

**IN THE MATTER OF THE COMMISSION OF INQUIRY  
INTO THE DEATH OF NEIL STONECHILD**

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**WRITTEN ARGUMENT ON BEHALF OF  
CST. BRAD SENGER**

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**I. Introduction**

This Brief will focus on Cst. Brad Senger. Despite a great deal of suspicion, suggestion and innuendo there was no credible evidence heard during the entirety of this Inquiry that implicated Cst. Brad Senger with respect to either the death of Neil Stonechild or how he came to be by the Hitachi building in late November of 1990.

This written Argument will review the evidence of Cst. Senger and how it relates to other testimony and known facts. The Argument will then review the evidence of Jason Roy as the evidence of Jason Roy is the only evidence that suggests any police officers had anything to do with how Neil Stonechild came to be near the Hitachi building at the time of his death. Lastly the medical evidence will be examined.

**II. Evidence of Cst. Brad Senger**

Cst. Senger began employment with the Saskatoon City Police on January 2, 1990. At the time he was 26 years old. From January of 1990 to November of 1990 Cst. Senger did not have a regular partner. He worked with several training officers during that time including Ryan Smith, Lorne Mulder, Al Carlson and Don Yonkman. Up to that point in time Cst. Senger had not been a partner of Larry Hartwig's.

The only present recollection that Cst. Senger had with respect to the night of November 24, 1990 was the call made to the mother of two sons that had been murdered by their father. Cst. Senger's evidence that this call was the only call he remembers from the night is consistent with the evidence of Dr. Yuille who testified that unusual events are more memorable and more likely to stay in available memory than routine events that are usually forgotten.

At the start of night shift at 7:00 p.m. on November 24, 1990, Cst. Senger did not know who his partner would be or even if he would have a partner on that particular day. Officer Senger's notes are legible and the manner in which he made his notes is consistent both before, during and after November 24, 1990.

Exhibit P-36 confirms that at 11:49 p.m. on November 24, 1990 someone from the Trent Ewart residence phoned the Saskatoon Police Department and requested that Neil Stonechild be removed from the premises as he was intoxicated. Two minutes later, at 11:51 p.m. Officers Senger and Hartwig were dispatched to 306 - 3308 - 33<sup>rd</sup> Street West which is the residence of Trent Ewart. Cst. Senger's notes confirm that he was dispatched at 11:51 p.m. for that purpose. Officer Senger's notes indicate that he and Cst. Hartwig arrived at the scene at 11:55 p.m. The "at-scene" button in their patrol car was pushed at 11:56 p.m. 11:56 p.m. is also the time that a CPIC person query was performed with respect to a person by the name of Tracey Horse. Jason Roy testified that he was stopped by Saskatoon City Police on the evening of November 24, 1990 shortly after he left the company of Neil Stonechild. He testified that he gave the false name "Tracey Horse" to Police. He testified that at that time Neil Stonechild was in the back of the police cruiser, handcuffed, bloodied and yelling that the police were going to kill him.

The impossibility and implausibility of Jason Roy's statement is astounding. For Jason Roy's statement to be true Officers Hartwig and Senger would had to have driven from where they were when they were dispatched at 11:51 p.m. to wherever Neil Stonechild was at the time, found him, identified him, arrested him, caused injury to him, handcuffed him, placed him in the back of the police cruiser and continued on to 306 - 3308 - 33<sup>rd</sup> Street West, stopped Jason Roy, asked him his name and entered the name "Tracey Horse" into their terminal all within five minutes. Not only is this scenario physically implausible it simply doesn't make sense. Why would two young police officers who are not familiar with each other and are early in their career make a decision to commit a criminal offence and threaten to kill a 17-year old boy?

