

**INQUIRY INTO THE MATTERS RELATING TO
THE DEATH OF NEIL STONECHILD**

**WRITTEN SUBMISSIONS OF
JASON EDWARD ROY**

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TO:

**THE HONOURABLE MR. JUSTICE D.H. WRIGHT, COMMISSIONER
THE COMMISSION OF INQUIRY INTO MATTERS RELATING TO
THE DEATH OF NEIL STONECHILD**

WRITTEN SUBMISSIONS

FIND WHAT FOLLOWS as the written closing submissions before the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild of Jason Edward Roy:

INTRODUCTION:

1. If it were not for the persistence and the evidence of Jason Roy this Commission and these proceedings would have never taken place. Mr. Roy has consistently recounted the same story of the events of November 24, 1990 for fourteen years. He approached to the Saskatoon Police Service several times to try and report this event but has always been rebuffed. It was not until after similar freezing deaths of Aboriginal people occurred in January and February of 2000 and the attention of the entire nation was turned to the conduct of the Saskatoon Police Service and their dealings with Aboriginal people that fair consideration was paid to Jason's story. In due course, the Minister of Justice for Saskatchewan announced a Commission of Inquiry Into Matters Relating to the Death of Neil Stonechild on February 20, 2003.

2. Mr. Roy was granted funding and standing with regard to his participation as a witness in these proceedings by decision of the Commissioner dated June 13, 2003. Following that decision Mr. Roy has made every effort to provide his full cooperation and assistance in regards to his role before this Honourable Commission. Mr. Roy has acceded to every request of Commission Counsel to attend meetings and has twice gone well beyond his civic duty and made private applications to the Provincial Court of Saskatchewan to ensure that this Commission might openly consider and publish any evidence adduced regarding his youth justice record and his associated youth health records which would otherwise be suppressed by the law.

3. It is noteworthy that Mr. Roy has maintained throughout these proceedings, even in the face of harsh cross-examination and an ultimately unnecessary investigation into his personal history, that he has “nothing to hide” and has laid his life bare for all to see, in order to assist this Commission in its work.

4. Lastly, it cannot be said by anyone that Mr. Roy has brought forward his story and evidence for financial, or any other sort, of personal gain. Rather, it is not unreasonable to say that the burden of bringing forward this weighty evidence has cost Mr. Roy everything. Indeed, giving his evidence and attending these proceedings has exhausted all of the resources that were available to him. Currently, Jason finds himself without a home, without a job and in the midst of a very deep depression.

JASON ROY’S EVIDENCE:

5. Mr. Roy’s evidence of the night in question has been entirely consistent since 1990 and is as follows:

- Jason met Neil shortly after noon on November 24, 1990 near the downtown bus terminal on 21st Street in Saskatoon. They saw Trevor

Nowaselski at his home sometime that afternoon. Later Neil and Jason agreed that they should have a few drinks in the evening.

(September 9, 2003 – page 351, line 8)

- They then went to Neil's mom's house where some sort of deal was made with Marcel, to get them a bottle of liquor. There is evidence that they obtained a bottle of Silent Sam Vodka.

(September 9, 2003 – page 352, line 5)

(September 10, 2003 – page 369, line 18)

- They then went to the Binning home for the evening and played cards. They left the Binning's to try and find Lucille Neetz late in the evening of November 30, 1990. It was so cold that they stopped at the 7-11 on the corner of 33rd Street and Confederation Drive to warm up.

(September 9, 2003 – page 355, line 4)

- After warming up they crossed the street to Snowberry Downs where they tried to find Lucille's sister's apartment where Lucille was babysitting. They rang several buzzers at the apartment complex until Jason became tired of looking and said, "Lets go back to 7-11" to warm up.

(September 9, 2003 – page 359, line 7)

- There was a disagreement between the two about whether they should carry on in the search or return to the 7-11. After they exchanged harsh words Jason tripped causing them to become separated. Jason lost sight of Neil as he ran around the corner of one of the apartment buildings. Jason got up and went after Neil but he was gone and out of sight. Jason called out for Neil but he didn't see him at Snowberry Downs after that point.

