

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

**THE HONOURABLE MR. JUSTICE D. H. WRIGHT,  
COMMISSIONER**

**SUBMISSION ON BEHALF OF KEITH JARVIS**

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**I. BACKGROUND**

1. On November 29, 1990 the frozen body of Neil Stonechild was found in the north industrial area of Saskatoon in the 800 Block between 57<sup>th</sup> and 58<sup>th</sup> Street East. Saskatoon Police Service (“SPS”) responded to the call.
2. As a result of the investigation conducted at the scene by SPS personnel, the file was established and reported as a “sudden death”. It was the opinion and conclusion of the SPS personnel who attended at the scene that this was not a suspicious death or that foul play was involved. This opinion reflected the opinion of the coroner.
3. In November 1990, Sgt. Keith Jarvis was assigned to the Morality Division. Morality’s responsibility was to investigate offences against people, including assaults, noisy parties, disturbances, liquor laws, prostitution, sudden deaths, suicides, accidental deaths and missing persons. The Morality officers had no responsibility for homicide investigations or other suspicious deaths. Sgt. Jarvis had no training in the investigation of homicides; he had never done homicide work (Transcript p. 5331-32).

**II. THE SPS INVESTIGATION**

Scene Investigation

4. Patrol Sgt. Petty was the senior SPS officer to attend the scene in accordance with routine attendances at sudden deaths. Sgt. Petty’s role was to ensure that everything that should be done at the scene was done including calling such additional assistance as may be

required including Identification, canine or an investigator (Transcript pp. 2488-2489). S/Sgt. Petty recalled that either Morality or Major Crimes would have been notified; it was their decision whether to attend or not (Transcript pp. 2489-2490, 2494). S/Sgt. Petty was not unduly concerned if no investigator arrived because the circumstances appeared to be such that it was an unfortunate freezing death where there was nothing to indicate likely foul play (Transcript p. 2496-2502, 2510, 2516-2519, 2530-2531). S/Sgt. Petty's duty included the preservation of the scene and the evidence including the co-ordination of the scene to accomplish the best possible investigation (Transcript p.2497-2501, 2509). S/Sgt. Petty's experience included dealing with 15-20 freezing deaths over his career (Transcript p.2501-2502). The presence of the body in the north industrial area didn't cause S/Sgt. Petty to be concerned about why or how he got to the scene as it was not unusual for people to wander in this area (Transcript p. 2508, 2513, 2530); there is no common place for a freezing death which can happen anywhere (Transcript p.2505).

5. Sudden death/homicide investigations by SPS were subject to an operational directive dated March 30, 1988 (Exhibit P-117). This policy provides, in part:

*The Investigations Staff Sergeant will also be directed to attend the scene as overall co-coordinator and person accountable for all aspects of the investigation until satisfactorily concluded.*

No Investigation Staff Sergeant attended the Stonechild death scene, nor became the overall co-coordinator and person accountable for all aspects of this investigation.

6. Section 37 of the Saskatchewan Police Procedure Manual provides guidelines for the investigation of a sudden death (Exhibit P-120). Of particular significance is Section 37(1):

*Any suspicious circumstances will be thoroughly investigated to ensure the death was not caused by any criminal act or negligence. Nothing must be taken for granted.*

Subsection 37(2) provides guidelines to be followed “*When death is due to natural causes...*”. Many of these guidelines relate to conduct at the scene. S/Sgt. Petty was

satisfied in his mind that the death was accidental (Transcript p.2511-2512). S/Sgt. Petty recognized that each scene must be deemed suspicious until established otherwise; it was his duty to read the scene (Transcript p.2503, 2510).

Investigation November 29 by Sgt. Jarvis

7. On November 29, Sgt. Jarvis began his shift at 1500 hours; at approximately 1920 hours the Stonechild file was assigned to Sgt. Jarvis as a “sudden death” investigation. The assignment of the file occurred after those SPS members responsible for the investigation at the scene had left the scene. S/Sgt. Bolton was of the opinion that based on the original reports, the file was a Morality file (Transcript pp 3233, 3240-3241). Although Sgt. Jarvis began his shift at 1500 hours, he was not called to the scene; he was not advised that the Stonechild file would be assigned to him so that he could attend the scene for the purposes of assuming responsibility for the investigation. When Sgt. Jarvis received reports completed by those at the scene, he was satisfied with the work which had been done at the scene (Transcript p.5036). Sgt. Jarvis reasonably relied on others to conduct their aspect of the investigation in a satisfactory manner and provide information, documentation and reports (Transcript p.5178).

8. Sgt. Jarvis was not in fact or by policy and practice of the SPS the co-coordinator and person accountable for all aspects of the investigation. SPS failed to comply with its own practice, policy and procedure which required the oversight by an Investigation Staff Sergeant who was to attend the scene. This failure has left Sgt. Jarvis as the one who has been targeted and painted at this Inquiry as the person responsible for the overall investigation. This was never Sgt. Jarvis’ role; his role was that of a front line investigator to whom a “sudden death” had been assigned after the investigation at the scene had been completed by others.

9. The review of Sgt. Jarvis’ investigation must be done on the basis that he was assigned a sudden death file.

10. Of significance in the review are the s.37 guideline requirements to identify the body, notify the next of kin (in person if possible) and to ascertain when, where and by whom the victim was last seen. When the Stonechild file was assigned to Sgt. Jarvis, he immediately set upon an investigation in which he identified Neil Stonechild as the deceased, attended personally upon Stella Bignell and Marcel Stonechild to advise of the death and to ascertain when, where and by whom Neil Stonechild was last seen. Sgt. Jarvis undertook this aspect of the sudden death investigation on the basis that those responsible for the scene investigation had completed all necessary aspects of the investigation, including looking at any suspicious circumstances such as the location of the body and the absence of one shoe. The report submitted by Cst. Lagimodiere in respect of the occurrence noted "exposure" and noted a single set of footprints in the field; the scene investigation reported no apparent signs of foul play.

11. On November 29, in addition to ascertaining the identity of Mr. Stonechild and notifying the next of kin, Sgt. Jarvis pursued the investigation to determine when, where and by whom Mr. Stonechild was last seen. In this aspect of the investigation Sgt. Jarvis was advised by Stella Stonechild and Marcel Stonechild that Neil had last been seen by them on November 24, 1990 at approximately 2100 hours in the company of Jason Roy apparently going to see Eddie Rushton. Sgt. Jarvis ascertained the address and date of birth of Jason Roy. Sgt. Jarvis also had contact with Mrs. Pat Pickard with whom Neil Stonechild had been living in open custody. Through contact with Mrs. Pickard, Sgt. Jarvis was able to confirm that Mrs. Pickard had last spoken to Neil Stonechild at approximately 2200 hours November 24, 1990.

12. In the course of the investigation Sgt. Jarvis also identified names, addresses and dates of birth of other persons with whom he may have possibly had contact from November 24 to November 29. When going off shift and filing his report Sgt. Jarvis reported to SPS and his supervisor that follow-up was required by the day shift to interview the identified persons to determine what information they could give in respect of Mr. Stonechild's activities over the past seven days. It was hopeful that information would narrow the time of death and could be passed on to Dr. Fern.

Investigation November 30 by Sgt. Jarvis

13. When Sgt. Jarvis returned to work at 1500 hours November 30 there had been no follow-up by the day shift. Sgt. Jarvis continued his investigation to identify when, where and by whom Neil Stonechild was last seen. Sgt. Jarvis made contact with a number of individuals who it was thought might have relevant information. Through these inquiries he was able to ascertain that Neil Stonechild had last been seen in the area of the 3300 Block 33<sup>rd</sup> Street West, Saskatoon. Sgt. Jarvis ascertained that Neil Stonechild had been with Jason Roy throughout much of November 24, 1990. Jason Roy provided a statement in which he detailed activities of the day up to about 11:30 p.m. when he last saw Neil Stonechild near the Snowberry Downs apartment. In his statement Jason Roy confirmed that Neil Stonechild was "*pretty drunk, well totally out of it*".

14. Sgt. Jarvis was also able to ascertain that Cst. Hartwig and Cst. Senger had been dispatched to 306 – 3308 – 33<sup>rd</sup> Street West, Saskatoon, in connection with a complaint by Trent Ewart wanting Neil Stonechild removed due to intoxication. Sgt. Jarvis ascertained from dispatch that Cst. Hartwig and Cst. Senger had attended at 2356 hours and cleared at 0017 hours on November 25, 1990 being unable to locate Neil Stonechild. Trent Ewart provided Sgt. Jarvis with a written statement concerning the complaint. In this statement Mr. Ewart reported that the police had responded to the complaint after Neil Stonechild had left, and that he did not see Jason Roy with Stonechild. Sgt. Jarvis' investigation disclosed that the last known person to see Neil Stonechild alive was Trent Ewart.

15. At 1642 hours a Crime Stopper tip was received by SPS that Neil Stonechild was beaten up by Gary and Danny Pratt and taken to the north end and left there. The motive alluded to was Neil Stonechild's 'rolling over' on the Pratts and allegations of the deceased being involved with a girlfriend of the Pratts. Sgt. Jarvis in his November 30 report noted:

*At this time there is no evidence to support foul play but the information about Pratts cannot be ruled out. A clearer picture will show following the autopsy and its findings.*

Sgt. Jarvis was about to go on a four-day rotational leave. In concluding the report for his file and his superiors, Sgt. Jarvis noted that further investigation was required, his recommendation was:

*It is suggested that with the possibility of foul play, that this file be turned over to Major Crimes for immediate follow-up.*

#### Request to Transfer to Major Crimes Unit

16. Despite Sgt. Jarvis' urgent request to have this matter referred to Major Crimes, the file was not so assigned. Unfortunately because the effluxion of time, the memories of those involved in this incident are unable to provide any historically accurate or reliable information as to what occurred in respect of this request. Witnesses who have ventured opinions have done so with the benefit of 10-13 years of hindsight history and speculation.

17. Staff/Sgt. Bud Johnson was Sgt. Jarvis' superior; Sgt. Jarvis' reports went to Staff/Sgt. Johnson. Mr. Bud Johnson had no recollection of the death of Mr. Stonechild, the investigation, or the request that the file be transferred to Major Crimes (Transcript pp 3371-3372); he could not recall the file (Transcript pp 3380, 3383). Mr. Bruce Bolton was at the time a Staff Sergeant in SPS; he had no memory of Mr. Stonechild's death (Transcript p.3232) or the investigation (Transcript p.3255).