The story proposed by Jason Roy becomes even more implausible as a person query was done on Bruce Genaille by Officers Hartwig and Senger at 12:04 a.m. on November 25, 1990, exactly eight minutes after the name "Tracey Horse" was queried. It is absolutely beyond doubt given the testimony of Bruce Genaille that no one was in the back of Officers Hartwig's and Senger's police cruiser when they performed a CPIC inquiry on Mr. Genaille at 12:04 a.m. For Jason Roy's story to be true one of the following scenarios must have occurred (neither of which are plausible):

1. Officers Hartwig and Senger must have, within eight minutes, left the area where Jason Roy was encountered, driven to the Hitachi building in northern Saskatoon, stopped the car, got Neil Stonechild out of the back seat, undid his handcuffs, got back in the car and returned all the way to the location where Bruce Genaille was stopped near Snowberry Downs. Not only is this scenario impossible and implausible it doesn't make sense. Why would police officers drop a person known to commit break and enters in an area where several businesses were located? Why would they decide to let him loose as opposed to taking him into custody? Lastly, if they had just taken Neil Stonechild to the north end of town, why would they return to the Snowberry Downs location and continue to try to find him when they would already know where he was? Mr. Genaille testified that the police officers were suggesting that he was Neil Stonechild. If they had just dropped Neil Stonechild off in the north end of town there would be no need to continue to look for him.
2. Under this second scenario as suggested in some cross-examination questions, Officers Hartwig and Senger contact another police car sometime between 11:56 p.m. and 12:04 a.m. and pass custody of Neil Stonechild to the other police car. Why would they do this? The only plausible explanation under this scenario would be that all four police officers conspired to take Neil Stonechild somewhere to be left in the cold. There is absolutely no evidence that another police car met with Csts. Hartwig and Senger between 11:56 p.m. and 12:04 a.m. The RCMP

carefully questioned every police officer on duty that day and there is absolutely no evidence whatsoever to support this theory. Lastly, if such a switch did take place, why would Officers Hartwig and Senger continue to look for Neil Stonechild and ask Bruce Genaille if he was Neil Stonechild? And as indicated above, why would the other mystery police officers take him to a place where there are several businesses located?

This argument will look further into the testimony of Jason Roy, however, the allegation by Jason Roy that he saw Neil Stonechild in the back of the police car that stopped him when he gave the false name "Tracey Horse" is implausible and simply not credible.

At 12:17 a.m. Officer Senger's notes indicate that Neil Stonechild was gone on arrival and the call was cleared leaving no report. Such calls are routine and happen all the time.

Officers Hartwig and Senger then dealt with a suspicious person call. The call was received by the Saskatoon City Police at 11:56 a.m. The originating address of the complaint is very close to the Snowberry Downs apartment. Officers Hartwig and Senger were dispatched to the call at 12:18 a.m. on November 25, 1990. They arrived at the scene at 12:24 a.m. No one was found and the call was cleared according to Exhibit P-37 at 12:27 a.m. Officer Senger's notes indicate that the perpetrator was gone on arrival.

Officer Senger's notes are consistent with dispatch records and CPIC records. Officer Senger's testimony was forthright and compelling. He was completely unshaken during cross-examination as to what happened the night of November 24, 1990. Officer Senger testified that he did not harm Neil Stonechild in any way or have anything to do with him being near the Hitachi building in the north end of Saskatoon.

It is interesting to note that the CPIC inquiry done on Neil Stonechild at 11:59 p.m. did not have a date of birth attached to the inquiry. Both Officers Hartwig and Senger testified that it is their practice to use a birth date whenever one is available. If they had Neil

Stonechild in the back of their car when the CPIC inquiry was done, as alleged by Jason Roy, his birth date would have been available. As indicated earlier, no one was in the back of the police car as at 12:04 a.m., some five minutes later.

We also know from the written statement of Trent Ewart that Officers Hartwig and Senger must have checked the apartment building looking for Neil Stonechild sometime between 11:56 p.m. and 12:17 a.m. This search would have taken some time.

In summation, Cst. Senger's testimony was consistent with his notes, the dispatch records, the CPIC records and with the evidence and notes of Cst. Hartwig. It is respectfully submitted that Cst. Senger was a forthright witness and was unshaken during skilled cross-examination by senior counsel. Cst. Senger was not involved in any way in the death of Neil Stonechild.

### **III. Evidence of Jason Roy**

In addition to the fact that Jason Roy's assertion that he saw Neil Stonechild in the back of a police car at 11:56 p.m. on November 24, 1990, is not plausible as described as above, his testimony has a great number of other difficulties. Some of these difficulties and inconsistencies could perhaps be explained by alcohol problems or "false memories" as described by Dr. Yuille, however, some difficulties cannot be explained. The first example is the most troubling.

