SHERIFFDOM OF SOUTH STRATHCLYDE DUMFRIES & GALLOWAY AT LANARK

2015FAI16

DETERMINATION

by

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In Inquiry into the circumstances of the death of

STEPHEN GORDON GOODWIN

In terms of section 6 of the Fatal Accidents and Sudden

Deaths Inquiry (Scotland) Act 1976

LANARK, 12 June 2015

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

1. In terms of section 6(1) (a) of the Act that Stephen Gordon Goodwin, who was born on 24 November 1968, died at the A70 Ayr to Edinburgh Road (also known as the A721) between Carstairs and Carnwath, approximately 275 metres east of Ryeflat Road. His life was pronounced extinct at 1401 hours on 9 July 2014.

2. In terms of section 6(1) (b) of the Act, that the cause of death was:

1a) Head injury

Due to

1b) Road traffic accident (lorry driver)

NOTE

1) On or about 1327 hours on 9 July 2014 a Mercedes 1836 Bluetec 5, rigid motor lorry, Registration mark KX58CHH (Mercedes lorry), owned and operated by Symphony, Park Spring Road, Barnsley, collided with a DAF XF 105.460, 3 + 2 articulated motor lorry travelling in the opposite direction on the A70 Edinburgh to Ayr Road.

2) The A70 at this point is also numbered as the A721 for a distance of approximately 1 mile and consists of a 2 lane undivided carriageway travelling in a generally east to west direction. The prevailing speed limit is 60 mph for motor cars and 40 mph for Large Goods Vehicles. The centre line is marked with hazard-warning lines. The road was in a generally good condition, weather conditions were favourable and there were no unexpected intrusions or obstacles on the road.

3) Stephen Goodwin (the deceased) was an experienced driver of large goods vehicles. He had worked for Symphony Group plc since March 2013. At or about 1327 hours on Wednesday 9 July 2014 he was driving back to the company depot in Carnwath in the Mercedes lorry having completed his

planned deliveries for the day. His partner, Helen Millar, confirmed that he had gone to bed at his usual time of 10pm the night before rising at or about 4 am to commence his shift. There was nothing out of the usual about his presentation that morning. Just prior to the accident he was travelling west along the A70, negotiating the left hand bend approximately 0.5 miles east of the junction of the A70 with the A721 at Columbie Junction, Carstairs.

4) William Peat, the driver of the DAF 105 XF articulated lorry (DAF lorry), was also a very experienced HGV driver, driving roads familiar to him. He was driving east along the A70, approaching the right hand bend approximately 0.5 miles east of Columbie Junction. He was travelling at approximately 43 mph past a queue of oncoming traffic when he noticed the deceased's vehicle, which was in the middle of that line of traffic, gradually crossing the white line and coming towards him. His first thoughts were that it was edging out as if the driver was not paying attention or pulling out to check oncoming traffic and that it would safely pass him. He pulled his vehicle as far to the left of his carriageway as he could but the two vehicles collided, the offside mirror of the Mercedes smashing into his windscreen. He did not see the Mercedes lorry swerve away from him prior to collision.

5) Driving behind the DAF lorry was Mr John Dalziel in his Vauxhall Insignia motor vehicle, registration number BV62WGV. He saw the Mercedes lorry coming towards them around the corner, veering across the road. It hit his car pushing it through the fence at the side of the road into the field. Like Mr

Peat, he saw no sign of the driver of the lorry trying to correct what he described as a gradual movement which he thought had probably started on the bend itself. It did not make sense to him. He sustained serious injuries which still cause him pain and his car was written off.

6) A tyre dislodged from the Mercedes lorry struck the Toyota Yaris motor car, registration mark SG58 FGO driven by Rose Thomson which had been travelling behind the Mercedes lorry.

7) Police collision investigation officers attended the scene shortly after the accident, carried out a detailed investigation of the scene, collated information relating to the tachograph records of the LGV's involved and compiled a report which was before the court and was spoken to by PC Allan Hope, one of its authors.