18. It was Staff/Sgt. Johnson's responsibility to oversee and review the investigation and reports of Sgt. Jarvis. It was the responsibility of Staff/Sgt. Johnson to direct Sgt. Jarvis in his investigation including what, if any, further investigation ought to have been conducted. Standard protocol required that Staff/Sgt. Johnson upon review of Sgt. Jarvis' reports, including the one of November 30 would have been responsible either alone or in consultation with the head of the Major Crimes Unit or the Inspector for the decision to reassign the file to Major Crimes or to leave it with Morality. None of these officers remember this file or actions which surrounded it.

19. Mr. Johnson testified that a request to transfer to Major Crimes Unit would probably have been discussed with the investigator and Major Crimes Unit (Transcript p. 3372). Mr. Johnson does not know if these discussions occurred or not (Transcript p. 3393).

20. Mr. Bruce Bolton believed there would be some discussion by the Staff Sergeant of Morality with the supervisor of Major Crimes Unit or the Inspector in charge of plain clothes section (Transcript pp. 3234, 3246). It was the evidence of Mr. Bolton that a request such as that from Sgt. Jarvis to transfer the file to Major Crimes for follow-up would result in the staff sergeant in Morality putting the file together and forwarding it "*If it was thought that it should be forwarded.*" (Transcript p. 3229). It was expected that the staff sergeant in charge of Morality would make the decision whether or not to forward the file to Major Crimes (Transcript p. 3230). Mr. Bolton did not recall in his experience Major Crimes refusing a request to take over an investigation (Transcript pp. 3230-3231).

21. Mr. Jarvis has no recollection of circumstances surrounding why the file remained with him on December 5, nor does he, or any other witness have a memory of any discussions as to why the file remained with him (Transcript p.4500, 4798,4834). Mr. Bolton says that any discussions surrounding the request to transfer the file to Major Crimes Unit should have been the subject of an investigation report (Transcript pp. 3248-3250).

22. The logical inference and conclusion to be drawn from the fact that the file remained with Sgt. Jarvis was that Sgt. Jarvis' superiors, notwithstanding his recommendation for an assignment to Major Crimes on an urgent basis, upon a review of the file and all of the information in the file, made a decision to continue the investigation into Neil Stonechild's death, as a sudden death, a non-suspicious death; had these officers considered otherwise, the file would have been reassigned to Major Crimes. (Mr. Bolton Transcript pp. 3246-3248). The decision not to re-assign and the fact of the non-assignment, is not the responsibility of Sgt. Jarvis.

23. In the face of no complete SPS file and no memories of what conversations occurred between Sgt. Jarvis, Staff/Sgts. Johnson, Bolton or the Inspector, it is respectfully submitted

it is erroneous to infer or to conclude that this matter was not reviewed, considered and assessed by the superiors as required under normal procedure. It would be wrong to infer or conclude that Sgt. Jarvis made an unguided and undirected decision to resume the investigation as a non-suspicious death investigation. Such inference or conclusion would deny the practicalities and realities which must have existed within SPS in December 1990. Mr. Bolton was of the view that Sgt. Jarvis would certainly have made some comments to his supervisor (Transcript pp. 3303 – 3304). Because there is no memory is no reason to believe that it did not occur and Sgt. Jarvis acted imprudently (Transcript p. 3305).

24. The fact that Sgt. Jarvis continued with the investigation of the file is consistent with one rational conclusion, namely, that Staff/Sgts. Johnson and/or Bolton, either alone or jointly or in consultation with the Inspector, viewed this matter as a non-suspicious death and on this basis asked Sgt. Jarvis to continue the investigation (Transcript p.5287). Had S/Sgt. Johnson not been satisfied that there was no necessity to refer the investigation to Major Crimes Unit he would not have agreed that the investigation be concluded at that time. At no time prior to this Inquiry did any of Sgt. Jarvis' superiors within SPS question the adequacy of the investigation conducted by Sgt. Jarvis (Transcript p. 5288), nor were any questions asked of S/Sgt. Johnson about the competency or thoroughness of the investigation (Transcript p. 3388).

Investigation on December 5, 1990.

25. On December 5, Sgt. Jarvis returned to work and continued his attempts to determine who had last seen Neil Stonechild alive. Sgt. Jarvis attended at 3269 Milton Street, Saskatoon where Neil Stonechild had been drinking on the night of November 24. From a conversation with Shannon Night, Sgt. Jarvis was able to confirm Jason Roy's report of he and the deceased drinking a bottle of Silent Sam Vodka prior to leaving the residence; after this Ms. Night did not see Neil Stonechild again. Shannon Night did state to Sgt. Jarvis “*...that Jason Roy returned to her home later that night and said he and the deceased had words and gone their separate ways. She noted that Roy was intoxicated at this time and passed out at her home and woke up sick the next morning.*” (Exhibit P-61, Sgt. Jarvis

December 5 report). Attempts to locate Gary Pratt and Eddie Rushton by attendance at their known residences were unsuccessful.

26. On November 30 Sgt. Jarvis was of the opinion that there was no evidence to support foul play; he was not prepared to rule out the information about the Pratts. Sgt. Jarvis knew that a clearer picture would show following the autopsy and its findings. On December 5 Sgt. Jarvis spoke to Dr. Adolph, the pathologist. Sgt. Jarvis recorded in his notebook that it was possible for Mr. Stonechild to have been deceased from November 25 and “*...there was no evidence of any trauma to the body whatsoever.*” Sgt. Jarvis also noted that Dr. Adolph advised that if the deceased consumed alcohol as indicated by the witnesses, it would have contributed to hypothermia and eventual freezing to death. When Sgt. Jarvis prepared his December 5 report he recorded this conversation as follows:

*Adolph confirmed that there was no sign of Trauma to the deceased and that no foul play was evident and the deceased was a well-nourished seventeen year old.*

Indeed, a clearer picture after the autopsy showed no evidence of foul play. Sgt. Jarvis confirmed with Sgt. Morton of Identification that he would attempt to have a blood alcohol level completed as soon as possible.

27. Based upon the investigation to date, including the information from Dr. Adolph, Sgt. Jarvis was of the opinion that the Crime Stopper tips about the Pratt's involvement were unfounded. Sgt. Jarvis concluded that unless there was concrete evidence to the contrary, Neil Stonechild had died from exposure and froze to death. At this time Sgt. Jarvis had no explanation as to why Mr. Stonechild was in the area except the possibility he was going to turn himself in to the correctional centre, following the railway tracks back to the Sutherland Group Home, or wandered around drunk until he passed out from the alcohol and froze. Based on the information available, Sgt. Jarvis reported to SPS and his superiors that the file should be “concluded at this time”. At the Inquiry, Mr. Jarvis was of the opinion that the possibilities which he noted in his November 30 report were as a result of thinking out loud

and possibilities having regard to information from Pickards about wanting to turn himself in and there being “no evidence to support foul play” (Transcript 4489-4490, 4778).

28. Sgt. Jarvis filed comprehensive reports detailing his investigation and the results thereof. These reports went to Staff/Sgt. Johnson and SPS. The file had a report date or diary date of January 15, 1991 (Exhibit P-59). It was the duty and responsibility of Staff/Sgt. Johnson to review the investigation done by Sgt. Jarvis to see that the file was investigated properly (Transcript p.3366); and whether to close the file at the time (Transcript pp 3263-3264, 3299). If Staff/Sgt. Johnson was of the opinion that this matter required further investigation or inquiry or that in some manner the investigation was insufficient or incomplete or that further inquiries ought to have been made in this file whether as a sudden death investigation or as a suspicious death investigation, it was the responsibility of Staff/Sgt. Johnson to direct and guide Sgt. Jarvis to make further investigation and inquiry as deemed appropriate (Transcript p. 3386). There was no such direction. Sgt. Jarvis had no such feedback from his superiors or anyone in SPS (Transcript p.4715).

29. The logical conclusion is that on December 5, Staff/Sgt. Johnson accepted the investigation completed by Sgt. Jarvis as being satisfactorily completed based upon the information available at that time, with full recognition that upon receipt of the toxicology report, the autopsy report or any additional information coming forward, that the investigation of the file would continue.

30. Sgt. Jarvis and other members of SPS can reasonably expect that if they send a file to a superior with a recommendation that it be concluded that any shortcomings in investigation would be brought to the attention of the investigator with direction for further investigation. When such did not occur, it is reasonable for the officer to believe that the superiors concurred in a request to conclude a file at that time (Transcript p.5283-5284).

### Significance of Photographs

31. During the course of the RCMP Task Force and this Inquiry, it has been suggested that Sgt. Jarvis ought to have attended to autopsy, viewed the autopsy photographs and viewed the photographs of the scene, including those taken of Mr. Stonechild. It has become apparent through the course of the evidence at the Inquiry that observations of the abrasions at the autopsy, whether observed in person or by photographs, would not accurately depict the nature and condition of the abrasions sustained. The need to understand the medical evidence and significance of effects on the body after death is of critical importance. During the course of the investigation it appears that this was misunderstood by the RCMP Task Force and Mr. Gary Robertson with the result that what were really minor abrasions, took on a magnitude and significance far beyond that. Sgt. Jarvis properly relied upon Dr. Fern and Dr. Adolph to provide him with medical information and background. Dr. Adolph's opinion was that these were minor abrasions.

32. The 'at-scene' photographs of Mr. Stonechild accurately depict the minor abrasions sustained. True definition of the extent and significance of the marks only comes from medical evidence and interpretation. The 'at-scene' photographs of Mr. Stonechild's abrasions with no bleeding, were not fully and reasonably considered by the RCMP Task Force. There is nothing in these photographs and medical opinions to support an allegation that these abrasions were caused by handcuffs or were large gash which resulted in lots of blood on Mr. Stonechild. It is clear from the photographs at the scene that there is no evidence of any blood on Mr. Stonechild's face; except for redness within the abrasions on his nose. There is no evidence in these photographs to support any allegation of Mr. Stonechild having a large six-inch gash on his face with lots of blood. Reasonable examination of the photographs demonstrate that there was no blood on the face and none on the clothing of any nature to corroborate or support allegations made by Mr. Roy in 2000 and at this Inquiry.

### Concluding Comments on the SPS Investigation

33. The review and assessment of the SPS investigation into Neil Stonechild's freezing death ought to be conducted on the basis of standards, practices, policies and procedures in place in 1990. The actions of Sgt. Jarvis ought to be fairly judged and examined against the practices, policies and procedures of 1990 having regard to his police background, training and experience and his assignment as a Morality Officer. The review and assessment ought not to be conducted through the eyes and interpretation of events from 2000 or 2003.

34. This Commission's recommendations or review of the SPS responses to this investigation or changes of practices, policies and procedures since 1990 may certainly be reviewed with the eyes, knowledge and experience of today.