The RCMP did not become aware of the existence of the Saskatoon Police Service file until early 2000. That file contained the November 30, 1990 statement of Jason Roy. Jason Roy maintained up until that time that he told the Saskatoon City Police about seeing Neil Stonechild in the back of a police car at the time he was stopped by police on the night of November 24, 1990. Upon being reminded that he had made a written statement to Saskatoon City Police on November 30, 1990 where he **did not** refer to seeing Neil Stonechild in the back of a police car Mr. Roy knew that he had a problem. The written statement he gave to police on

November 30, 1990 did not implicate the Saskatoon City Police whatsoever. His statements to the RCMP, however, indicate that he had told Saskatoon City Police about seeing Neil Stonechild in the back of a police car.

When Jason Roy testified at this Inquiry on September 10, 2003, he testified very clearly and specifically that the statement dated November 30, 1990 was in fact made on December 20, 1990<sup>1</sup>.

Mr. Roy confirmed the December 20, 1990 date several times during his testimony. We know, however, from the testimony of Cst. Ernie Loutit that he photocopied the Saskatoon City Police file, including the written statement of Jason Roy of November 30, 1990, on December 5, 1990. Therefore we know for a certainty that Jason Roy's statement is not only untrue but a lie. Furthermore, his story as to what occurred on December 20, 1990 does not fit with the evidence of Cst. Lewis concerning his dealing with the police on that date. Cst. Lewis testified that Jason was not even arrested on December 20<sup>th</sup> nor was he taken to the police station. Instead he was issued an appearance notice. Jason Roy's out and out lie about making the November 30, 1990 statement on December 20, 1990 casts a serious doubt on the entirety of his testimony.

Furthermore, Cheryl Antoine, Jason Roy's girlfriend at the time, testified that she was with Jason when he spoke to police about the night of November 24, 1990, shortly after Neil's body was found. She confirmed that Jason Roy **did not** tell police about seeing Neil Stonechild in the back of a police car<sup>2</sup>. This confirms Sgt. Jarvis' testimony that nothing was said by Jason Roy about seeing Neil Stonechild in the back of a police car when he interviewed him on November 30, 1990. This also confirms and explains the fact that the written statement made by Jason Roy on November 30, 1990 contains no reference to seeing Neil Stonechild in the back of a police car on November 24, 1990.

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<sup>1</sup> See transcript pages 378-381

<sup>2</sup> See transcript page 223

Jason Roy's description of events of November 24, 1990 changed over time as follows:

1. Cheryl Antoine confirmed that when Jason Roy returned to the Binning household after returning from the Snowberry Downs apartments he did not mention anything about seeing any injury on Neil Stonechild's face or that he was pleading for his life. Furthermore, Cheryl Antoine, in her statement to the RCMP, indicated that Jason Roy "thought" that Neil Stonechild was in the back of a police car (summary of witness statement taken from Cheryl Antoine by Cst. Myers March 15, 2000). At page 2248 of the transcript Cheryl Antoine indicated that Jason was surprised to see a gash on Neil's face at the funeral because there was nothing like that when he last saw Neil.

Julie Binning confirms that Jason Roy was not sure whether Neil had been picked up by police on the evening of November 24, 1990. In her initial testimony in chief Julie Binning testified as follows:

"We just asked him where Neil was and he said that he had lost Neil. He had—he just lost Neil on the way back. And then we—we asked him like how did he lose—"How did you lose Neil?" and then he said **he might have been picked up by the police**"<sup>3</sup>

Later in chief she changed her story to indicate that Jason Roy **had** told her that Neil had been picked up by police. However, during cross-examination by Mr. Fox at page 2155 and 2156 the following exchange occurred:

**Question:** Okay. And he came in and one of you then would have asked, "Where's Neil?"

**Answer:** M'hm.

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<sup>3</sup> See transcript page 2123



**Question:** Correct?

**Answer:** Right.

**Question:** Do you remember who asked that?

**Answer:** I think we actually both asked him because we were surprised that he came back without Neil.

**Question:** Okay. So Jason didn't walk in and say, "Hey, this is what happened to us." He just sort of came in, Neil wasn't with him. One of you, or both of you, said, "Well, what happened to Neil?"

