

B272-20

DETERMINATION

BY

SHERIFF MHARI S MACTAGGART

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

into the death of

IAN POLLOCK

Ayr, 28 October 2020

The Sheriff, following the hearing of unchallenged evidence, having resumed consideration of the cause, determines that, in terms of section 26 of the Fatal Accidents and Sudden Deaths etc (Scotland) Act 2016 (“the Act”):

1. In terms of section 26(2)(a) of the Act, Ian Pollock, born 20 June 1992, who resided at Kilhenzie Farm Cottage, Auchenwynd, Dailly Road, Maybole died on 27 May 2018 within the Accident & Emergency Department at University Hospital Ayr, Dalmellington Road, Ayr at 2140 hours.
2. In terms of section 26(2)(b) of the Act, the accident which resulted in the death of Ian Pollock occurred on a road within the boundary of Kilhenzie Farm Cottage, Auchenwynd, Dailly Road, Maybole on 27 May 2018 at approximately 1730 hours.

3. In terms of section 26(2)(c) of the Act, the cause of death was chest and abdominal injuries due to a quad bike incident.
4. In terms of section 26(2)(d) of the Act, the accident was caused by (a) a calf darting out in front of Mr Pollock's path as he was driving a quad bike; (b) Mr Pollock driving the quadbike at speed; and (c) Mr Pollock driving the quad bike whilst under the influence of alcohol.
5. In terms of section 26(2)(e) of the Act there were no precautions which could reasonably have been taken, and had they been taken, might realistically have resulted in the accident being avoided.
6. In terms of section 26(2)(f) of the Act there were no defects in any system of working which contributed to the death or the accident causing death.
7. In terms of section 26(2)(g) there are is one other fact which is relevant to the circumstances of the death, namely that Mr Pollock's employers, WJ and AF Briggs did not keep any records showing that Mr Pollock was trained to drive a quad bike.
8. It is recommended, in terms of section 26(1)(b) of the Act, that this employer keep accurate records that its' employees have the appropriate training in the operation of quad bikes.

NOTE

Introduction

[1] This inquiry was held under section 1 of the Act. It was a mandatory inquiry in terms of section 2(1) of the Act as Mr Pollock was, at the time of the accident which resulted in his death, engaged in his employment.

[2] Mr Fauré, procurator fiscal depute, appeared for the Crown. Mr Bissett, solicitor, Glasgow, appeared for the firm of WJ and AF Briggs (the employers). There was no other appearance.

[3] No parole evidence was led at the inquiry. A joint minute was entered into by parties and, at their invitation, I interponed authority thereto.

Findings

[4] Mr Ian Pollock was born 20 June 1992 and was 25 years of age at the time of his death. He resided alone at Kilhenzie Farm Cottage, Auchenwynd, Dailly Road, Maybole. The cottage was on the farm where he worked. He was the father of a son, also named Ian Pollock, aged 7 years from a previous relationship. At the time of this death he was in a relationship with Ms Shelby Harkness.

[5] Mr Pollock was one of three sons of Mr and Mrs John Pollock who reside in Maybole. He was employed as a dairyman for WJ and AF Briggs working at Kilhenzie Farm. John Briggs and Robin Briggs were both partners in the business who employed Mr Pollock. He had been employed as a dairyman since October 2017. He was one of three employees. He had previously worked for WJ and AF Briggs for 12 months

in 2013. He had worked on several farms in the preceding 10 years. He was registered with National Plant Operators Registration Scheme (NPROS) to operate an agricultural tractor and as a vehicle marshal. Before returning to Kilhenzie in 2017 he had been employed with an agricultural contractor, W&J Mair, and had operated tractors and silage equipment. The main business activity of WJ & AF Briggs is dairy farming. The partnership owns over 400 acres and rents another 30 acres. There are 230 dairy cows and another 200 young stock.

[6] On Sunday 27 May 2018, having been instructed to do so the previous day by Robin Briggs, Mr Pollock proceeded to bring a newly calved cow and calf from a field on the other side of the B714 to the dairy shed on the farm. Around 1650 hours Mr Pollock telephoned his friend, James McGill, to assist with this task.

[7] James McGill arrived shortly afterwards on the farm to give assistance. Mr Pollock appeared to him to be under the influence of alcohol. Mr Pollock drove an all-terrain vehicle (hereinafter referred to as a quadbike) to the field to herd the cow and calf back to the dairy shed. The quadbike was a Honda TRX 420 model, with a 5-speed gearbox, which had been purchased from a local dealer in June 2017 and had been subsequently serviced by the same dealer in April 2018. It was the only quadbike in use at the farm. Mr Pollock used the quadbike on a daily basis. Mr Pollock and Mr McGill retrieved the newly calved cow and calf from the field and were in the process of returning them to the dairy shed when Mr Pollock stopped and spoke to his partner, Ms Harkness. Mr McGill did not stop. He carried on herding the cow and calf back

towards the farm and dairy shed. At this time Mr Pollock, Mr McGill, Ms Harkness together with the cow and calf were all on a single land road within the farm.