35. Substantially all of the review, comment and criticism directed at Sgt. Jarvis is only relevant if SPS or Sgt. Jarvis' superiors had considered Mr. Stonechild's death to be a suspicious death or one in which foul play was suspected. No one with responsibility for the assignment of this investigation or the review of the investigation considered this to be other than a non-suspicious death, a sudden death. The responsibility for that assessment does not lie with Sgt. Jarvis. It was Sgt. Jarvis who, because of the rumored involvement of the Pratts, recommended on an urgent basis that the file be reassigned to Major Crime for investigation as a suspicious death. No one within SPS responded to Sgt. Jarvis' recommendation.

36. It was critical that the senior officers attending the scene of a death take all appropriate steps to respond to the situation and make at least a preliminary determination as to whether or not the death is suspicious or otherwise. Sgt. Jarvis was not called to the scene. The SPS determined at the scene that the death was non-suspicious; for that reason no homicide Detective Sergeant and no Major Crimes Unit Staff Sergeant was called to the scene. For some inexplicable reason the Investigations Staff Sergeant never attended as overall co-coordinator of the scene and person accountable for all aspects of the investigation. Sgt. Jarvis is not responsible for the investigation at the scene nor for the conclusions reached by those investigators who attended the scene.

37. The review and examination of Sgt. Jarvis' conduct of the file must reflect the assignment that he was given, namely, to investigate this sudden death. The SPS never intended to assign this file to Sgt. Jarvis as a suspicious death. The fact that the file was assigned to Sgt. Jarvis for investigation when he had not been called to the scene confirms that this was not a suspicious death investigation. Best practice is for the investigating officer to attend the scene; further, best practice requires that an investigation sergeant or staff sergeant at the scene ensures that all proper steps are taken before leaving the scene.

38. Sgt. Jarvis was not a homicide investigator; he had never been assigned to investigate homicide cases. This was well known within SPS when the Stonechild file was assigned to Sgt. Jarvis. Sgt. Jarvis was assigned and accepted the file as a sudden death. With that mandate, Sgt. Jarvis acted quickly and properly in ascertaining the identity of the deceased, notifying the next of kin and seeking to ascertain when, where and by whom Mr. Stonechild was last seen.

39. Sgt. Jarvis' superiors knew that he was not a homicide investigator; if and when any issue arose that this death may have been suspicious, these superiors had an positive obligation to reassign the file. In the absence of reassigning the file, Sgt. Jarvis' superiors were responsible to take an active role in the direction and guidance of Sgt. Jarvis in the investigation to ensure that he was properly assisted in the conduct of the investigation and to ensure that no proper course of action or chain of inquiry was not taken and to ensure that nothing was taken for granted.

40. Crime Stopper tips reported that the Pratts were involved in beating Mr. Stonechild and dropping him off. This information caused Sgt. Jarvis concern with the resultant recommendation that the file be transferred to Major Crimes. This request for transfer was made in spite of Sgt. Jarvis' discounting the rumors. Unfortunately, because of the lapse of time, Mr. Jarvis' memory is not clear as to all of the circumstances surrounding this discounting. The evidence then and now supports a conclusion that Mr. Stonechild was not beaten by anyone. The evidence at the scene, the opinions of the coroner and Dr. Adolph,

supported the conclusion that Mr. Stonechild had not been beaten. There were no indications from the entire picture that Mr. Stonechild had been beaten (Transcript 4486-4487, 4758). Sgt. Jarvis recognized on November 30 that matters would become clearer after the autopsy (Exhibit P-61 – November 30 report). Upon receiving Dr. Adolph's report, it was clear to Sgt. Jarvis that Mr. Stonechild had sustained only a minor abrasion to the nose (Transcript p. 4838). Sgt. Jarvis was properly satisfied that Mr. Stonechild had not been beaten, there were no signs of violence to the body. Sgt. Jarvis' assessment was that the Pratts were not involved in beating and dropping Mr. Stonechild (Transcript p. 5096).

41. Dr. Adolph testified that he did not recall Sgt. Jarvis having a conversation with him or what information he passed to him during the Stonechild investigation (Transcript p.1973, 2003). Dr. Adolph does not recall what he said to Sgt. Jarvis, but testified that the message he would have meant to pass to Sgt. Jarvis was that there was no evidence of a traumatic death (Transcript p. 2004-2005) and the abrasions on the body were consistent with having succumbed to death by freezing and having fallen on crusty snow or an area that had twigs or bush (Transcript p.2038).

42. It is respectfully submitted that the conclusion of Sgt. Jarvis that Neil Stonechild had not been beaten up and dropped by the Pratts was a logical and proper conclusion based on the evidence. Today that conclusion is still proper; the injuries sustained by Neil Stonechild are not consistent in any way with an account that he was beaten up. Essentially this view was expressed by the Commissioner during consideration of the application by Mr. Plaxton to call additional witnesses in relation to alleged comments made by Gary Pratt to third parties (Transcript p.7896).

43. Sgt. Jarvis was not satisfied as to how Mr. Stonechild got to where he was found (Transcript p.5049). In the absence of foul play, Sgt. Jarvis recommended to his superiors that the file be concluded pending receipt of any additional information including the toxicology report which had been requested by Identification Officer Morton.

44. There was no suggestion in 1990 that the marks on Mr. Stonechild's hands may have been caused by handcuffs. The evidence clearly establishes that the marks were not made by handcuffs and were indeed post-mortem marks created by Mr. Stonechild's lumberjack shirt. Full reasons for this will be elaborated by other counsel.

### **III. MEMORY ISSUES**

45. The evidence of Dr. Yuille, Dr. Richardson and Dr. Arnold will be of significant importance to assist the Commissioner, the parties and the public in coming to a greater understanding of the reconstructive nature of memory and the frailty of memory.

#### Evidence of Dr. John Yuille

46. Memory Not Improve With Time Dr. Yuille's evidence should be of substantial assistance to the Commissioner in understanding the frailty of memory and the danger that what is thought to be an accurate historical memory may be very much altered from historical reality. Individuals may tell something which is sincerely believed to be the case but are mistaken either because they misperceived the event initially, changed their interpretation of the event with the passage of time or have been influenced in some other way to create a memory of something that is inaccurate (Transcript pp. 7437-7438).

47. According to Dr. Yuille, if a witnesses' memory has more detail being recalled over time, then the circumstances need to be examined to determine what is leading to that extra detail. Dr. Yuille testified that it is unlikely that without some additional cuing a memory would simply become better over time on its own (Transcript pp. 7525-7526). If memory improves with time, it is caused by either additional cues or it may not be memory (Transcript pp. 7528-7529). Increased detail does not occur in the absence of some intervention or cue. In the absence of thinking about the incidents, being supplied notes, photographs or other information, then improvement in memory is a "puzzle" as this is generally not how memory works. In the absence of cues, a significantly detailed memory may be indicative that the memory is not based on personal experience, but based on

something else (Transcript pp. 7535-7537). Usual change in memory over time is a decrease in detail.

48. Contemporaneous Notes These notes are a great memory aid for two reasons. First, in the process of making notes the writer reinterprets what has been heard or seen and experienced into his own words and thoughts thus improves processing of the event. Secondly, notes subsequently provide cues to reconstruct the event which might otherwise be subject to normal forgetting. (Transcript pp. 7436-7437).

49. Interview Techniques The most accurate part of a witnesses' recall is found in the free narrative phase of an interview which always produces the highest level of accuracy; open-ended questions tend to be about as accurate as the free narrative. (Transcript pp. 7445 – 7446). There is a tendency to want to provide information so individuals may feel the need to have to come up with an answer. An interview should encourage free narrative, open-ended questions and avoid specific questions as well as avoiding leading or suggestive questions since they will produce the least accurate responses (Transcript p. 7447). When contamination occurs, it is more difficult to make a determination of accurate memory versus contaminated memory.

50. The step-wise interview process seeks to minimize the impact of the investigation and maximize the information obtained without contaminating the witnesses' memory. Taping or verbatim record is a good technique; this also reduces the number of times you need to interview a witness.

51. Dr. Yuille testified that in the research of himself and others:

*"...biggest single impediment to effective investigation is when the investigator has a single hypothesis about the fact pattern that he or she is dealing with, and that in contrast to that the most effective approach to investigation is the alternative hypothesis method, where the investigator entertains several alternative explanations as the investigation unfolds. This way the investigator is not blinded by this one hypothesis. When there's only one hypothesis there's a tendency to exaggerate the evidence that's consistent*

*with it and minimize evidence that is inconsistent. So by keeping an open mind through multiple hypothesis reduces that problem. (Transcript p.7552).*

According to Dr. Yuille, critical thinking with an open mind and the ability to entertain alternative explanations are critical requirements for an effective investigation. An investigator ought not to have tunnel vision; an investigator should not jump to conclusions or let the conclusion determine the facts as opposed to the facts determining the conclusion (Transcript pp. 7554-7555).

52. False Memory Dr. Yuille described his research experiment in which 50% of the participants said they remembered the event that hadn't happened; 26% of the participants not only remembered but they described the event that had not occurred. Dr. Yuille testified that around 20%-25% of adults will accept a suggestion. Dr. Yuille described the boundary conditions which are more likely to produce the phenomenon as being (1) the source of the suggestion has to be credible; (2) the suggestion has to be repeated several times; (3) the suggestion has to be plausible (Transcript pp. 7449 – 7450).

53. According to Dr. Yuille, memory recovered in the context of suggestive interviews is not necessarily accurate. Created memories may be partial where a missing piece is created. In Dr. Yuille's experiments where memories were created, some of the volunteers had memories which contained emotional details even though the event didn't happen.

54. Memory and Alcohol Dr. Yuille's evidence is that a person can't recover from the memory loss that alcohol causes (Transcript p.7483).

55. Source Misattribution Source misattribution can either interfere with a real memory or can result from a created memory; source misattribution may be part of a later reconstructed memory. Dr. Yuille testified that misinformation is most effective when the person doesn't remember that aspect. Misinformation has a greater potential for contaminating memory when there is no memory, than when the person has remembered something that is contrary to the misinformation. Where there is confusion about an original memory, misinformation is more likely to interfere; misinformation could create an entirely

new memory or may simply alter some component of the memory (Transcript pp. 7547-7548).

56. Distinguishing Created from Real Memory According to Dr. Yuille, there is no accurate way to distinguish whether memory is created or real. Corroboration is always of value in assessing this.

57. Fabrication of Memory Dr. Yuille testified that a fabricator will often weave reality with the lie (Transcript p. 7609).