**Answer:** M'hm.

**Question:** And then his answer, and I'm just sort of looking at what you told Mr. Hesje today. He said that he had lost Neil on the way back.

**Answer:** Right.

**Question:** And, of course, that didn't tell you a whole lot -

**Answer:** No.

**Question:** - about where Neil was and so the next question or some - I'm assuming fairly shortly after that you'd have asked him, "Well, how did you lose Neil?"

**Answer:** Yeah.

**Question:** Okay. And then I've got down that what you told Mr. Hesje is **he said he might have been picked up by the police?**

**Answer:** Right.

**Question:** Would your recall, is that your best recollection as to what Neil said - or Jason said that night at that time?

**Answer:** I would say that, yeah.

**Question:** And at that point in time, sort of having got that answer, that didn't sort of put off alarm bells for you because you knew Neil was unlawfully at large<sup>4</sup>

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<sup>4</sup> See transcript line 17 on 2155 to line 3 on 2157

It is clear from the evidence of Cheryl Antoine and Julie Binning that Jason Roy was not clear at all as to what had happened to Neil Stonechild the night of November 24, 1990. It is absolutely clear that Jason Roy did not mention seeing any injuries to Neil Stonechild or that Neil Stonechild had been pleading for his life in a bloody condition in the back of a police car. If in fact Jason Roy had seen such a thing on November 24, 1990, one would think he would certainly tell his girlfriend, Cheryl Antoine, and other residents of the Binning household as to what he had seen. Furthermore one would think that he would certainly tell Neil's mother of what he had seen during the time between November 24, 1990 and November 29, 1990 while Neil was missing.

2. Upon learning of Neil's death one certainly would think that such a story would be something to tell Neil's family. However, no such communication was made by Jason Roy to Neil's family immediately after Neil's body was found. Jason Roy did not even attempt to speak to Stella Bignell until 1991. At that time Jason Roy did not mention seeing any injuries to Neil's face.

Jason Roy did not tell Marcel Stonechild anything about what he had allegedly seen on November 24, 1990 about Neil Stonechild being bloody and screaming for his life.

Contrast the above facts with pages 534 and 535 of the transcript, where the following exchange occurred during the cross-examination of Jason Roy by Mr. Fox:

**The Commissioner:** Mr. Roy, the question is very, very simple. Whatever your feelings were and whatever your concerns were about Mrs. Bignell, did you tell her that you saw blood on Neil's face?

**Answer:** I don't recall if I specifically told her that.

**The Commissioner:** Did you tell her that Neil was screaming or freaking out in the back of the police car?

**Answer:** Yes, I would have. Yes, I did.

**The Commissioner:** You what?

**Answer:** Yes, I did.

**The Commissioner:** You're sure you did?

**Answer:** Yes.

Later on pages 535 and 536 the following question is posed by Mr. Fox:

**Question:** So your recollection is that you told her you saw Neil with a cut across his nose. I think you said it was a big cut or a deep cut across his nose.

**Answer:** I think the word that I most used with -- with this in regard to what I saw on his face was a deep gash.

**Question:** A deep gash, so your recollection is that you told her he had a deep gash across his nose and that he was screaming for his life in the back seat of the car. That's what you're saying you told her?

**Answer:** Yes.

3. It is no wonder that Jason Roy does not have a good memory as to what took place on November 24, 1990. On page 612 Jason Roy testified that he and Neil were drinking from a 40-ounce bottle of Silent Sam vodka and that Neil and Jason drank it roughly evenly. He weighed 120 lbs. on November, 1990<sup>5</sup>. There were seven or eight ounces left in the bottle when they were finished therefore each of Jason Roy and Neil Stonechild had approximately 16 ounces of vodka. Jason Roy's blood alcohol level can be calculated with some precision given his testimony as to what he had to drink. Dr. Richardson clearly places his blood alcohol based on that evidence at .315. At that level of intoxication Dr. Richardson testified that one could not establish long-term memories.

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<sup>5</sup> See transcript page 613

The written statement of Jason Roy of November 30, 1990, appears to indicate a progression of memory lapses. Under cross-examination by Mr. Fox at pages 7483 and 7484 Dr. Yuille agreed that the statement does seem to indicate some progression as to memory loss.