8) They found that the Mercedes lorry had come to rest within a grass field to the north of the roadway approximately 220 metres east of the junction to Ryeflat Road. It had sustained extensive collision damage, predominantly to the front offside. This included the front offside tyre missing from its wheel, which had been forced back approximately 0.30 metres from its original driving position, shearing and detaching securing bolts. The two front wheels were found to be at full lock turned to the right. The front offside had sustained major impact, with the roof line of the upper cab area being crushed back towards the rear of the vehicle. The front windscreen and

offside mirror arm were missing and the detachable box container unit fitted to the back of the lorry had a large hole within the front offside. The outside door skin from the Vauxhall Insignia motor vehicle driven by Mr Dalziel was embedded in the lower front offside of the lorry.

9) The DAF lorry driven by Mr Peat was found to have sustained moderate collision damage, predominantly to the front offside. It consisted of *inter alia* a missing offside mirror arm and the smashing of the front windscreen to the offside. The window bore the imprint of an open-ended rectangular shape with rounded corners which was later discovered to have been made by the front offside door mirror of the Mercedes lorry at the initial point of impact between both vehicles. Black paint marks ran horizontally along the entire length of the cab, increasing in width, and red paint marks ran horizontally above these. The black paint was later found to have been made by the offside door handle of the Mercedes lorry, the increasing width indicating that the contact between the two vehicles was increasing. The offside wind detector at the rear of the cab was broken and partially detached and the battery cover and aluminium cat walk were missing. The tipping trailer had sustained extensive collision damage, predominantly to the front offside, consisting of a large hole and crushing to the trailer body, denting and partial detaching of the ladder attached to its front offside. Red paint marks ran horizontally along the entire offside length of the trailer body which was dented at the rear. The red paint marks on trailer and cab were made by the front offside of the Mercedes motor lorry as the two vehicles collided as was

all the damage noted above and to the offside wheels, studs and nuts and tyres which had detached.

10) The force of impact was so heavy that it forced both front wheels of the Mercedes into full right lock. Scuff marks on the carriageway resulting from this, together with scrape marks caused when the front offside tyre of the Mercedes detached and the wheel came into contact with the road surface, indicate the position of the front offside wheel of the Mercedes at the point of impact. These show that the centre of its front offside tyre was 0.73 metres over the centre line markings into the eastbound lane. Tyre marks indicate that the driver of the DAF lorry had steered nearside in an attempt to avoid a collision with the Mercedes lorry. After impact, the Mercedes motor lorry continues to travel westwards in contact with the tipper trailer of the DAF lorry causing the paint marks and damage described above to the DAF, the Mercedes lorry digging further in as it proceeds. The Mercedes motor lorry continued its trajectory, colliding with the Vauxhall Insignia motor car at a point where the lorry's front offside wheel was 1.42 metres over the centre line markings into the eastbound lane and digging in to the extent that it rips off the outer door skin of the car. At impact, the motor car was forced backwards off the roadway onto the grass verge and thereafter into the adjacent field to the north of the roadway. The Mercedes motor lorry finally came to rest within the field to the north of the roadway.

11) Piecing together the damage to the vehicles, the witness statements and the marks and debris left on the road surface, the experienced Collision Investigators conclude that the collision was caused by the driver of the Mercedes motor lorry, Mr Goodwin, crossing over the centre line markings into the eastbound lane whilst travelling west along the A70 and colliding with the front offside and offside of the DAF XF articulated lorry and trailer and then colliding with the offside of the Vauxhall motor vehicle. It is not suggested that the Mercedes motor lorry was travelling at excessive speed for the left hand bend it had just negotiated. There were no physical signs left on the carriageway to suggest either that Mr Goodwin had swerved sharply into the eastbound lane, or swerved to correct that move. The fact that the damage got worse as the two vehicles came together suggests that he effected no change in trajectory. Had he been momentarily distracted the officer would have expected him to have thereafter violently swerved to correct the encroachment. The fact that Mr Goodwin had just successfully negotiated the left hand bend suggests that driver fatigue cannot explain the veering manoeuvre which the investigators suggest occurred as a result of lack of concentration by Mr Goodwin in the absence of any other revealed explanation.