(September 9, 2003 – page 360, line 10)

- Jason went back to the 7-11, waited there long enough to get warm and then walked south down Confederation Drive back towards the Binning house. Approximately 2 blocks south along Confederation Drive a police car pulled in front of Jason out from an alley way. The Officer driving asked Jason his name and he gave the false name of Tracy Lee Horse. It appeared to Jason that the police then entered the alias name into their computer. And shortly afterwards the police allowed Jason to leave and he continued south on Confederation Drive back to the Binning residence. When Jason arrived there he told those present: "I think he (Neil) got picked up by the police".

(September 10, 2003 – page 372, line 14)

- After Neil was found Jason was told that Marcel Stonechild wanted to speak with him. About that same time Jason was also told that the Police wanted to speak with him about Neil's death. Shortly thereafter arrangements were made and a plain-clothes police officer interviewed Jason in a house on 11th Street and Avenue P.

(September 9, 2003 – page 375, line 17)

6. All of the forgoing evidence is incontrovertible, and widely corroborated by the evidence of witnesses Marcel Stonechild, Lucille Horse, Gary Horse, Trent Ewart, Flora Binning, Tracy Horse, Julie Binning, and Cheryl Antoine. As well, the electronic records systems of the National Police Records Centre in Ottawa and the Saskatoon Police Service corroborate his evidence.

7. It is important to note that Jason has shared his story many times with many people over the years since those events in 1990. His first disclosure of this story was to Julie Binning and Cheryl Antoine upon his return to the Binning residence that very night. When asked by Julie Binning where Neil was he said; "he had lost Neil".

(September 25, 2003 - page 2123, line 21)

8. Also, in her testimony Julie Binning confirms that Jason and Cheryl Antoine had recounted the same entire story that Jason has consistently told all of these years.

(September 25, 2003 - page 2126, line 12 to page 2128, line 7)

9. Jason also shared this story with Stella Bignell at the Lucky Horseshoe Bingo in the Spring of 1991 after the snow had left the ground. **(September 8, 2003 - page 34, line 23)** Debra Mason, Neil's aunt, confirms Stella Bignell's evidence. **(September 8, 2003 - page 119, line 25)**

10. Jason shared this story with Diana Fraser at a time either in 1990 or 1991. They spoke in the community and not in an institutional setting after Neil's funeral. She remembers that Jason told her the same story that he has told everyone.

(September 22, 2003 - page 1542, line 9)

11. Jason also shared this story with Brenda Valiaho in November of 1991, about a year after Neil's death. At that time she was working at Kilburn Hall as a practicum student and was enlisted to assist Jason with some problems that he was having sleeping and with feelings of guilt regarding the death of his friend Neil Stonechild. Brenda Valiaho indicates that she had no idea what story was about to come from Jason and that she employed a relaxation and visualization technique to assist Jason to relieve his burden. During their second session Jason recounted the same story he has told others.

(September 16, 2003 - page 1070, line 20)

12. Lucille Horse indicated that she had heard the story from Jason four or five years after Neil's death. **(September 16, 2003 - page 892, line 8)** As well, it is the evidence of Father Andre Poilievre that Jason had told him this story in 1996 or 1997 while he was in the Saskatoon Correctional Centre. **(September 17, 2003 -**

page 1323, line 1) It is Father Andre's evidence that Jason has been very troubled indeed by the burden his story has placed upon him.

13. If we look at the totality of the evidence regarding Jason's actions after Neil's death it seems clear that as time has passed the events he witnessed that evening have come to weigh more and more heavily upon him as time passes. This was even more the case after it became clear that the city police would not assist him in relieving the terrible burden he was carrying.

14. We submit that, despite any challenges of these facts that might be brought by opposing counsel, the balance of this evidence presented in these proceedings roundly supports the core of the story presented by Jason Roy. In particular, Jason's evidence that a police cruiser had stopped him is corroborated by the fact that Saskatoon city police officers Hartwig and Senger conducted a CPIC check of the false name he had given. **(Exhibit P- 88)** It is Tracey Lee Horse's evidence that the police had not stopped him that night or at all during that period of time. **(September 18, 2003 – Page 1478, line 14)** Therefore, it is absolutely certain that Jason Roy stood beside that police car on Confederation Drive on the night of November 24, 1990.

