and to that of her colleague Richard Wilson, a specialist engineer with the HSE.

In the course of the inquiry I was referred to a number of productions including an affidavit and post mortem report from Dr Ian Wilkinson, Pathologist at the University of Edinburgh.

Based on the evidence led and the documents to which I was referred I was satisfied that Mr Divers died when a car on which he had been carrying out repairs fell on to his chest, thus compressing it and causing death.

I also found the following matters established.

Mr Divers had rented a garage unit know as Unit 2, East Philpstoun, Linlithgow, EH49 7RY, from the Hopetoun Estates for a period of around eight months prior to his death. He had previously run a garage elsewhere but that had shut down. Mr Divers used the unit as a garage from which he carried out repairs to cars. At the time of his death the only cars in the garage were owned by Mr Divers and / or his partner.

During the course of the morning of Thursday 23 August 2012 Kenneth Mackenzie, who operated a lawnmower repair business in the unit next door to Mr Divers (Unit 3), had had a conversation with him during which Mr Divers had asked if he – Mr Mackenzie - knew how to remove the front transfer box of a vehicle. He told him he was carrying out some repairs on his partner's Landrover.

Mr Mackenzie told Mr Divers that he did not know how to remove the unit but suggested he could look it up on his computer and they could speak about it then. Mr Divers left to return to his own unit.

At approximately 1320 one of Mr Mackenzie's customers, Stuart Jackson, had arrived at Unit 3. He asked Mr Mackenzie if he could carry out some work on his car. Mr Mackenzie explained that he could not and that he – Mr Jackson – should speak with Mr Divers. Mr Mackenzie said that he would make coffee for all three of them.

Mr Mackenzie shouted through to Mr Divers, saying that Mr Jackson was there and that he had made him a coffee. There was no reply.

At approximately 13.25 Mr Mackenzie phoned Mr Divers and again got no reply.

Mr Mackenzie and Mr Jackson then walked round to Unit 2. There was a dog tied up outside that unit. As it was barking and rather fierce Mr Mackenzie was nervous about entering the unit. However he overcame his fear as he was concerned that Mr Divers was not responding to his calls.

The door to the unit was open and Mr Mackenzie and Mr Jackson could see the back of a black Land Rover, Freelander in the unit. At first Mr Mackenzie could not see Mr Divers but when he went round to the front of the vehicle he saw Mr Diver's leg sticking out from under the vehicle.

Mr Mackenzie went over to Mr Divers, touched his leg but there was no response. Mr Mackenzie could see that Mr Divers was lying face down under the vehicle. He immediately went to call for an ambulance. Mr Jackson stayed with Mr Divers until the emergency services arrived. No life signs were found and Mr Divers' life was pronounced extinct by Clair Greenhill, a paramedic and Brian Forbes, an ambulance technician, at 14.01.

Due to the position of the vehicle the fire brigade had to use lifting equipment to stabilise the vehicle and allow for removal of the body.

The vehicle under which Mr Divers body was found - registration number SY54 0ER - belonged to his partner. It was found sited in the centre of the garage unit. That was the usual spot at which Mr Divers carried out work on vehicles. The ground there was uneven concrete and the floor has a slight slope from left to right.

The driver's side front wheel of the vehicle had been removed. A blue axle stand, known as a "Draper", was found near the passenger side front wheel.

A second almost identical blue axle stand was found underneath the vehicle. That stand was near Mr Divers face when his body was under the vehicle. That stand was found to have a warped base, was damaged and did not stand true on the floor. The other blue stand had straight sides.

There was also a green plastic box under the vehicle. It appeared to have been crushed.

In addition, there was a yellow vehicle jack found in the down position underneath the front passenger side of the car. When Mr Mackenzie found Mr Divers that jack was in the down position and slightly back from the front of the car.

It appears that the work Mr Divers had been carrying out to the vehicle had caused movement that either caused the jack to slip or the axle stands to tip due to the weight of the car. The resulting momentum is likely to have caused the car to move to the side. As there was a missing wheel the underside of the vehicle is likely to have touched the ground and caused the vehicle to trap Mr Divers, causing the injuries that resulted in his death.

Returning to the issue of whether or not there was any requirement for there to be an inquiry in terms of section 1 of the Act I had regard to the evidence that I heard in reaching a view on the matter. On one view that was a preliminary matter which ought to be determined in advance of any determination required under section 6. However I accept the Fiscal's submission that the inquiry having been convened I should make determinations in terms of section 6 irrespective of the disposal of the preliminary matter. I have done so.

In relation to the preliminary point section 1 of the Act provides, inter alia,

"1 (1) Subject to the provisions of any enactment specified in Schedule 1 to this Act and subsection (2) below, where -

(a) in the case of a death to which this paragraph applies -

(i) it appears that the death has resulted from an accident occurring in Scotland while the person who has died, being an employee, was in

the course of his employment or, being an employer or self-employed person, was engaged in his occupation as such; or

.....

the procurator fiscal for the district with which the circumstances of the death appear to be most closely connected shall investigate those circumstances and apply to the sheriff for the holding of an inquiry under this Act into those circumstances.”

There was no suggestion that Mr Divers was an employee working for another. What therefore I required to consider was whether Mr Divers was a self-employed person and, if he was, whether he was engaged in that occupation at the time of the accident that resulted in his death.

There was very little evidence at all about Mr Divers’ employment status. It was clear from the evidence that Mr Divers was, or at least had been, a car mechanic to trade. There was some suggestion that he had previously operated a car mechanic’s business but that that had closed down. There was evidence from Mr Mackenzie that on a regular basis people other than his partner would bring cars to Mr Divers and that he would carry out work on those cars. There was however no evidence of the basis on which those transactions operated – were they commercial, were they carried out as favours, or how and why it came about that those who were the putative customers would find out about Mr Divers and his garage. There was no evidence of any adverts or invoices or, for example, of there being a trading sign over the door. There was evidence of an aggressive dog being tied up at the entrance of the garage which might be thought would be a disincentive to customers visiting.

There was no evidence in the form of bank statements, tax returns, company details or the like. There was no financial evidence at all and nothing before me that might explain how Mr Divers funded his lifestyle.

Other than Mr Mackenzie’s evidence the only piece of evidence that might suggest Mr Divers was operating as a self-employed car mechanic was that the premises were rented from the Hopetoun Estate. On one view a hobbyist car mechanic might be less likely to rent premises given that there would probably be a cost involved but I heard no evidence about the terms of the lease or the rent. Such evidence might have been able to indicate the situation one way or another but it was not available to me.

It was clear from the evidence that Mr Divers did carry out car repairs from the garage. It was also clear that at the time of his death all the vehicles in the garage belonged to Mr Divers and / or his partner. Other than the one he was working they were dirty, in a poor state of repair and looked as though they had not been touched for some time.

Taking the evidence as a whole on the balance of probabilities I was persuaded that while Mr Divers may have been a car mechanic he was not working as a self-employed car mechanic at the time of his death.

If I was wrong about that I would in any event have found that at the time of the accident that resulted in his death Mr Divers was not engaged in that occupation but was instead carrying out work, on his own behalf, on one of his family's vehicles. He was therefore not engaged in his occupation (if he had one) at the time of his death. In that sense section 1 of the Act did not apply but, for the reasons given, I have made determinations in terms of section 6 to the extent required.

Susan Craig

Sheriff

30 August 2013