12) Exploring the time available to both lorry drivers to react to their potential collision, PC Hope hypothesised that the fact that the DAF driver, Mr Peat, had responded to the encroachment by swerving but had not had time to brake suggested that drivers had only 1-2 seconds to fully react. This is the

average driver's reaction time, albeit that calculation is dependent upon when the driver realises that there is a problem to react to. He can however say drivers were definitely not further than two seconds apart when the DAF driver realised, as he came round the right hand bend, that the Mercedes was in danger of colliding with him. Whilst there is no evidence of how long the Mercedes was travelling at this encroaching trajectory for, there would be evidence had he reacted and PC Hope can therefore say that he did not react within the 1-2 second average reaction time.

13) A thorough examination of both lorries revealed no mechanical defects and no issues with their tyres. Whilst the digital tachograph unit of the Mercedes lorry was too badly damaged to produce a download, examination of the deceased's driver's card revealed no driving hours offences. The download obtained from the DAF tachograph unit likewise revealed no driving hours offences. There is no evidence to support any suggestion that Mr Goodwin dozed off at the wheel, and there is evidence to contradict such a hypothesis. As pointed out by PC Hope, Mr Goodwin had successfully driven his vehicle around the left hand bend immediately prior to impact. Further evidence comes from an examination of his personal mobile phone recovered from the Mercedes lorry which reveals that he accessed an incoming call at 13.27.18.

14) It is not possible to synchronise all timings revealed by the evidence. It seems from the tachograph records for the DAF lorry that the collision is recorded as occurring at 13.29 and 16 seconds, albeit this time is not necessarily

externally accurate. The Navman wireless system for the Mercedes motor lorry records that the GPS aerial was removed at 13.27 hours. This was located directly above the driver's window and thus is likely to correlate with the time of impact, given that this was the first point of impact. The setting of the clock on the deceased's mobile phone unfortunately cannot be checked. Whilst the phone and its contents were subject to examination, its setting returned to factory settings post-examination and the accuracy or otherwise of the clock settings at the time of accident was not considered at the time of examination. The setting of the clock on this mobile would be inputted by its user and is not dependent upon or necessarily referable to accurate configuration, in the same way that GPS-linked devices are.

15) The text noted as accessed by the deceased on his mobile at 13.27.18 was work-related and is believed to have been sent by his team leader. It read as follows: "Orders from transport – Paul's leaving van at Merc for you. It's got a unit on it that you've to deliver to Buildbase at Law". It seems to require Mr Goodwin to extend his shift by driving to the yard at Bellshill, picking up a van and making a delivery to premises at Law. According to Mr Alderston, Symphony Group's Transport Manager, the sending of work-related information by private mobile phone is prohibited by company rules, a copy of which is presented to each new recruit to the Company at induction. No further or subsequent reminders are provided by the employers to their employees in any form. The Company provides drivers with a mobile phone which is attached permanently to the dashboard of their cab and expects all

communications, personal and business-related, to be carried out via this device. A handheld device is also provided which is used for delivering information in relation to uplifts and deliveries and scanning packages but is disabled from using as a mobile phone.

16) The relevance of the sending and receipt of this message to the accident is unclear. Whilst its timing seems concurrent, that cannot be verified. Clearly, Mr Goodwin accessed it, as revealed by the scrutiny of the phone, and therefore would have had to divert his attention from the road to do so. The extent of that period of inattention is unclear. The positioning of the mobile is not known and neither, therefore, is how difficult it was to access. The message is short. It is not known if Mr Goodwin actually read it. The use of mobiles whilst driving is prohibited by law, in recognition of the danger involved in such an activity. However, whilst it may be relatively easy to envisage momentary inattention to the road ahead resulting in some slippage in road position, it is difficult to understand why a professional driver, driving in a stream of traffic, would be oblivious to the dangers to the extent that he would make no effort to brake, steer or avoid the inevitable resulting collision. PC Hope spoke of only a small window of reaction time existing for the drivers, but it was sufficient for the DAF driver to take some avoidance measures. Mr Goodwin took none.

17) His injuries were extensive and severe. Post mortem examination revealed that in addition to multiple injuries to the right arm and bruising and

abrasions to the trunk, left arm and legs, his main injury was to the head. He sustained lacerations at the top of the right ear and on the back of the right side of the head, together with bruises and abrasions over most of the forehead, bilateral black eyes and bruising to the chin. Internally, he sustained multiple fractures of the skull, mainly at the front but also extending into its base and posteriorly, associated with lacerations of the dura and brain at the front. There was widespread bruising at the front of the scalp and fine, white matter haemorrhage in the parasagittal regions, in keeping with diffuse traumatic injury. This head injury was the cause of death. Unconsciousness would have resulted immediately upon that injury. He was attended to immediately at the scene by qualified nursing staff but was unresponsive and life was pronounced extinct by paramedics at 1401 hours.