#### **IV. KEITH JARVIS – KNOWLEDGE OF SASKATOON POLICE SERVICE (“SPS”) – POTENTIAL INVOLVEMENT WITH NEIL STONECHILD.**

58. The overriding and overarching issue before the Commission is the frailty of memories of all witnesses about an issue which occurred 10-13 years prior to being questioned or providing evidence. From Keith Jarvis' perspective, his testimony must be viewed and it must be remembered that he is testifying about an incident that at the time was a rather routine file and event, one of thousands in his career. The circumstances and events of the Stonechild file occurred over a few-day period in November/December, 1990 in respect of a file which was assigned to Keith Jarvis to investigate as a sudden death which, in the classification of the time, was a death which was not deemed to be suspicious.

59. In giving his evidence to the Inquiry Keith Jarvis depended on the contemporaneous notes made in his note book (Exhibit P-106) and the contents of the SPS reports filed by him in the course of his duties (as the same were copied, retained and produced from Cst. Ernie Loutitt). (Exhibit P-61)

60. It is respectfully submitted that this Commission ought to conclude that in November/December, 1990 the only knowledge that Sgt. Jarvis had which suggested there was any contact or involvement of SPS with Neil Stonechild was the record that Csts. Hartwig and Senger were dispatched to Snowberry Downs in connection with a complaint

about Neil Stonechild, however upon attending the officers were unable to locate Mr. Stonechild. There is no credible evidence to support a conclusion that Jason Roy told Sgt. Jarvis on November 30, 1990 that he had any contact or involvement with SPS or that he saw Neil Stonechild in the back of a police car.

#### A. Snowberry Downs

61. Sgt. Jarvis records at page 87 of his notes (Exhibit P-106) that he obtained information that there was a complaint from Trent Ewart in respect of Mr. Stonechild being intoxicated. Sgt. Jarvis' notebook records that Cst. Hartwig and Cst. Senger attended at 2356 and cleared at 0017 hours on November 25, 1990. The report filed by Sgt. Jarvis on November 30 records that this information was obtained from calls dispatched and that they were unable to locate Neil Stonechild (Exhibit P-36, Transcript p.4737).

62. Prior to Sgt. Jarvis obtaining a statement from Trent Ewart, he had spoken to Jason Roy and attended at 1121 Avenue P. South to obtain a witness statement from Jason Roy (Exhibit P-6). The statement written by Jason Roy made no reference to either he nor Neil Stonechild having any contact with SPS on the night of November 24, 1990. Mr. Roy reported that he separated from Neil Stonechild at the last apartment of Snowberry Downs on November 30, 1990. This handwritten statement of Jason Roy was filed and became part of the SPS records. At the same time, Sgt. Jarvis recorded in his report the circumstances of taking the statement and some of the contents including that Stonechild and Roy went their separate ways with Roy blacking out and waking up at Binnings.

63. When Sgt. Jarvis completed his November 30 report, it contained no reference to Jason Roy having told him anything about having been checked by SPS or Neil Stonechild being in the custody of SPS. Had Sgt. Jarvis received this information from Jason Roy either by way of a statement, preliminary to or subsequent to a statement, such information would have been recorded as it was required to be recorded and reported by Sgt. Jarvis. There is no evidence that Sgt. Jarvis in any way, for any reason, omitted to report and record such

material information. The evidence is that Sgt. Jarvis made his notes and filed his reports to record what he had done and learned in the investigation to the time the record was made.

64. Subsequent to obtaining the written statement from Jason Roy, Sgt. Jarvis met Trent Ewart at the police station and obtained a statement written by Trent Ewart (Exhibit P-34). In his statement, Trent Ewart confirmed the presence of Neil Stonechild at the apartment, his complaint to SPS and that the police attended subsequent to the complaint and were advised that they thought the individual was Neil Stonechild. Sgt. Jarvis records in his notebook that Trent Ewart attended the police station and gave the statement regarding November 24 when Neil Stonechild was at Snowberry Downs. Sgt. Jarvis also notes in his November 30 report the advice that Trent Ewart “... *did not see Roy with him*” at Snowberry Downs. Sgt. Jarvis also records in his report of November 30 the fact that Neil Stonechild was wearing a jacket with the name “CHRIS” on the front of it when he was at Ewart’s door and that Mr. Ewart last saw Neil Stonechild approximately 2400 hours November 24. This additional information was not in Mr. Jarvis’ notes, but appears in the report as part of what Sgt. Jarvis had learned in the investigation.

B. Keith Jarvis – Contact with Cst. Hartwig and Cst. Senger

65. There is no record in either Sgt. Jarvis’ notebook or his reports that he had any contact or communication with Cst. Hartwig and Cst. Senger. Throughout his various interviews with the RCMP, at the interview with Mr. Martell and at the Inquiry, Keith Jarvis has asserted his recollection that he contacted Cst. Hartwig and/or Cst. Senger either directly or by way of Jet Set. Although he cannot recall the manner of contact, nor the response, Keith Jarvis is certain that he made the approach and would have received the advice confirming the dispatch report that Neil Stonechild was “gone on arrival” and that they had no contact with him.

66. Neither Cst. Hartwig nor Cst. Senger have a memory of this occurrence, the dispatch to Snowberry Downs nor whether or not he was contacted by Sgt. Jarvis. The lack of memory of Cst. Hartwig and Cst. Senger of the occurrence or the details related to it is not

surprising having regard to the nature of the occurrence and the lapse of time which causes memory, particularly memory of non-remarkable events, to fade.

67. There is the possibility that Keith Jarvis' memory of contacting Csts. Hartwig and Senger may not be an historically accurate memory. It is open in the circumstances to the Commissioner to conclude that Mr. Jarvis has "filled in" a memory blank and has a created memory and recollection which may or may not be accurate. There is the potential that Sgt. Jarvis did not make any additional inquiries of Cst. Hartwig and Cst. Senger. This would not be surprising in the circumstances where the records recorded the dispatch and clearance with a report of a "GOA". Sgt. Jarvis had no reason to doubt that information (Transcript p.4718). The report of a GOA for removal of individuals, disturbance or drunkenness is very common; the records and testimony of Deputy Chief Wiks is that this would occur in 15% to 17% of dispatches. Further had Cst. Hartwig or Cst. Senger had any additional follow-up or contact with Neil Stonechild, they were required to file additional reports. There is no evidence that such additional report of contact was filed. The fact is that Cst. Hartwig and Cst. Senger had no contact with Neil Stonechild. There was no report by Jason Roy of any contact by he or Neil Stonechild with SPS. Trent Ewart confirmed in his statement that when the police attended, Neil Stonechild was gone and that there was no one else with him; this was consistent with what Jason Roy told Sgt. Jarvis.

68. The need for Sgt. Jarvis to follow-up with Cst. Hartwig and Cst. Senger becomes significant if one were to accept as accurate the statement of Jason Roy that in his statement to Sgt. Jarvis he had told him "*exactly*" what Jason Roy was telling Cst. Warner in Exhibit P-7 on March 7, 2000. If Mr. Roy's evidence had been accurate, then a different view and concern would arise as to why Sgt. Jarvis might have contacted Cst. Hartwig and Cst. Senger. If Jason Roy had indeed made these disclosures to Sgt. Jarvis and these disclosures were not recorded either in his notes or in the reports, then there would be a legitimate concern about a cover-up of SPS involvement; in such circumstances if Sgt. Jarvis failed to pursue this, he could be part of a cover-up. The evidence clearly refutes that there was any failure to report on behalf of Sgt. Jarvis or Cst. Hartwig or Cst. Senger. The evidence supports the conclusion that SPS had no involvement with Neil Stonechild that night nor did

Jason Roy tell Sgt. Jarvis that he had contact with SPS or that he had seen Neil Stonechild in the custody of SPS.

C. What Did Jason Roy Report to Sgt. Jarvis on November 30?

69. It is respectfully submitted that the Commissioner ought to conclude on the evidence that all material information given by Jason Roy to Sgt. Jarvis on November 30, 1990 is recorded in and contained in a handwritten statement given by Jason Roy on November 30 (Exhibit P-8) and as reported by Sgt. Jarvis in his SPS report November 30, 1990.

70. On November 30, 1990 Sgt. Jarvis met with Jason Roy for the purpose of Jason Roy providing him with full knowledge and particulars of his last involvement with Neil Stonechild whose frozen body had been found on November 29. Sgt. Jarvis was investigating a sudden death; he was seeking to determine who may have last had contact with Neil Stonechild. At this time Sgt. Jarvis was aware from advice from Stella Bignell and Marcel Stonechild that when they had last seen Neil, he was with Jason Roy and was going to see Eddie Rushton. By this time Sgt. Jarvis had been advised by Dennis Nowaselski that he had seen Neil Stonechild with Jason Roy at approximately 1500 hours on November 24, 1990; Sgt. Jarvis' notes say November 26 and his report says November 24. Jason Roy, in a telephone call, had advised Sgt. Jarvis that he was with Neil Stonechild for most of the day and evening of November 24 (Jarvis Notes Exhibit P-106 at p.87 and November 30 report).

71. The November 30 statement written by Jason Roy is taken in a pure version narrative form; Sgt. Jarvis' practice was to ask a witness what he can give and have the witness write the statement (Transcript p.4604). According to Dr. Yuille the most accurate part of a witness' recall is found in the free narrative phase of an interview; Dr. Yuille says this will always produce the highest level of accuracy and open-ended questions tend to be about as accurate as a free narrative (p.7445-7446). Sgt. Jarvis used a technique which was intended to and would result in the most accurate information being obtained from Jason Roy (Transcript p.4698). What is recorded in Jason Roy's statement is the full limit and extent of

what Jason Roy reported to Sgt. Jarvis as being his memory of events of the night of November 24, 1990.

72. Jason Roy's November 30 statement was a free and full narrative of his memory. The statement was filed in the SPS files; Sgt. Jarvis in his November 30 report referenced the statement and its contents. When the SPS file was copied by Cst. Loutitt on or about December 6, 1990 the file contained the statement, and the report of Sgt. Jarvis. These facts are hard independent corroboration which is consistent with the fact that Exhibit P-8 is the statement given by Jason Roy to Sgt. Jarvis on November 30. The presence of the statement in the file when it was copied by Cst. Loutitt is inconsistent with any other rational conclusion. It is not reasonable to conclude that Jason Roy gave a different statement to Sgt. Jarvis on November 30, 1990. Any such evidence that there was another statement is clearly wrong.

73. The statement of Jason Roy to Cst. Warner on March 7, 2000 (Exhibit P-7) wherein he agrees with Cst. Warner's statement that he told the police officers "*exactly*" what he was then telling Cst. Warner about seeing Neil Stonechild in the back of a police cruiser handcuffed, bleeding with lots of blood and a six-inch gash on his face is clearly wrong.