15. The following is also evidence given by Jason Roy; however, it is set apart and out of order from the foregoing because it represents the small fraction of Jason's total evidence regarding the night in question that is directly challenged by other parties. That evidence is as follows:

- When the Police Cruiser stopped Jason on Confederation Drive two blocks South of the 7-11 store Neil Stonechild was in the backseat of that car. **(September 9, 2003 – page 361, line 10)**

- Neil was yelling: "Jay, help me. Help me. These guys are going to kill me." **(September 9, 2003 – page 361, line 14)**

- Neil was handcuffed with his hands behind his back.

(September 9, 2003 – page 361, line 23)

- Neil had an angular cut across his nose and fresh blood on his face.

(September 9, 2003 – page 361, line 17)

16. With respect to the previous 4 points in order: there is no evidence to corroborate that Neil was in the back of the cruiser, however, there is evidence that the same police cruiser that stopped Jason Roy had also done a CPIC check on Neil Stonechild. There is no evidence to corroborate Jason's claim that Neil shouted to him from the back seat of the cruiser. There is forensic evidence, photographic evidence, and the evidence of Gary Robertson that there were marks on Neil Stonechild's wrist that are consistent with handcuff marks. Likewise there is forensic evidence, photographic evidence and the evidence of Gary Robertson that the angular cuts on Neil's nose were made by handcuffs.

17. The highly corroborated evidence that Jason Roy has related to many people over the years stands in stark contrast to the evidence of Constable Lawrence Arthur Hartwig. In Examination-in-Chief by Mr. Fox, Cst. Hartwig directly contradicted the evidence of Jason Roy that Neil Stonechild was in the back of the police cruiser.

(March 15, 2004 – page 7768, line 7)

18. Likewise, it is the evidence of Constable Bradley Senger that he has no knowledge of how Neil Stonechild wound up in a field by the Hitachi Building in the north part of Saskatoon.

(March 18, 2004 – page 8376, lines 3 - 13)

19. The conclusion that is ultimately drawn by the Honourable Commission regarding the reasons for the disagreement of the evidence between Mr. Roy and Constables Hartwig and Senger is central to these proceedings.

Jason Roy's Statement of November 30, 1990

20. The evidence is clear that Jason Roy met with Sgt. Jarvis of the Saskatoon Police Service in the evening of November 30, 1990 at a private residence on 11th Street and Avenue P. However, there is a discrepancy between Sgt. Jarvis and Jason Roy regarding what occurred on the evening that Jason's statement was given. Sgt. Jarvis indicates that the statement that was entered into evidence as Exhibit P-6 was created on the evening of November 30, 1990.

21. In response, Jason Roy presented a different view of Exhibit P-6 in the statement given to Mr. Hesje. **(Exhibit P-8)** It is clear that Jason Roy has had some difficulty reconciling in his mind the statement in Exhibit P-6 that he "blacked out and woke up at Julie Binning's" with his memory of giving a much more detailed statement to Sgt. Jarvis. We submit that there are at least three possible explanations for his difficulty.

a) Explanation one

22. The first explanation is that which opposing counsel will immediately suggest. Namely, that the November 30, 1990 statement is entirely accurate and any suggestion by Mr. Roy that Neil Stonechild was in the back of a police car is a falsehood: the product of either a lie, the result of a memory fabricated later to "fill in" gaps left from an alcohol-induced "Black out" or memory implanted by Brenda Valiaho.

23. It has clearly been one goal of opposing counsel through out these proceedings to demonstrate that Mr. Roy is a liar. However, there is no evidence that such is the case. In fact, while not in evidence but as part of the record, counsel for the Police Association has even tried to introduce highly questionable and suspect testimony to suggest Jason Roy lied about having seen Neil

Stonechild in the back seat of a police cruiser. That testimony was rightly rejected. Clearly, it is fair to assume that no stone was left unturned in the search to find evidence to show that Jason is a liar; the fact that no such evidence could be found speaks volumes on behalf of Mr. Roy's credibility.

24. We submit that all of the evidence before this Commission suggests that Jason has done everything he can to try and explain the events as fully and completely as possible given what he knows and remembers. We submit that Jason Roy presents himself as a witness that has been forthright within his limited ability to express facts and memories. Throughout very harsh cross-examination he was not shaken regarding the central content of his story. Rather than appearing to be a liar, Mr. Roy presents as a person who knows a few facts very clearly and is trying very hard to remember other details. One does not get the impression that Mr. Roy is trying to deceive; rather he appears to be someone who is trying to assist the Commission as best he can.