18) The immediacy of his devastating head injury upon collision further complicates any attempt to ascertain the precise cause of the accident. Even if conscious and sentient at the time of impact, he would have been unable to respond thereafter and nothing further can be taken from the lack of any attempt to brake or steer away thereafter. The 2 seconds suggested by PC Hope is probably his only window of opportunity to remedy the situation, whatever its cause, and he took no steps to do so. It is because of this total lack of reaction that the Crown's position is that Mr Goodwin probably suffered some form of sudden, unexpected loss of full consciousness, most likely in the form of a cardiac arrhythmia, as he completed the navigation of

the left hand bend, and was therefore unable to return the steering appropriately as he entered the straight. Ms Hutchison, on behalf of Symphony Group, does not disagree that some medical emergency is likely to be a cause of the accident, albeit she also points to the coincidence of timing of the mobile message as an equally likely cause.

19) Mr Goodwin was noted by the pathologist to be a heavily built man, approximately 5 feet 8 inches in height and weighing approximately 164 kilograms. His heart was found to be generally enlarged with a degree of left ventricular hypertrophy which is commonly caused by underlying high blood pressure but could also be referable to his large build. Cardiac enlargement to the extent present in Mr Goodwin can cause sudden fatal cardiac arrhythmia which can occur with or without preceding symptoms such as light-headedness, palpitations or chest pain. There are no findings at post mortem that can confirm that acute arrhythmia has occurred. The possibility that the sudden onset of a cardiac arrhythmia with associated altered consciousness played a part in the circumstances leading up to the road traffic accident cannot be excluded by the pathologist. There were no other signs of natural disease or injury found which would cast light on Mr Goodwin's reactions and behaviour at the relevant time. His GP records contain no information to indicate that he had been diagnosed with any heart related condition, or any other health condition other than obesity. Toxicology examinations of his blood and urine were negative for alcohol, acidic drugs, basic drugs, paracetamol, drugs of abuse and cannabinoids.

20) For the reasons rehearsed above, the lack of certainty in respect of the timing of the mobile message, the lack of any attempt by Mr Goodwin to respond to the drifting trajectory adopted by the Mercedes lorry and the lack of any medical certainty that he suffered some form of altered consciousness by reason of a cardiac arrhythmia, I am unable to ascertain the precise reason or reasons for Mr Goodwin's catastrophic loss of attention. Both or either or neither may have been responsible and all available sources of further information have been exhausted. The sender of the message to Mr Goodwin's phone is no longer employed by Symphony Group and cannot be located and in any event his phone records may be no more reliable in terms of timing than are Mr Goodwin's. Mr Alderston can provide no explanation as to why such a message should pass via private mobiles, as opposed to via the company-provided hands-free system which was *in situ*. It did so contrary to company policy. I note that the company have taken steps to reissue the rules relating to the prohibition of business calls to private mobile phones to all of their drivers in the light of the information coming to light in the latter stages of this Inquiry. They may wish to consider whether further, more proactive, steps are required to raise awareness of the dangers involved in respect of the use of hand-held mobiles whilst driving and promote the exclusive use of company-provided hands-free devices at such times, by both drivers and those employees interacting with them. Ultimately, of course, it is a matter of personal responsibility whether or not a driver chooses to act in contravention of the law and use a hand-held mobile device whilst driving.

What can be targeted by employers is the communication of company orders in such a way as to discourage such behaviour.

21) In all of the circumstances narrated above, whilst the cause of the accident leading to the injury of Mr Peat and Mr Dalziel and the death of Mr Goodwin has been ascertained, namely the uncorrected drift of the Mercedes lorry driven by the deceased into the path of oncoming vehicles, what gave rise to that cannot be ascertained and accordingly no determinations can be made in terms of Sections 6(1)(c) or (d) in respect of the reasonable precautions whereby the accident resulting in his death may have been avoided, or defects in the system of working contributing to that accident. Nor were any facts revealed which are relevant to the circumstances of the death.