74. In the initial contact of Keith Jarvis by Cst. Warner, it is noted (Exhibit P-108) and Keith Jarvis testified that the name Neil Stonechild meant "*absolutely nothing*" to him. Even "*after considerable prompting*" or the provision of what might be memory cues, it is recorded by Cst. Warner that on March 3, 2000 (Exhibit P-108) "*he knows nothing of any allegations then or now that STONECHILD had been in the custody of SPS on the night that he was last seen*". Mr. Jarvis testified that that was accurate then and now (Transcript p.4665). When Mr. Jarvis was interviewed on April 3, 2000 by Sgt. Lyons, it is again recorded by Sgt. Lyons "*he is certain that there was never any suggestion of an SPS member involved with STONECHILD*" and "*says everyone would have been aware of it if there was that allegation*". This was Mr. Jarvis' recollection then and now (Transcript p.4671).

75. When the RCMP finally recorded a statement with Keith Jarvis on October 12, 2000 (Exhibit P-107), Keith Jarvis was uncertain as to the source of his understanding of the potential that Jason Roy was checked by the police or if he had told about seeing Stonechild in the back of a police car; at the same time, Keith Jarvis was very clear that if Jason Roy did give him such information that this information would be in Jason Roy's written statement (Transcript p.4699-4700, p.4604). The outside corroborative evidence (Exhibit P-8), establishes that no such information was contained in Mr. Roy's written statement nor was such information recorded in the SPS report filed by Sgt. Jarvis. That which was recorded was accurate and complete. Mr. Roy did not give Sgt. Jarvis any information inconsistent with that in Exhibit P-8 which was the only statement Sgt. Jarvis took from Mr. Roy (Transcript p.4703-4704, 4977, 5298-5299, 5301).

D. Evidence of Jason Roy as to his Statement Given to Sgt. Jarvis on November 30 lacks credibility.

76. The manner in which Cst. Warner questioned Jason Roy (Statement given to Cst. Warner March 7, 2000 - Exhibit P-7) as to what information he had given to SPS concerning his last knowledge of Neil Stonechild's whereabouts was obtained in an inappropriate manner for such important evidence. It is not in accordance with an appropriate procedure for obtaining accurate or reliable information. The misinformation received seriously and adversely affected the conduct of the Task Force investigation. This portion of the interview of Jason Roy occurs very near to the end of the interview (page 15) as follows:

Cst. WARNER: Over the course of time...did you ever make any disclosures to the Saskatoon Police Service about what you had seen that night?

Jason ROY: Yup. Ahm...shortly after Neil had passed away...ahm...the police...the police wanted to contact me...and get a statement from me...knowing what happened. Ah...knowing the last time I seen Neil and what were the...circumstances around it. So I gave 'em...I gave them...ah...ah...ah...a interview...Ah...I just...actually ah a statement. Putting it through a number of questions and...I answered them.

**Cst. WARNER:** When they came to interview you...the first time after that when you gave them what you described as a statement...Jason...did they seem to know that you had seen him...that you had been with him that night...did they know details of you giving a false name?

**Jason ROY:** I don't...yah...well yah...I think they probably did that...I'm pretty sure they knew about that. Well once I gave the statement he knew that. They knew that.

Cst. WARNER: But before that?

Jason ROY: But before that...I don't think so.

Cst. WARNER: Do you recall the police officer you talked on that occasion?

Jason ROY: No I don't.

Cst. WARNER: Was he a uniform policeman...a plain clothes officer?

Jason ROY: Ah...no he wasn't. I...I believe he was in ah...probably...I think the homicide division...or...or people who dealt with deaths in the police station.

Cst. WARNER: How long after...his body was discovered was it before that interview occurred before they came to see you?

Jason ROY: Well it was between the time of ah...his funeral and him being found. I'm pretty sure.

**Cst. WARNER:** And during the course of that interview...did you tell him exactly what you had told me?

**Jason ROY:** Yah

Cst. WARNER: What was the response?

Jason ROY: Ah...we'll be in touch.

Cst. WARNER: Did you ever hear from that police officer again?

Jason ROY: No.

[emphasis added]

It is very obvious that the directed question put by Cst. Warner, "*Did you tell him exactly what you had told me?*" produced no information, certainly no accurate information.

77. As noted by Dr. Yuille, a much better question would have been "*What did you tell them?*" Dr. Yuille said that in looking for accurate information one would not have asked the question in the manner that it was asked by Cst. Warner (Transcript pp. 7549 – 7569). The question as put by Cst. Warner leaves this Commission of Inquiry with no information as to what Mr. Roy, at that time, would have said he told the SPS in his written statement which he recalls at that time as being "*Putting it through a number of questions and...I answered them.*" The credible evidence is that the handwritten statement given by Jason Roy on November 30 (Exhibit P-6) is the only statement made by Jason Roy to SPS; it contains no reference to Jason Roy's involvement with SPS or seeing Neil Stonechild in the back of a police car.

78. The manner in which Cst. Warner asked Mr. Roy the directed question as to what he reported to the police officers provides some insight into the manner in which the RCMP conducted this investigation. The manner in which his question was asked makes it clear that Cst. Warner had a preconceived view of what occurred. Without asking Jason Roy what he reported, Cst. Warner "assumes" that Jason Roy would have told the officers "exactly" what he had up to that point in the statement told Cst. Warner. There is not now, and there was not then, any justification for such an assumption. Such an assumption in the course of an investigation can serve only to result in an investigation which will not result in ascertaining the full facts and knowledge of witnesses. Dr. Yuille testified that an investigator should not use newspaper articles to come to conclusions about what a witness might tell in an investigative interview. On a critical issue it is not a good way to elicit accuracy, to put questions which can simply be answered with a 'yes' and in a direct manner (Transcript p.7571).

79. Why at this very preliminary stage of the investigation would Cst. Warner "assume" a state of affairs? In the absence of evidence from Cst. Warner to the contrary, it is apparent that all of this is based upon newspaper articles and reports including one which appeared in the Star Phoenix on February 22, 2000 (Exhibit P-72). The assumption made by Cst. Warner is that the scenario being given to him by Jason Roy and appearing in the newspaper articles

was a factual summary of what occurred. Cst. Warner appears to have made a conclusion before determining the facts. Cst. Warner at page 11 of the statement says that some of the questions which he had been asking Jason Roy were based on materials which he had read in various articles written in the newspaper. This approach by the RCMP to the investigation of the Neil Stonechild matter unfortunately pervaded, coloured and distorted the investigation.

80. At the time Jason Roy gave his March 7, 2000 statement to Cst. Warner, Jason Roy's November 30 statement (Exhibit P-6) was not available. However, for some inexplicable reason when Exhibit P-6 was found, the RCMP did not re-interview Jason Roy or ask any questions of Mr. Roy as to why the statement which he gave to SPS did not contain any reference to either his contact with the SPS on the night of November 24 nor any reference to seeing Neil Stonechild in a police car on that night. No explanation has been offered for this egregious oversight. Why in the face of this clear contradiction on such a material issue would the RCMP not pursue this matter?

81. In the March 7, 2000 statement Jason Roy reported to Cst. Warner at page 7 that Neil Stonechild was in the back of a police car with his hands handcuffed behind his back, that "*He had a nice big cut across his face...there was a lot of blood. Quite a bit of blood...*" At page 11 of his recorded statement Jason Roy describes the injury on Neil Stonechild as starting at one of his cheeks going across the nose to the other side of the face being "*About 6 inches long*" and again confirms that there was "*lots of blood*" and "*quite a bit of blood*". These statements by Jason Roy are inconsistent with the credible evidence at this Inquiry in respect of the condition of Neil Stonechild. The evidence is clear that there was no six-inch cut nor was there any bleeding or amount of blood. The evidence of qualified medical professionals confirm that Neil Stonechild had scrapes or abrasions on the bridge of his nose. The police photos confirm that there was no bleeding; there was no evidence of blood on Mr. Stonechild's face or his clothing. With the description provided by Jason Roy, evidence of bleeding ought to have been clearly obvious. Once again the objective, documentary evidence does not support Mr. Roy's assertions.

82. At page 3 of his March 7, 2000 statement (Exhibit P-7) Mr. Roy says "*They told me that it was Neil...that was found out there. From that point...FR...right from that point in my life I've been scared from...I've been scared shitless from the cops for...since then.*" This assertion by Mr. Roy is not consistent with the probability that he would, in his first contact with SPS, tell Sgt. Jarvis of having seen Neil Stonechild in the back of the police car. If Mr. Roy was in fact scared of the police, it is improbable that he would have reported to Sgt. Jarvis the information which he now says he did. Further, it is improbable that if Mr. Roy was scared as he says that he would have again gone to the police station in 1991 to the front desk and ask to speak to the homicide detectives where he claims he once again relayed his story.

#### E. Jason Roy's Statement Given To Commission Counsel, July 31, 2003

83. On July 31, 2003 Mr. Hesje interviewed Jason Roy in the presence of his counsel (Exhibit P-8). At this time it was clear that the written statement of Mr. Roy dated November 30 given to Sgt. Jarvis (Exhibit P-6) contained no reference to involvement by either Jason Roy or Neil Stonechild with SPS. This was directly contrary to Mr. Roy's statement to Cst. Warner (Exhibit P-7) on March 7, 2000 that the statement which he gave to SPS would have contained advice about him having seen Neil Stonechild and giving a false name to the police.

84. On July 31, 2003 Mr. Roy presents a new explanation and new memory in relation to Exhibit P-6. The new memory is that his statement (Exhibit P-6) was not made on November 30, 1990. Mr. Roy now recalls that on November 30 the police officer wrote the statement which was at least three pages in length; he says that in this statement he told the officer he had seen Neil in the back of a police car and that he was bloodied. At page 31 of Exhibit P-8, the new memory in relation to Exhibit P-6 is related. Mr. Roy's counsel introduces the thought by way of a clarification that Exhibit P-6 was given at a later time by Jason Roy when he was in custody. Mr. Roy then recollects that he would have likely spent at least one night in the cells; that when he was in custody he would have been under the influence and his memory of this statement is hazy. Mr. Roy says that the November 30 (Exhibit P-6) statement was false; when he gave it he was scared.

85. In the interview with Mr. Hesje, Jason Roy takes the position that the statement he gave on November 30 to the police officer is not Exhibit P-6. Mr. Roy acknowledges that he did not bring it to the attention of the RCMP about signing Exhibit P-6 when he was in custody; his stated reason was "*It wasn't brought to my attention until way later.*" We don't know who brought it to his attention!

86. During the taking of Mr. Roy's statement by Mr. Hesje, the presence and interjection of comments by counsel illustrates the dangers of leading questions or comments which might arguably contaminate a statement. This type of problem is obvious at pages 30, 31 and 37 where counsel is essentially stating a circumstance which is then picked up on and agreed to by Mr. Roy.