25. The suggestion that Mr. Roy's is lying is simply unfounded and is completely inconsistent with the many facts that have been shown to corroborate his story.

26. The other aspect of this version is that Jason has somehow developed the memory of Neil Stonechild in the back seat of the police cruiser to fill in an alcohol-induced black out he had at a crucial moment. Dr. Richardson presented this concept in his testimony regarding alcohol-induced amnesia. In the January 5, 2004 portion of the transcript at page 5785, line 11 it is Dr. Richardson's evidence that as humans:

"...we don't like holes. We like things to be filled up, we like closure and -- and it's not a question of deciding that we want to have closure, it's just the way the brain works, that it works that way. And so when there is a gap, people try to -- either consciously or unconsciously try to figure out what happened to -- so I can -- so they can fill in the gap."

27. The suggestion will be that this is precisely what Jason has done: created a memory to fill in a gap. However, after presented with several hypothetical questions by Ms. Knox, Dr. Richardson admitted that where there is a good deal of “peripheral facts” surrounding a story that are corroborated by other sources it is less likely that there is any alcohol-induced amnesia and it is more likely that the statement is a reliable memory. **(January 6, 2004 – Pages 5900 line 6 to 5905 line 5)** We submit that this is precisely the case in this situation where there is so much corroboration of Jason’s evidence that it is plainly a genuine memory that he saw Neil Stonechild in the back of a police cruiser on the night in question.

28. In regards to the suggestion that Brenda Valiaho implanted this memory in Jason’s mind, it is fair to say that opposing counsel will say anything, however far fetched, to undermine Jason’s evidence. The suggestion that Brenda Valiaho somehow implanted this entire story in Jason’s mind during their brief sessions is completely inconsistent with the facts before this Commission. The evidence is clear that Jason told many people this same story through out the first year after Neil’s death—even immediately after it occurred on November 24, 1990 when he told Cheryl Antoine and Julie Binning—and long before he spoke to Brenda Valiaho.

b) Explanation two

29. The second explanation is Mr. Roy’s suggestion that the police elicited Exhibit P-6 in exchange for his release the next time he was arrested after Neil’s funeral. Jason believes this because, according to his recollections, the meeting with Sgt. Jarvis resulted in a three to six page document that was written by a police officer and that Jason signed but did not write.

(September 10, 2003, page 378, line 24)

30. This is corroborated by the evidence of Cheryl Antoine who said that she

did not see Jason write anything out when he gave his statement to the police at the house on 11th Street and Avenue P.

(September 25, 2003, page 2210, line 8)

31. When Mr. Hesje asked about the November 30, 1990 statement on July 31, 2003 Mr. Roy's evidence was that he remembered being coerced into making that statement at a later time. **(Exhibit P-8 Pages 31 – 33)** This is the first time that Jason had ever mentioned this occurrence on record, even though it was related to legal counsel shortly after Exhibit P-6 was first disclosed and before the meeting of July 31, 2003 with Mr. Hesje.

32. It is noteworthy that a review of Jason's Young Offender records, provided by Court Services pursuant to a Provincial Court application by Mr. Roy, indicates that there were incongruous events, within the timeframe in question, and in particular on December 20, 1990. The evidence from the Young Offender Court file indicates that December 20, 1990 was the next date when the Saskatoon City Police arrested Jason Roy after Neil Stonechild's funeral.

33. The incongruity is that on that date Jason Roy was released from police custody even though there was a warrant for his arrest for robbery **(Exhibit P-19, Information Y 098387)**, he was wanted for breach of probation **(Exhibit P-10, Information Y 119023 see probation order dated October 24, 1990)** and he had just stolen a woman's purse and its contents **(Exhibit P-18, Information Y 121877)**. Moreover, this is the one and only occasion in Jason Roy's lengthy youth record where the "Written Notice to Parent or other Person" was served on his parents by way of a copy of the document being signed by and given to Jason himself **(Exhibit P-23)**. Jason was next arrested on January 18, 1991 when he was then remanded into custody after missing the court appearance of January 17, 1991 that he was given upon his December 20, 1990 release **(Exhibit P-18, Information Y 121877)**.