[8] Mr Pollock, after finishing speaking to Ms Harkness, drove off on the quadbike. He drove off at speed and continued to accelerate as he drove up the road. The cow and calf were in front of Mr McGill in single file on the road, the calf walking in front. Mr Pollock caught up and overtook Mr McGill who had been walking on the road behind the cow and calf but had stepped on to the grass verge when he saw Mr Pollock coming along the road at speed. When Mr Pollock was about to pass the cow and calf, the calf without warning darted into the path of the oncoming quadbike. The quadbike collided with the calf which was thrown into the air and landed beside a boundary fence at the side of the road. The calf died as a result of the collision.

[9] The quadbike overturned and Mr Pollock was thrown from it and landed beside a woodpile, again at the side of the road. The collision was witnessed by Mr McGill.

[10] Mr Pollock sustained chest and abdominal injuries as a result of the collision. Ms Harkness stayed at the scene and called the emergency services. Mr McGill left the scene to summon assistance from the farm.

[11] Paramedics arrived and rendered assistance to Mr Pollock at the scene of the collision. Police were called as was a trauma helicopter team given the location and seriousness of the injuries. The helicopter team arrived and took over from the paramedics.

[12] Mr Pollock's father attended the scene and was present whilst emergency services rendered medical assistance to his son. Mr Pollock's injuries were assessed by

the trauma team as time critical and a decision was made not to transfer him by helicopter to the Queen Elizabeth II University Hospital in Glasgow but rather take him by ambulance to Ayr University Hospital, Dalmellington Road, Ayr.

[13] He was received into the care of Dr Robbie Muir, a Consultant in A&E who had been expecting his arrival. Mr Pollock was attended to by Dr Muir and his team however later that evening within the A&E department Mr Pollock succumbed to his injuries and his life was pronounced extinct by Dr Muir at 9.40pm.

[14] Whilst in hospital Mr Pollock received a blood transfusion.

[15] On the 1 June 2018 at the Queen Elizabeth University, Glasgow a post mortem examination was conducted by Forensic Pathologists Drs John Williams and Marjorie Turner. The cause of death was recorded as 1a: Chest and abdominal injuries due to 1b: Quad bike incident.

[16] Blood samples were analysed by Forensic Toxicologists Anne McKeown and Dr Hazel Jennifer Torrance and in their report dated 13 July 2018 Mr Pollock's blood alcohol concentration was recorded as 122mg/100ml.

[17] Mr Pollock had been drinking alcohol, cans of lager, throughout the previous day and on the day of the accident.

[18] The road surface was in fair condition, the road was a private farm road which was reasonably level and straight at the locus of the collision. Visibility was good and weather conditions were dry at the time of the accident.

[19] In 2017 Mr Pollock had told John and Robin Briggs that he was qualified in the use of quadbikes. He showed three certificates to John Briggs, stating that these were

qualifications in Work at Height; the use of forklifts and tele handlers; and quadbikes. John Briggs did not obtain copies of these. No certificate showing Mr Pollock was qualified to drive quadbikes has been recovered as a result of the investigation into his death.

[20] The quadbike Mr Pollock was driving at the time of the fatal collision was examined by Health and Safety Inspector David Gostick. No mechanical defects were identified which could have caused or contributed to the collision. The quadbike was found, at the time of examination, to be in 5th gear.

[21] The following Crown productions were presented to the Inquiry: Crown production 7 being a true and accurate copy of the Post-Mortem report; Crown production 8 being a true and accurate copy of the toxicology report and Crown production 6 being a true and accurate copy of a mechanical engineering report by the Health and Safety Inspector.

Submissions and decision

[22] Mr Fauré and Mr Bissett were in agreement with regard to their submissions under sections 26(2)(a) to (d). Neither made any submissions nor invited any findings in terms of section 26(2)(e) and (f).

[23] The Crown did however invited findings under section 26(2) (g) in relation to the lack of written record of Mr Pollock's qualification to drive a quad bike. The Crown accepted that this was not relevant to the death itself, but submitted that it was relevant to "the circumstances of the death". The fact that the employer's record keeping was

deficient in this regard would be captured under this section and was in line with the whole ethos of the Act which was sculpted to promote retrospective review and to identify and assist in remedying poor practice. The lack of record keeping was purely poor practice and therefore was not captured under (2)(e) and (f) but could sit comfortably under (g). Mr Bissett submitted that Mr Pollock was competent in the use of quad bikes, he had exhibited a certificate to John Briggs and the dairyman now employed has been refused permission to use the quad bike as he has been unable to produce a certificate of training. In response to a question by the court, he confirmed that a record of any such qualifications would now be kept by the partnership.

[24] I am in agreement with the Crown in this regard. There is nothing to suggest that there was anything other than poor practice here, but I am satisfied that making a finding under this section would have the desirable consequence that this employer will, in the future, keep accurate records in order that there may be no doubt as to whether employees are trained to operate quadbikes safely.

[25] I therefore make the formal findings set out above.

[26] I make a recommendation that this employer keep accurate records of training and operation of quadbikes by its employees.

[27] I join with Mr Fauré on behalf of the Crown and Mr Bissett on behalf of the partnership of WJ & AF Briggs in extending my sincere condolences to the family and friends of Mr Pollock.