#### F. Evidence of Jason Roy at the Inquiry

87. It is anticipated that other counsel will address in substantive detail the evidence of Jason Roy and the reasons why the evidence which Mr. Roy gave at the Inquiry is not credible. We touch upon Mr. Roy's evidence in respect of his dealings with Sgt. Jarvis to identify the improbabilities of Mr. Roy's testimony.

88. Mr. Roy now recalls that only one police officer came to take the statement. According to Mr. Roy, the officer wrote down the questions and answers in what became a 3-6 page statement. Mr. Roy says he advised the officer of having seen Neil Stonechild in the back of the police cruiser handcuffed and bleeding. Mr. Roy says that the statement dated November 30, 1990 (Exhibit P-6) is not the statement which he gave the officer as he did not write the statement given to the officer at the house (Transcript p.375- 378).

89. Mr. Roy testifies that the November 30 statement (Exhibit P-6) was actually written by him in an SPS interview room on December 20, 1990 which was two days before his birthday. Mr. Roy offers the incredible explanation that the police simply asked him "*Do you want to reconsider your previous statement?*" (Transcript p.379). Mr. Roy says that he

then wrote down the statement; as he got to the end of the second page, the officer came in. He says that the statement isn't true and that he lied for his life. This evidence is without any credibility.

90. Jason Roy does not suggest in his evidence that the police officer who was present when he wrote Exhibit P-6 on December 20 was Sgt. Jarvis, the officer who had interviewed him on November 30. There is clear and uncontradicted evidence that the writing on the statement, other than that of Jason Roy, is that of Sgt. Jarvis. The evidence is that Sgt. Jarvis was not working on December 20, 1990 (Transcript p.4705). Jason Roy offers no explanation as to why Exhibit P-6 would be dated November 30 if it was actually written on December 20. How is it that the start and end times for the taking of the statement (Exhibit P-6), allegedly written on December 20, match the start and end times noted by Sgt. Jarvis in his notes in respect of when he attended the address and the statement was concluded? (Exhibit P-106 p. 89).

91. The version given by Jason Roy as to completing Exhibit P-6 on December 20, 1990 does not have an air of reality when assessed against the documentary and substantive evidence contained in Sgt. Jarvis' notes (Exhibit P-107) and the contents of the SPS file as copied by Cst. Loutitt on or about December 6, 1990. Sgt. Jarvis made a note in his notebook about having attended with Mr. Roy to obtain a statement; he records the start and end times. Sgt. Jarvis files a report on November 30 in which he reports that he attended upon Jason Roy to obtain a witness statement. In his SPS report he briefly summarizes the contents of the statement. He includes with his report a copy of the statement completed by Jason Roy in his own handwriting on November 30, 1990 which statement was signed by Jason Roy and Sgt. Jarvis. Significantly, Sgt. Jarvis' report provides details of some information obtained from Jason Roy in the statement; these details include activities at Binnings from approximately 1400 hours, arriving at Trevor Nowaselski's home at 1445 hours and leaving to Circle Park Mall at 1830 hours. Remarkably, these times recorded in the report match identically with the times written by Jason Roy in Exhibit P-6. It is improbable that these times would match identically with a statement prepared by Jason Roy on December 20.

92. More importantly, one wonders how Sgt. Jarvis could have known on November 30 that three weeks later on December 20 Jason Roy would write a statement in which he would say that he "*blacked out and woke up at Binnings later*". This is extremely significant in view of the fact that Jason Roy claims to have told Sgt. Jarvis on November 30 about having been stopped by the police and having seen Neil Stonechild in the back of the police car. If Jason Roy didn't tell Keith Jarvis that he 'blacked out' and woke up at Julie Binnings, how it is that Sgt. Jarvis could record the same in his report on November 30 and with prescience, know that on December 20 that would be Jason Roy's explanation as to what occurred? Such is not credible, it is neither consistent with the probabilities, or the possibilities.

93. The fact that Cst. Loutitt copied Exhibit P-61 on our about December 6, 1990, is the final nail into the coffin of any purported credibility by Jason Roy that Exhibit P-6 was not the statement made by him on November 30, but rather was made on December 20. It is impossible that Exhibit P-6 could be on the SPS file on December 6 if it was not written until December 20!

94. It is submitted that the evidence of Jason Roy that in or about the time of Neil Stonechild's death he told others that he had seen Neil in the back of a police car is not capable of belief. Other counsel will fully address this issue in respect of the alleged relaying of stories to people at the Binning household. I will address the probability that such information was given to Stella Bignell and/or Marcel Stonechild.

95. The memory of Marcel Stonechild ten and thirteen years after his brother's disappearance is that Jason Roy had told him about Neil being picked up and that he then phoned the City Police to see if he could locate his brother. It is submitted that Marcel Stonechild's recollection is mistaken. On November 29 when Sgt. Jarvis advised Stella Bignell and Marcel Stonechild of Neil's death, neither Marcel nor Stella advised Sgt. Jarvis that there was any suggestion that Neil had been picked up or in the custody of SPS. Sgt. Jarvis records in his November 29 report that Stella Stonechild stated that she had last seen her son on Saturday, November 24 at approximately 2100 hours, it is recorded that this was

confirmed by Marcel Stonechild. Ms. Bignell reported that Neil was in the company of Jason Roy; Neil had told her he was going to see Eddie Rushton. When Sgt. Jarvis advised Ms. Bignell that the file was being concluded, subject to any additional information being provided, neither Ms. Bignell nor Marcel provided any additional information to Sgt. Jarvis. To and including March 1991, it was the position of the Stonechild family that Neil's death was in some way related to foul play potentially associated with gang activity. At no time prior to 2000 did the Stonechild family ever suggest to the media or SPS that members of SPS may have been involved in Neil's death.

96. Additionally, of great significance is the fact that although Marcel Stonechild believes that he probably told Ernie Loutitt that Neil was taken by the police, Cst. Loutitt is very clear that neither Ms. Bignell nor Marcel told him, or at any time suggested that SPS were involved in Neil's circumstance. Mr. Commissioner can reasonably conclude that if such information or suggestion of the same had come to the attention of Cst. Loutitt he would have taken all steps to pursue this information. Cst. Loutitt says that this information was not given to him; he did not pursue this chain of inquiry. Further, Cst. Loutitt never contacted Jason Roy. Had the Stonechilds provided to Cst. Loutitt any suggestion of what Jason Roy alleges, one would reasonably expect that Cst. Loutitt would have followed this with Jason Roy.

97. Stella Bignell testified at the Inquiry that she had phoned the police on Monday about Neil, it is submitted that this is a memory which is not corroborated or supported by any other actions taken by Ms. Bignell or the members of the Stonechild family. In this respect we draw the Commissioner's attention to the evidence of Eli Tarasoff who is a friend of Ms. Bignell and the Stonechild family. Mr. Tarasoff testified that in his conversations with Ms. Bignell there was no suggestion of SPS involvement in Neil's death rather there was suggestion of improper conduct related to gang activities.

98. For all of the foregoing reasons it is respectfully submitted there is no corroboration of the suggestions at the Inquiry by Marcel Stonechild and Stella Bignell, that they were

aware in November/December 1990 or shortly thereafter of allegations that Neil was in SPS custody.

G. Sgt. Jarvis' Knowledge of Jason Roy's Allegations of SPS Involvement

99. It is respectfully submitted that the Commissioner ought to conclude that Jason Roy did not tell Sgt. Jarvis anything concerning Neil Stonechild other than that contained in Exhibit P-6. Had there been other information, it would have been in the question and answer at the end of the statement (Transcript p.5160). There is no credible evidence that Jason Roy told Sgt. Jarvis anything different. This is so first because Jason Roy did not see Neil Stonechild in the back of a police cruiser and secondly, Neil Stonechild was never in the back of a police cruiser. Detailed submissions in respect of these points will be advanced by other counsel.

100. Should the Commissioner conclude that Jason Roy did see Neil Stonechild in the police cruiser, it is submitted that Mr. Commissioner ought to conclude that Jason Roy did not tell Sgt. Jarvis of this observation. There is no suggestion of such a disclosure in the statement written by Jason Roy on November 30, 1990 (Exhibit P-6). There can be no question this statement was taken on that date.

101. Jason Roy does not claim that Exhibit P-6 is the statement which he gave to Sgt. Jarvis however, before the taking of the statement or after the taking of the statement he made disclosures to Sgt. Jarvis in respect of his contact with members of SPS and observations seeing Neil in the back of a police cruiser. There is no reason why the Commissioner would not conclude that that which is recorded in Exhibit P-6 represents Jason Roy's November 30 memory of events of the last time he saw Neil Stonechild. There was no basis for Sgt. Jarvis to conclude that the information which was being given to him by Jason Roy was not accurate, reliable, complete and represented Jason Roy's knowledge. At the time Sgt. Jarvis was investigating a sudden death, he received information from a friend of Neil Stonechild who agreed to give a written statement as to his knowledge. Sgt. Jarvis had

no knowledge or information in respect of any allegation of SPS involvement. All that Sgt. Jarvis knew was that the dispatch records showed “GOA”.

102. Keith Jarvis’ evidence is that Jason Roy never told him that he saw Neil Stonechild in the back of a police car. There is no evidence in Sgt. Jarvis’ notes or in his SPS reports which would support a suggestion that Jason Roy had disclosed to him anything other than what appears in Exhibit P-6. Had Sgt. Jarvis received any additional material information such information would have been recorded; this is so even if Sgt. Jarvis didn’t find such statements credible (Transcript p.4979). To conclude otherwise would be to conclude that Sgt. Jarvis was engaged in a cover-up of material evidence in the investigation. To make this finding, the Commissioner would have to conclude that Sgt. Jarvis in some manner knew of the involvement of Cst. Hartwig and Cst. Senger and/or SPS in an alleged “drop-off” or activity which might be criminal. This would have had to be known to Jarvis within one day of Neil Stonechild’s body having been found. Sgt. Jarvis would then have had to set upon withholding information and subverting the course of justice in connection with activities, whatever they might have been, for two police constables, one of whom was known slightly to Sgt. Jarvis and one was a very junior probationary employee who was not known by Sgt. Jarvis. If Sgt. Jarvis were setting upon covering up any potential involvement of SPS, why would he record in his notes of Cst. Hartwig and Cst. Senger being dispatched?

103. To conclude that Sgt. Jarvis failed to record information provided by Jason Roy, would be to find that he breached his oath as a police officer to investigate and record fully and completely all matters in which he was investigating and to report any potential or suspected police involvement and wrongdoing. Mr. Jarvis’ evidence is that he was not involved in a cover-up (Transcript p.4731). There is no evidence that Sgt. Jarvis did not, at all times, properly and completely record his activities and file comprehensive reports. How reasonable would it be to presume that if Sgt. Jarvis was aware of an alleged SPS suspected involvement and that he had failed to document and report material evidence alleged to have been given to him by Jason Roy that Sgt. Jarvis would then recommend that the file be referred to Major Crimes Unit which referral ought to have lead to a chain of inquiry which

would clearly have brought back and revealed Sgt. Jarvis' failure to report material information and participation in a "cover-up"?

