

SHERIFFDOM OF LoTHIAN AND BORDERS AT LIVINGSTON

[2018] FAI 16

B8/18

DETERMINATION

BY

SHERIFF DOUGLAS A KINLOCH

UNDER THE INQUIRIES INTO FATAL ACCIDENTS AND SUDDEN DEATHS ETC
(SCOTLAND) ACT 2016

into the death of

THOMAS McFARLANE

Livingston, 3 May 2018

Determination

The Sheriff, having considered the information presented at the inquiry, determines in terms of Section 26 of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016 that:

- (i) The deceased was Thomas McFarlane (d.o.b. 30/12/46), residing at Addiewell Farm, Addiewell, West Calder. He died at 14.07 hours on 8 August 2016.
- (ii) The death was as a result of an accident which occurred while Thomas McFarlane was acting in the course of his occupation on 20 June 2016 at Cuthill Farm, Blackburn Road, Stoneyburn, West Lothian.
- (iii) A post mortem examination took place on 15 August 2016 at the Edinburgh City Mortuary, and found the cause of death to be:

- 1a. Complications of head and chest trauma following a farming accident
2. Cerebral infarction
3. Interstitial lung disease
4. Ischaemic heart disease.

Recommendations

I have no recommendations to make.

NOTE:

Introduction

[1] An Inquiry into the death of Thomas McFarlane was held at Livingston Sheriff Court on 27 March 2018. A preliminary hearing took place in relation to the Inquiry on 27 February 2018. Ms Rollo, Procurator Fiscal Depute, represented the public interest. The family of the deceased were not represented and I was informed that although they wished to be advised of the outcome of the Inquiry, they did not wish to appear or be represented at the hearing. I heard evidence from two witnesses, namely Andrea Taylor, a farmer, and Graeme Dunbar, an HGV driver. A post mortem report by Dr Robert Ainsworth, dated 26 October 2016, was lodged as a production, as was an affidavit by Norman George Bradley, Scene Examiner, c/o The Scottish Police Authority, Forensic Services, Stirling Police Station, dated 20 March 2017. The affidavit contained formal evidence in relation to a book of photographs which had also been lodged as a production.

The legal framework

[2] The Inquiry was a mandatory Inquiry under section 2(3)(b) of the Inquiries into Fatal Accidents and Sudden Deaths Etc (Scotland) Act 2016, in that the death was as a result of an accident which occurred while Thomas McFarlane was acting in the course of his occupation. The Inquiry was governed by the Act of Sederunt (Fatal Accident Inquiry Rules) 2017, and the purpose of the Inquiry (in terms of section 1(3) of the 2016 Act) was to establish the circumstances of the death, and consider what steps, if any, might be taken to prevent other deaths in similar circumstances.

Circumstances of accident

[3] At the Inquiry I heard evidence from two witnesses and this allowed me to gain a fairly accurate understanding of the way in which the accident happened. The first of the witnesses was Andrea Taylor (28), who lives at Blackburn Main Farm, West Lothian, and who is a farmer. She has lived and worked on a farm all of her life. She had known Thomas McFarlane for many years, and regarded him almost as being one of her family. The second witness was Graeme Dunbar (21), who was an HGV driver.

[4] On the day in question Thomas McFarlane had arranged for about eight cattle to be taken from his farm to the abattoir in an HGV lorry. He phoned Andrea Taylor early in the morning and asked if she could come to his farm to assist him. An HGV lorry driven by Graeme Dunbar duly arrived at the farm in the morning at about 9.00am. The plan was to load the cattle onto the HGV lorry. In order to assist in herding the animals

into the lorry, a pen, that is a small area surrounded by a fence, had to be created in the courtyard area of the farm.

[5] As I understood it, Andrea Taylor assisted the deceased in creating the pen. They did so by tying a number of metal gates together, in a way which allowed each gate to hinge at the point where they were connected. The gates were about five or six feet high according to the witnesses.

[6] When the lorry driven by Graeme Dunbar arrived, it had to reverse off the main road into the farm courtyard because of restrictions in space. It reversed in at an angle and was positioned so that the rear of the lorry at the passenger side was positioned near to a wall formed by a farm building. The pen, as I understood the evidence, was formed by attaching one gate to the rear of the lorry at the driver's side; then another gate was attached to the first gate (which formed the long side of the pen); and then a third gate (which was able to hinge) was attached to the second gate, to form an opening into the pen, which could be closed as if it were a proper gate. According to Andrea Taylor, two straw bales had been placed outside of the metal gates and at the rear of the driver's side of the lorry. She said that her recollection was that the gate which was attached to the lorry was resting against the bales, and that this was done in order to provide stability to the gates. Graeme Dunbar confirmed that the bales were there, but did not recollect that any gate was resting against the bales. His recollection, as I understood him, was that the bales had been placed there to prevent the cows from escaping from the yard.