4. Another problem with Jason Roy's testimony is that he testified that during his meeting with the police when he gave the name "Tracey Lee Horse" he indicated that Neil Stonechild was in the back of the car cursing him and telling him not to "fucking lie" and tell the truth about who he was. Despite this, according to Jason Roy, the police officers did not question Mr. Roy's identity. This simply does not make sense and is not plausible.
5. At pages 627 and 628 Jason Roy testifies that the gash across Neil's nose was a deep gash and it was bleeding a fair amount. Jason Roy said there was a lot of blood. So much so that Jason Roy would have expected that there would have been blood on his shirt or his jacket. We know from the Police Officers at the scene there was no obvious blood on Neil's face or his clothes. The enhanced photos of the scene where Neil is found do not show any blood whatsoever.
6. Jason Roy indicated that he could identify the driver of the police car containing Neil Stonechild on the night of November 24, 1990<sup>6</sup>. He described the person at pages 513 to 515 as a tall man, glasses and moustache with a pinkish face. The driver's height was estimated to be more than 6 feet with coke-bottle glasses. This description does not apply to either Cst. Hartwig or Senger. Furthermore under cross-examination by the writer, Mr. Roy said he really didn't see the driver at all.

During his testimony at this Inquiry Jason Roy was evasive, unresponsive and unconvincing. His testimony was often inconsistent with his own testimony and on many

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<sup>6</sup> See transcript pages 505, 507

occasions, some of which are highlighted above, his testimony was inconsistent with other witnesses and known facts. In all the circumstances, after hearing all the evidence of this Inquiry, it is respectfully submitted that the only conclusion that one can come to with respect to the testimony of Jason Roy seeing Neil Stonechild in the back of a police car on November 24, 1990, bloodied and pleading for his life, is that either Jason Roy:

1. Is not telling the truth on purpose;
2. Is testifying to false memories that have developed over time based on information gleaned over time including seeing his friend at the funeral; or
3. A combination of #1 and #2.

#### **IV Medical Evidence**

##### **Evidence of Dr. Graeme Dowling**

Dr. Graeme Dowling testified that the marks on Neil Stonechild's nose were very superficial lacerations<sup>7</sup>. He did not expect that the injury would produce a large quantity of blood<sup>8</sup>. The pictures of Neil Stonechild's body after being thawed appear to be bloody. However, Dr. Dowling had this to say about that aspect of the photographs:

“Most lay-people would look at that and say that's blood. In fact, that's not blood, that is simply clear fluid that is stained with a small bit of blood.”

At page 1211 Dr. Dowling stated in chief:

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<sup>7</sup> See transcript line 23, page 1197 - line 13, page 1201

<sup>8</sup> See transcript line 16, page 201

<sup>9</sup> See transcript pages 1200 to 1201

**Question:** Now, you do go on, though, in your letter, to say, having referred to the crusted snow condition, "It appears to me that his injuries would be entirely consistent with his falling onto the snow at this site prior to his death" and that is, and was, your opinion?

**Answer:** Yes

At page 1275, Dr. Dowling said:

**Question:** And in your experience, you've seen cases where people have been suffering from hypothermia, they fall face first in the snow and abrasions like this have been caused by such a fall?

**Answer:** Yes.

Dr. Dowling testified there was no evidence of Neil Stonechild suffering a broken nose. Furthermore there was no evidence to suggest any cartilage damage to Neil Stonechild's nose.<sup>10</sup>

### **Evidence of Dr. Adolph**

Dr. Adolph performed the original autopsy on Neil Stonechild. Dr. Adolph testified that the abrasions on Neil Stonechild's nose were made within an hour of death<sup>11</sup>. With respect to the cause of the abrasions on Neil Stonechild's body and face Dr. Adolph had this to say, starting on page 1978:

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<sup>10</sup> See transcript line 3 to 6, page 1264

<sup>11</sup> See transcript page 1967

**Question:** Did you form an opinion yourself as to the cause of the abrasions you described?

**Answer:** At the time?

**Question:** Yes.

**Answer:** Yes. I could not be specific, first of all, as to what caused them, but I could only say at that time that it was not unusual to have this type of abrasion in cases of death in the cold. I could add that the reason for saying that, it is well known that there's inappropriate, if you like, or purposeless movement, such things as falling, stumbling, bumping against things, so it's not unusual to see any number of superficial abrasions on the face, particularly, and on the hands and lower limbs.