104. It is respectfully submitted that there is no evidence that Sgt. Jarvis failed to report and record fully and completely on this case or that he engaged in any fashion in an activity to cover up or conceal any information or knowledge concerning the case and in particular, allegations of SPS involvement.

#### H. Memory Issues

105. Sgt. Jarvis and each other witness at the Inquiry, has been confronted with the reality that memories fade with time; this is particularly so in respect of events which are routine and non-remarkable. As tragic as the event is for the Stonechild family, this file and circumstance was a routine file within the workings of SPS. What is not remarkable in the context of the evidence at the Inquiry is the lack of recall of the file or the incident by most of the members of the SPS who testified. What is remarkable is the nature and extent of memories claimed by other witnesses at the Inquiry. Mr. Commissioner will have to decide what is a real and historical memory, what is a created memory, what is a fabricated memory. The Commissioner will need to determine from the evidence of each witness at the Inquiry those portions of the evidence which he finds to be credible.

106. It is respectfully submitted that the evidence given by Keith Jarvis at the Inquiry was honest evidence given to the best of his ability. The evidence was affected by circumstances, including a lapse of 10-13 years from the incident, in respect of a sudden death which occurred over a one-week period. The investigation was assigned and dealt with by SPS, including Staff Sergeant Bud Johnson, Sgt. Jarvis' superior, Staff Sergeant Johnson's superiors and the Staff Sergeant in charge of Major Crimes Unit, as a death, which while it may have had some unusual aspects, was not one that fit the category of a 'suspicious death'.

107. Mr. Commissioner will have to decide whether or not the circumstances of the RCMP investigation were such that they had the potential to contaminate Mr. Jarvis' memory and

probably did contaminate his memory leading him to make statements which might be found to be inconsistent with the evidence given at the Inquiry. In assessing this, the analysis should begin with Keith Jarvis' memory on March 3, 2000 that the name Neil Stonechild meant "*absolutely nothing*" to him. This was followed by a series of eight contacts and communications between members of the RCMP and Mr. Jarvis. For seven of these contacts we have no verbatim transcript of the meetings. There is no basis upon which to review and assess what transpired at each of these meetings; there is no basis to know what information was given to Keith Jarvis, what his response was or the manner in which questions were asked. For a reliable assessment of the potential for contamination a verbatim transcript is required. In this case, not only do we not have a verbatim transcript, we do not have any notes or record of information given by the RCMP members to Mr. Jarvis in these conversations by way of prompting or cues. None of this information was recorded by the officers at the time of the interviews; the officers did not give evidence at the Inquiry.

108. It is submitted that the failure of Sgt. Lyons and Cpl. Warner to give evidence at the Inquiry permits this Commission drawing an adverse inference in respect of the evidence which they would have given in respect of the potential for contamination. It is submitted that the Commissioner ought to conclude that the evidence would have shown circumstances in which there was great potential for contamination of Mr. Jarvis' evidence. It is apparent from reading the summaries in respect of the various contacts including Exhibits P-108, P-109 and P-110 that the RCMP officers were providing to Mr. Jarvis considerable information including names, occurrences and scenarios relevant to the investigation of the Stonechild matter. In summary, these contacts were:

March 3, 2000	Cst. Warner phones Mr. Jarvis – 10 minutes
April 3, 2000	Sgt. Lyons interviews Keith Jarvis for 50 minutes
June 21, 2000	Sgt. Lyons and Cpl. Warner interview Mr. Jarvis at his home for 65 minutes
Oct. 4, 2000	Sgt. Lyons phones Mr. Jarvis
Oct. 11, 2000	Sgt. Lyons and Cpl. Warner meet with Mr. Jarvis for 55 minutes. At this meeting he is provided with a copy of his notes. He is told by the RCMP of the cuff marks on Mr. Stonechild's body and shown photos on the lap top computer.

Oct. 12, 2000	Sgt. Lyons and Cpl. Warner attend upon Mr. Jarvis for the purpose of taking a recorded statement (Exhibit P-107). The interview was conducted over a 50-minute period.
Oct. 16, 2000	Sgt. Lyons called Mr. Jarvis – went over some details of the file
May 23, 2001	Sgt. Lyons meet Keith Jarvis.

At the time of these contacts, Sgt. Lyons and Cpl. Warner possessed information published in the newspaper and received from others which reflected the memories of these individuals whether the memory was real, created, or fabricated.

109. A critical aspect of evidence relied upon in their contacts with Keith Jarvis and others was based on the scenario advanced by Jason Roy. This scenario was put to numerous witnesses. The scenario was based upon the reports of Jason Roy having seen Neil Stonechild in the back of the police car, cuffed, bleeding and screaming for his life. When questioning Jason Roy on March 7, 2000 Cst. Warner proceeded on the assumption that Jason Roy had told the SPS officer (Jarvis) on November 30 that he had seen “*exactly*” that which he was reporting to Cst. Warner as having seen in respect of Neil Stonechild in the police car. In the contacts and discussions with Keith Jarvis the RCMP accepted as historically accurate the claims of Jason Roy as reported in the newspaper (Exhibit P-72) and in the statement given to Cst. Warner (Exhibit P-7) that Mr. Roy had reported to Sgt. Jarvis the same story he was advancing to the RCMP on March 7, 2000. At the time of the interviews with Mr. Jarvis, the RCMP investigators had talked to and received statements from many other civilian witnesses whose statements in the year 2000 might be broadly deemed to be supportive of Jason Roy’s position. The evidence at the Inquiry should lead the Commissioner to conclude that the memory of many of these witnesses was either mistaken or created. The RCMP when prompting Mr. Jarvis proceeded on the basis that the information which they had received was historically accurate and reliable. Unfortunately for the investigation and other witnesses, it is now clear that not all the information was historically accurate.

110. When Cst. Warner contacted Keith Jarvis on March 3, 2002, the name Neil Stonechild meant “*absolutely nothing*” to Mr. Jarvis. After numerous contacts, discussions

and interviews with Sgt. Lyons and Cpl. Warner, Keith Jarvis had a memory of events which varied over time from the initial contact on March 3, 2000 to August 11, 2003. It is submitted that these different memories occurred as a result of the contamination of Keith Jarvis' memory. This contamination resulted during contacts with the RCMP during which Sgt. Lyons and Cpl. Warner attempted to assist Keith Jarvis to achieve a recalled memory of events. Keith Jarvis does not suggest that there was any intention to try to put untruths in his mind (Transcript p. 4686). Keith Jarvis testified that Sgt. Lyons and Cst. Warner were trying to assist him by prompting and jogging his memory "*...and suggestions were made, do you recall so-and-so saying this, do you recall so-and-so saying that...*" (Transcript p. 4569). The suggestions or scenarios put to Keith Jarvis included:

*"Did this" or "Do you recall this" or "Do you remember speaking to so-and so" or "Do you remember so-and-so saying this or that"* (Transcript p.5150)

Keith Jarvis did not feel that Sgt. Lyons or Cpl. Warner were unfair to him, but rather were attempting to help him recall the events regarding the file (Transcript p. 4569). Mr. Jarvis trusted the RCMP officers. He wished to be helpful to their investigation, and was at all times co-operative. During interviews by the RCMP officers, suggestions such as "*Do you recall having a conversation with Jason Roy where he told you this or where he told you that?*" were put to Mr. Jarvis (Transcript p.4573). Mr. Jarvis believes that a possible scenario put by the RCMP was one that Jason Roy had seen Mr. Stonechild in police custody on the night in question (Transcript p.4679 and 4687-4688). There is reference in Keith Jarvis' recorded statement on October 12, 2000 (Exhibit P-107) about Mr. Roy apparently having told Sgt. Jarvis that he had been checked by the police. In relation to this, Keith Jarvis answered at p.8:

*Ah...the only thing I, ya'know I... I can't recall exactly what happened but from my understanding from... from having talked with...with yourselves and, ya'know, refreshing memories an' so forth, he was checked by the police, he was unlawfully at large apparently at the time and gave a phony name...*

Keith Jarvis testified that it was his belief that this was something that was suggested to him in an effort to try and refresh his memory (Transcript p.4684). At the Inquiry, Keith Jarvis confirmed that he told the RCMP in his statement of October 12:

*"...so he wouldn't get picked up ah... and from that stand point I'm not sure if he told me that STONECHILD was in the back of a police car or if I learned that from the result of our conversations an'... throughout this...this whole time frame...it's not something I... I don't remember him saying that h... he may very well have...and if he did it would be in this statement and that's...in his written statement.*

While Keith Jarvis could not recall whether Officers Lyons or Warner had specifically suggested this scenario to him or not, his evidence was that the recorded statement was accurate on the day he gave it to Officers Lyons and Warner and at the time of his testimony to the Inquiry.

111. As a result of the various contacts with Sgt. Lyons and Cpl. Warner, involving the information and discussions which occurred in these attempts to assist with his memory, confusion arose as to what was Mr. Jarvis' memory or what was a memory that had come from the contacts with these officers; Keith Jarvis started to believe matters which he had heard (Transcript p.4566-4569, 4686 and 4930). Mr. Jarvis was not able to distinguish his independent recall from the memory resulting from the prompting (Transcript p. 5309).

112. The prompting of Keith Jarvis by the RCMP officers may have acted as a cue to assist Keith Jarvis in reconstructing an actual memory. It is submitted this is what occurred in respect of some matters in respect of the file to which Keith Jarvis has testified that he did regain an actual memory, including matters such as attending upon the Stonechild family to advise the family of Neil's death. It is also clear that the prompting and the provision of information by the RCMP officers had the effect of contaminating Keith Jarvis' memory so that he had a false and altered memory or partially created memory. This false and altered memory was in respect of what Jason Roy reported to Keith Jarvis during their contact on the night of November 30 for the purpose of taking a witness statement.

113. It is clear that Jason Roy never told Sgt. Jarvis about either his contact with members of SPS or of having seen Neil Stonechild in the back of a police vehicle. For the reasons outlined in other portions of this submission, that never occurred. In his statement of October 12, 2000, Keith Jarvis identified his confusion and doubts as to the source of this

information and whether or not it came from the discussions with the RCMP officers. At the same time Keith Jarvis properly acknowledged and recognized that if this information had been given to him, the same could be verified as it would have been in the statement given by Jason Roy. This information was not there; this information was never given to Sgt. Jarvis. Neil Stonechild was never in the back of the SPS vehicle on the night of November 24, 1990.