[7] During the course of trying to herd the cattle onto the rear of the lorry one of the cows became agitated, and ended up trying to jump over the fencing formed by the gates. The deceased was standing outside of the pen, but unfortunately was positioned just at the point where the cow tried to jump over the gate. When it tried to jump over the gate the cow brought the gate down on top of the deceased's chest. The cow then made good its escape by trampling over the deceased, and according to Andrea Taylor's recollection the other cows did the same. Thomas McFarlane was taken by ambulance to Edinburgh Royal Infirmary where he was treated for the injuries he had received in the incident. My understanding of the medical evidence given to me was that his injuries did not at first seem to be too severe, and Andrea Taylor confirmed that she visited Mr McFarlane in hospital and that he was in a reasonable condition for the first two or three weeks. However, his condition deteriorated partly, as I understand it, as a result of pre-existing heart and lung health difficulties which he had, and he also, unfortunately, suffered a stroke while in hospital. He was transferred to St John's Hospital in Livingston on 6 August 2016, and died on 8 August 2016. Andrea Taylor was present when he passed away. His death is certified in the post mortem report as having been primarily the result of complications of head and chest trauma following his accident.

Conclusions

[8] Thomas McFarlane was 69 years old at the time of his death. I was informed that he was one of four brothers, although unfortunately one of his brothers has already

passed away. He had, as I understood it, worked on a farm all of his life. I was told by the procurator fiscal that his family regarded his death as being the result of a “freak accident”. They did not, accordingly, wish to be present or represented at the Inquiry. I was also informed that The Health and Safety Executive were aware of the circumstances of the death, but did not regard the accident as raising any real questions affecting the public interest, and had also declined to take part in the Inquiry. The procurator fiscal therefore asked me, effectively, to make a formal determination of death, without making any recommendations as to precautions. I agree with the view taken by the procurator fiscal. In my view, the evidence led before me was not sufficient to allow me to do anything other than make a formal determination as to the circumstances of the death.

Observations

[9] While I do not feel that on the evidence led before me I was able to form a sufficiently knowledgeable view as to any alternative methods by which cattle might be herded onto a lorry, I do think that there are one or two observations which it is appropriate for me to make.

[10] First, the evidence of Graeme Dunbar allowed me to gain some insights into certain matters. Although Graeme Dunbar is only 21, he was brought up on a farm, and still spends his working life transporting farm animals. He was therefore quite knowledgeable about farm procedures and the behaviour of animals including cattle. He gave evidence that he had “seen a cow jump like that a good number of times. It

happens quite a lot." He said that as a very rough estimation, perhaps 5% of cows actually jump over a gate in order to try and escape. Graeme Dunbar also said that he had seen a number of people have a lucky escape in similar circumstances.

Graeme Dunbar's evidence would therefore suggest that the prospect of a cow attempting to jump over a gate, even one five feet or six feet high as used by the deceased, is not so unusual after all. It suggests that it would not be quite right to call the accident a freak accident.

[11] Having said that, I agree with Andrea Taylor who said that the sad death of Thomas McFarlane "was *not* an accident waiting to happen". This was not a situation where there had been previous problems at the farm which had flagged up the dangers, which ought therefore to have been entirely obvious to anyone giving the matter some thought. The system having been used for so long by Mr McFarlane without, so far as I am aware, any real problems, it would not have been entirely obvious that there were dangers associated with it. Thomas McFarlane had worked as a farmer all of his life. He had no doubt always done things in a particular way. He had lived until the age of 69 without, so far as I am aware, having been involved in a similar type of accident. It may be that, like many workmen, he had become inured to the potential dangers of his job, in this case herding cattle into a truck, and did not give very much thought to these dangers.

[12] It is obvious that if a pen is required, then for it to be made as safe as possible the fencing has to be securely attached to the ground, such that it will be sufficiently strong to withstand the considerable weight of a cow attempting to leap over it. As a result of

access difficulties with this particular farm there was, as I understood it, nowhere else for the lorry to park, and therefore the pen had to be a “mobile” pen, capable of being erected at the only place to which the lorry could gain access, and then dismantled later. Graeme Dunbar told me that at some farms he visits there are purpose-built pens with posts which are concreted into the ground, and the fences are attached to the posts. I do not know how expensive it would be to construct such a pen, nor do I know how practicable it would be to construct such a pen which would have to be dismantled in some farms after a lorry had visited to transport cattle to the abattoir. I did not hear any evidence about this. I therefore cannot make any recommendations as to changes in practice.

[13] Beyond these general observations which I have made, I am not, for the reasons given, able to make any recommendations which might prevent a similar accident from taking place in the future.