Later, at page 1981, he referred to the marks on Neil Stonechild's face:

“Yes, my conclusion was this was an abrasion, in other words, a form of scratch, which is the usual term, and I thought that this was - - and I forget the technical term that the forensic pathologist uses, but it is an abrasion caused by a movement rather than an abrasion caused by a direct blow. And in general it would be caused by either - - by something with an edge, but a rough edge, not a sharp edge, and it was either - - crossed the face at that thing or the face crossed it in something like a fall, and that would be my conclusion, yes.”

At page 2038 Dr. Adolph stated:

**Question:** Would it be fair to say that your conclusion at the time, or the information you were passing on to him (Sgt. Jarvis), that all of the abrasions that you noticed, on the face, the hand, on his body, were consistent with the a person who had succumbed to death by freezing and had fallen on crusty snow or an area that had twigs or brush?  
(reference added)

**Answer:** Yes.

## **Evidence of Dr. Emma Lew**

Dr. Lew is eminently qualified to testify as to the likely causes of the abrasions on Neil Stonechild's face as well as the marks on his wrists. Not only does she have the educational qualifications but she has extensive experience examining dead bodies and coming to conclusions as to causes of injuries. She has testified in over 200 trials in several countries. Dr. Lew testified that the marks on Neil Stonechild's face were consistent with falling into the snow and vegetation that was found at the scene of his death. She also testified that in her opinion the abrasions on Neil Stonechild's nose were not caused by hand-cuffs<sup>12</sup>. At page 8166 she testified that the abrasions on the nose were sustained within minutes of death. We know from the previous testimony of Dr. Adolph that it would have taken two or three hours for Neil Stonechild to die from hypothermia.

At page 8169 Dr. Lew testified that the marks on Neil Stonechild's hand/wrist were post-mortem marks and were not consistent with hand-cuffs. Not only was Dr. Lew not shaken during cross-examination, but her conclusions became even more compelling. Because of her extensive experience and training and access to the enhanced photographs she was able to give more of an opinion than Drs. Adolph and Dowling, however, her testimony is not inconsistent with either of those two doctors' testimony who also indicated that the injuries to Neil Stonechild could have been caused by falling in the snow where he was found.

The writer was initially going to devote a section of this Brief to deal with the evidence of Gary Robertson. However, in view of his testimony, the manner in which he testified, the reply to his Undertakings given during his testimony and Dr. Lew's testimony regarding the use of photogrammetry the writer has decided not to do so. It is respectfully

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<sup>12</sup> See transcript pages 8160 and 8161



submitted that the testimony of Dr. Robertson should be disregarded in its entirety. To begin with, Mr. Robertson's C.V. was inaccurate. Under cross-examination by Mr. Fox it became clear that his C.V. was misleading. His C.V. read in part, "under Government sponsor attended Ottawa University to complete credits for certification in Civil Engineering." Under cross-examination by Mr. Fox at pages 4031 to 4039 he admitted that he didn't complete any credits at the University of Ottawa. Secondly, his only educational qualification is that he received a diploma from Algonquin Institute of Technology with diplomas in Electronics and later in Photogrammetry. However, the actual certificate he produced is in Cartography with the words Photogrammetry in brackets underneath the word Cartography. Despite the fact that Mr. Robertson had been previously questioned about his misleading C.V. in a trial in the United States he did not change his C.V. to correctly state his qualifications prior to testifying at this Inquiry.

Mr. Robertson did not have the enhanced photographs of the scene including a close-up of Mr. Stonechild's face as it appeared after being rolled over in the snow. Dr. Lew testified that this is the most accurate depiction of how Neil Stonechild would have appeared just prior to his death. Mr. Robertson was using the photographs of Neil Stonechild's body after the body had thawed and post-mortem changes started to take effect. Furthermore, the hand-cuffs Mr. Robertson used to make his comparison analysis to the marks on Neil Stonechild's face were not the same dimensions as the hand-cuffs actually used by Officers Hartwig and Senger in November of 1990.