114. There is no reliable way to determine whether or not a memory has been contaminated. Once a memory is created, it is impossible for the person with the memory to distinguish between what is real and what is created without objective evidence. In the recorded statement with the RCMP (Exhibit P-107), Mr. Jarvis identified the potential for contamination and raised an issue of a source attribution when he said at page 8 that he had an understanding from having talked to the RCMP officers and refreshing memories that Jason Roy was checked by the police, gave a phony name and Stonechild was in the back of the police car. Mr. Jarvis stated that he wasn't sure whether he learned that as a result of the conversations with the police officers; his evidence is that that statement was accurate then and now (Transcript p.4685). Mr. Jarvis's memory is that if Jason Roy had told him this it would have been in the statement. We know that such information was not in the statement.

115. It might be argued that the mention by Mr. Jarvis of the prompting and memories is really a recognition of cues which would aid in his memory. It is submitted that by looking at the complete context of the statement, it is apparent that Mr. Jarvis is not saying that this memory was cued from something that the RCMP has told him, rather he is clearly questioning the source and validity of the memory as indicated by his comment, "*Or if I learned that from the result of our conversations and...*" Mr. Jarvis goes on to say at page 9 that this could have come from the conversations throughout this whole period of time and "*...it is not something... I don't remember him saying that h...he may very have...*" Mr. Jarvis is not saying that any prompts or cues caused him to regain a memory. Mr. Jarvis is identifying that this is not his memory which has been recovered; rather it is a "memory" he may have acquired as a result of the contacts and communications with the RCMP, i.e. contamination.

116. Dr. Yuille was asked to review the recorded statements made by Keith Jarvis to the RCMP (Exhibit P-107) and to Mr. Martell (Exhibit P-111). On the basis of the review of these statements and restricted to what was recorded in the statements, Dr. Yuille said that he did not see things that could have contaminated Keith Jarvis' memory. Dr. Yuille agrees that contamination could have occurred in any of the earlier contacts, however, since there is no verbatim transcript of these contacts, he could not comment as to the potential impact or the effect of these. Dr. Yuille acknowledged that memory can build upon contacts. According to Dr. Yuille, prompting or cuing is okay as long as it does not lead or suggest; it depends upon the specifics of what was done. Here there is no transcript of the contacts. There is no evidence from Sgt. Lyons and Cpl. Warner as to their recollection of what the prompting consisted of; Dr. Yuille was not in a position to provide an opinion on whether or not there was a probability of contamination. Whether or not there is contamination depends upon having the whole picture and knowing how something was accomplished; this is not something that we have here (Transcript p. 7590). According to Dr. Yuille because the recorder was turned on and off, the statement given by Mr. Jarvis to Mr. Martell is verbatim in respect of what is recorded, but is incomplete; there is no way to know whether something that happened off the record could have contaminated the statement (Transcript pp. 7604-7606).

117. It is submitted that the memory of Mr. Jarvis of a conversation with Jason Roy relating to disclosures of contact with the Saskatoon City Police and seeing Neil Stonechild in the vehicle must be a created memory because while Jason Roy had contact with the SPS, he at no time saw Neil Stonechild in the back of the police car handcuffed, bleeding and screaming for his life. Not having seen this, why would Jason Roy tell this to Sgt. Jarvis? Jason Roy's memory on March 8, 2000 was that these disclosures to Sgt. Jarvis would have been contained in his statement given on November 30; the statement contained no such disclosure. It is important to recognize that there was a common memory between Mr. Jarvis and Jason Roy. Mr. Jarvis advised the RCMP that if Jason Roy had told him these things they would be in the statement, (the statement taken on November 30). When that statement was found, there were no such disclosures.

118. There was no suggestion by Jason Roy that the disclosures were made other than in the statement; he does not suggest that it was reported before the statement or after the statement was taken. That is a scenario developed by and pursued with vigour by the RCMP and Mr. Martell who pursued Keith Jarvis to have him adopt, as part of his memory, that since Jason Roy hadn't told him in the statement about Neil Stonechild, that such disclosure must have occurred either before the taking of the statement or after the taking of the statement and not recorded. That is a hypothesis advanced by the RCMP; it is not an hypothesis suggested by Jason Roy, certainly not one that Jason Roy advanced in his evidence at the Inquiry, nor is it a reasonable conclusion on his evidence. Rather, Jason Roy's evidence is that he gave the information in the statement to Keith Jarvis however the statement Exhibit P-6 is not the statement which he gave; rather it is one which was given on December 20, 1990. As previously outlined, that is not credible. What the investigators have done is to pursue a chain of inquiry with Mr. Jarvis on the basis that what Jason Roy had told them about his disclosures to Sgt. Jarvis in the statement was true. In response to that investigation, Mr. Jarvis advised that if disclosure had been made it would have been in the statement.

119. After the RCMP obtained Jason Roy's November 30, 1990 statement (Exhibit P-6) they did not follow or pursue any questions with Jason Roy as to why the disclosure which he says that he made to Sgt. Jarvis did not appear in the statement. No questions were asked as to why this material omission and contradiction in this evidence appeared. A complete and thorough investigation in pursuit of the accuracy and truth would have required that these questions be asked and satisfactorily answered.

120. Rather than pursue Jason Roy, the RCMP chose to ignore the obvious contradiction in this position and statement. The RCMP members sought out Keith Jarvis for the purpose of having him answer **when, not if**, Jason Roy told this to Sgt. Jarvis. The question pursued was before the statement was taken, or after the statement was taken; the RCMP never asked **if** this was reported. We know now that had the RCMP gone back to Jason Roy, he **may** have given them the answer or suggestion which he gave to Mr. Hesje in the July 31, 2003 statement or perhaps the position he gave to this Commission of Inquiry in his evidence that

in fact Exhibit P-6 was not the statement he made on November 30. Had these questions been asked, the RCMP investigation may have taken a different course. The lack of credibility of Mr. Roy's position may well have been established prior to this Inquiry.

121. Even after Mr. Roy's statement to Mr. Hesje on July 31, 2003 when the Commission was told that Exhibit P-6 was not the statement given by Mr. Roy on November 30, no one from the Commission suggested or advised Mr. Jarvis that Exhibit P-6 did not represent the statement taken by him on November 30, 1990. When Mr. Martell interrogated Mr. Jarvis on August 11, 2003, he did not question Mr. Jarvis about this suggestion by Mr. Roy that there had been an earlier statement consisting of a question/answer form of at least three pages. It is apparent from the questioning of Mr. Jarvis by Mr. Martell that Mr. Martell as representative of the Commission did not believe Jason Roy that Exhibit P-6 was not taken on November 30 but rather written on December 20.

122. In the face of the obvious lack of credibility of the evidence of Jason Roy, the Commission's representative, Mr. Martell set about upon an interrogation of Mr. Jarvis solely for the purpose of having Mr. Jarvis acknowledge that Jason Roy had made the disclosures to Sgt. Jarvis. There was no regard to the clear contradiction, inconsistency and improbability of Mr. Roy's assertions about Exhibit P-6. The premise of Mr. Martell was that Keith Jarvis was not being forthright and forthcoming in his disclosure to the RCMP. The reality is that the Commission ought to have been looking at Jason Roy in terms of the forthright and honest disclosure. Unfortunately, Mr. Martell in the face of the obvious lack of credibility to Mr. Roy's position, continued upon Mr. Jarvis to endeavour to get him to have his evidence and memory be that Mr. Roy told him of SPS involvement; no matter when, or how, or if consistent with Mr. Roy's changing position, the task was to get Mr. Jarvis to say Jason Roy told him.

123. This Commission ought to take no account of the Martell interview of Keith Jarvis (Exhibit P-111). Exhibit P-111 is not a full and complete transcript of the interview between Mr. Martell and Mr. Jarvis. The meeting started at approximately 10:05 and the tape was not turned on until 11:00. The interview continued without a break for water, coffee, etc. until 2:05; a total of four hours. During this period the tape was constantly being turned on and

off (Transcript p. 4542); listening to the tape reveals that the on/off likely occurred approximately 200 times. Responses may have been missed (Transcript p.4572). There was approximately forty minutes of recording time that was not on the tape. The entire manner in arranging for this interview of Mr. Jarvis was unfair; it was not in accordance with standard investigative techniques for obtaining a statement. Mr. Martell had in his possession notes and statements in respect of all of the contacts between Sgt. Lyons and Cpl. Warner and Mr. Jarvis including the disclosures which were filed as exhibits and RCMP notes. Mr. Jarvis was not given copies of any of this documentation; nor was he given a copy of his statement given to Sgt. Lyons and Cpl. Warner on October 12, 2000 (Transcript p.5313).

124. During the course of the meeting with Mr. Martell, Keith Jarvis provided substantially increased detail over any memory or recall that he had in respect of this matter since his recorded statement to the RCMP on October 12, 2000. As noted by Dr. Yuille, the usual change in episodic memory over time is a decrease in detail. According to Dr. Yuille, in the absence of evidence that a person had spent a lot of time thinking about an incident, been supplied with notes or photographs or other information, then an improvement in memory is a “puzzle” as this is not generally how memory works (Transcript pp. 7535–7536). The evidence of Mr. Jarvis is that he had not reviewed his notes nor given this matter thought or consideration after his contacts with Sgt. Lyons and Cpl. Warner until the time of the interview with Mr. Martell (Transcript p.4884-4889, 5136). The last substantial contact with the RCMP would have been Oct. 12, 2000 with minor contacts thereafter including one on May 23, 2001 when there was contact about whether or not Jason Roy’s disclosures were made before his statement or after his statement.

125. Mr. Jarvis’ detailed memory in the Martell statement could have been brought about by the inoffensive use of cues or it could be a created memory (Transcript p.7597). Keith Jarvis testified that his statement to Mr. Martell that Jason Roy told him he had been checked by the police and told him that had seen Neil Stonechild in a police car, was not accurate.

*“...that comment was made in error as a result of interviews that I had had with Officers Lyons and Warner over a period of time three years earlier, where scenarios were put to me as having possibly occurred, and at that point in time I indicated to them that I had*

*little or no recollection whatsoever regarding the file. I informed them at the time that I did not know whether or not what was being recalled was actually from my own memory or as a result of what they had suggested to me.*" (Transcript p.4552-4567, see also p.4728).

126. For all of the outlined reasons it is submitted that Mr. Jarvis' "memory" of being told by Jason Roy of the police check and seeing Neil Stonechild in a police car was a created memory in respect of events which did not occur.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Saskatoon, in the Province of Saskatchewan this 5<sup>th</sup> day of May, 2004.

PRIEL, STEVENSON, HOOD & THORNTON

Per: Kenneth A. Stevenson

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