34. While this evidence is clearly not conclusive of anything, the fact that the police released him in spite of overwhelming reasons to keep him in custody is consistent with Jason's rather hazy recollection of being forced to give a statement in exchange for his release from custody shortly before his birthday and Christmas.

35. In any case, Jason Roy's belief of what occurred conflicts directly with the very cogent evidence of Constable Ernie Louttit. While he was on the stand, Cst. Louttit indicated that he had copied the police file that became Exhibit P-61 at the beginning of December 1990 and likely not after December 5, 1990. **(October 18, 2003, page 2828, line 12)** The question therefore remains how could Jason have given his statement after December 5th if Cst. Louttit's evidence is accurate?

36. In this regard, it is noteworthy that Jason's evidence in Exhibit P-8 came at a time when the pressure of these proceedings was building for Mr. Roy. It was a time when these proceedings were about to begin and Jason had just become aware of the conflicting evidence between Exhibit P-6 and his memories. He wanted very much to provide an answer for something that he could not readily explain.

37. This is consistent with the evidence regarding memory presented by Dr. Richardson and cited above at paragraph 28. **(January 5, 2004 -page 5785, line 11)** Moreover, it is also consistent with the evidence of Dr. Yuille who explained the process by which memories are reconstructed rather than recalled in a stream **(March 12, 2004 - page 7427, line 8)** Dr. Yuille explained at line 25 of page 7427 that:

“...there is a tendency, unless someone is carefully interviewed, for us to fill in missing pieces in our reconstruction, to make the memory more complete. And we tend to fill in the reconstructions from general knowledge or from script memory.”

38. In Jason's situation, clearly he felt a very strong need to reconcile the

statement of November 30, 1990 with his much broader recollections of the events. We submit that it is possible Mr. Roy developed a mistaken, but honestly held, belief that he was forced to change the “original” statement he had given and write Exhibit -6 instead.

c) Explanation three

39. The third explanation for this statement, and the one that we submit is the most consistent with the facts and the evidence presented in these proceedings, is that Mr. Roy was reticent to be forceful as he gave his statement to Sgt. Jarvis. Instead of ensuring that the story was reported as he recalled it he either skimmed over the facts or was encouraged by Sgt. Jarvis to gloss over the events.

40. We submit that this is possible because Sgt. Jarvis was a person in authority and in Jason’s mind clearly connected to the officers that he saw with Neil Stonechild on November 24th 1990. This scenario was suggested to Dr. Yuille from the perspective of a child who was sexually or physically abused. **(March 12, 2002 – page 7521, line 1 through page 7523, line 25)** Dr. Yuille indicated it was quite possible that if an abuser was questioning a child they might give answers that tend to minimize the abuse. He said that they might retell the event in short hand or leave something out altogether. We submit that this represents the best explanation of what happened on the night of November 30, 1990 when Sgt. Jarvis questioned Jason Roy about the death of Neil Stonechild.

41. In November of 1990 Jason believed that the police were after him. In fact, there were warrants for Jason’s arrest for robbery and breach of probation. In cross-examination by his counsel Jason indicated that:

“I was on the run, that's all that mattered. That's all the -- I didn't use any -- like I wasn't trying to use a technical term, to be specific, I was -- wanted it to be known that I knew I was on the run.”

(September 15, 2003, page 848, line 16)

42. Moreover, at that time he knew that his good friend was recently found dead. The last time he had seen his friend alive he was with members of the Saskatoon City Police. And now, not even a week after seeing Neil in the back of a police cruiser and only a day after Neil was found dead, another member of the City Police is questioning Jason. We must keep in mind this context as we evaluate the statement given to Sgt. Jarvis by Jason Roy.

43. Clearly, in this context Jason would be very scared, he would be only beginning to digest the meaning of the events that had occurred and, perhaps most notably, he would be completely powerless. We submit that it would have been effortless for Sgt. Jarvis to manipulate or limit Jason's statement in that context.

44. We ask that this Honourable Commission consider all of the foregoing as consideration is given to the evidence in these proceedings.

DATED at the City of Saskatoon, this 6th day of May 2004.

WINEGARDEN & Co.

Per:

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