With respect to the use of Photogrammetric analysis in forensic pathology applications, Dr. Lew had this to say at page 8184:

**Answer:** The first time I have heard of this science of photogrammetric analysis is during this investigation. In the years that I have practiced as the forensic pathologist, and in the experience of other colleagues, we have not used this science to help us in forensic determinations of injuries on the body.

Later at page 8185:

**The Commissioner:** And in the course of attending these conferences over the years have you ever encountered any person or been privy to any sort of presentations or papers that discuss the technique of photogrammetry or its use in forensic matters?

**Answer:** No.

**The Commission:** Thank you.

**Question (Mr. Plaxton):** I assume also you and your colleagues keep abreast of latest development and technology that may assist you in your - - in your work.

**Answer:** Yes.

**Question:** O.K. And this has never come up?

**Answer:** It has never come up in relation to interpreting injuries on bodies. I understand that it is a science of its own and it's widely used in many other purposes.

**Question:** O.K. Such as buildings and so forth.

**Answer:** Yes, in - - in the mapping sciences. I know that forensic odontologists have used it to analyze bite marks but we as forensic pathologists have not, in the history of our department, used photogrammetric analysis in helping us to determine or interpret injuries.

Dr. Lew, in her report regarding the marks on Mr. Stonechild's hand that is alleged to have been made by hand-cuffs, was presumably referring to Gary Robertson's report when she used the words "pseudo science".

It is respectfully submitted that the only reasonable conclusion that can be reached regarding the injuries seen on Neil Stonechild's face is that they were caused by his

fall into the snow just prior to his death. The marks on his hands and wrists were made post-mortem by his clothing. There was no evidence of any blood on his clothing or in the snow. Dr. Lew clearly testified that the injuries on Mr. Stonechild's nose were not consistent with hand-cuffs. Furthermore, the marks on his hands/wrists were not consistent with hand-cuffs.

## **Conclusion**

After an exhaustive investigation by the RCMP and after 43 days of testimony at this Inquiry we still do not know how Neil Stonechild came to be near the Hitachi in the north end of Saskatoon in late November of 1990. We do know he passed away as a result of freezing to death. We know that his blood alcohol level was .150 post-mortem and that likely he would have been metabolizing alcohol for two or three hours prior to his death and that therefore his blood alcohol level would have been higher when he was last conscious.

The injuries to his face were caused when he fell in the snow just before he died. The marks on his hands were caused post-mortem by being pressed against his clothing from the weight of his body. There is no evidence to suggest that the police had any involvement in the death of Neil Stonechild except the implausible and incredible testimony of Jason Roy.

What we do not know after the monumental efforts of the RCMP and this Commission is why Neil Stonechild froze to death near the Hitachi building. There are several possibilities as to how he came there:

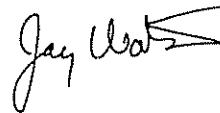
1. After parting company with Jason Roy and being told to leave the Trent Ewart apartment perhaps it was Neil Stonechild who was near the Gregorovich residence when they returned home. Perhaps it was him that fled the area and in an inebriated state became lost and disoriented and simply walked to the Hitachi building area before he succumbed to the cold.

2. After parting company with Jason Roy and being asked to leave the Trent Ewart apartment perhaps he attempted to obtain a cab ride to escape the cold. Perhaps it was a cab driver that took him to the North end of town and dropped him off as a result of Neil not having the proper cab fare.
3. After parting company with Jason Roy and being asked to leave the Trent Ewart apartment perhaps Neil wanted to get more alcohol as that was Jason and Neil's stated intention when they left the Binning residence before proceeding to Snowberry Downs. There was a booze can in the vicinity of the Hitachi building. Perhaps Neil Stonechild either alone or with others was attempting to get more alcohol.
4. After parting company with Jason Roy and being asked to leave the Trent Ewart apartment perhaps Neil was picked up by some enemy at the time who dropped him off in the North end of town.

Unfortunately, we may never know how or why Neil Stonechild wound up in the North end of Saskatoon. What we **do** know is that Officers Hartwig and Senger had nothing to do with his injuries or how he came to be near the Hitachi building.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**, at the City of Saskatoon, in the Province of Saskatchewan, this 4th day of May, 2004.

**CUELENAERE, KENDALL, KATZMAN &  
WATSON**



Per: \_\_\_\_\_

Solicitors for Cst. Brad Senger

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