



As I now turn to my analysis of the evidence, I must reiterate that the findings and conclusions I have reached cannot be taken as findings of criminal or civil responsibility. The rules of evidence and the procedures followed by the Inquiry are very different from those of civil and criminal courts. As a result, the findings of fact in an inquiry may not necessarily be the same as those that would be reached in a court.

## 1 | The Events of November 24/25, 1990

Much has been said and written about the death of Neil Stonechild. After sifting, literally, through thousands of pages of evidence and the many exhibits, a clear picture emerges as to the events of November and December 1990. In setting down my conclusions with respect to what happened during that period, I will necessarily make references to many parts of the evidence. My commentary will include those portions of the evidence which may be viewed as contradictory. I acknowledge that, in the final analysis, no one can ever know with precision, other than Neil Stonechild and Cst. Hartwig and Cst. Senger, what happened on the night of November 24/25. I say Cst. Hartwig and Cst. Senger because whatever other conclusion one may draw, there is no question that Stonechild was last observed in the custody of those two officers, and that he was later found in a vacant field near the Hitachi plant on 57th Street with injuries and marks that were likely caused by handcuffs.

What then are the essential facts? On the afternoon of November 24th, 1990, Stonechild and Roy visited a friend on the east side of Saskatoon.<sup>399</sup> They then took the transit bus to the west end and the area of Confederation Park, in particular. Stonechild and Roy encountered Stonechild's former girlfriend, Lucille Horse (nee Neetz) on the bus.<sup>400</sup> The boys learned from their conversation with Horse and her companion, Gary Horse, that the couple were babysitting for her sister, Claudine Neetz, and her boyfriend, Trent Ewart, in an apartment at Snowberry Downs on the west end of Saskatoon. Snowberry Downs is comprised of three apartment buildings. These apartments are located on the corner of 33rd Street West to the south and Wedge Road to the east. Appendix "K" to this Report contains a map of the area which indicates the location of Snowberry Downs and its close proximity to Confederation Drive.

Ms. Horse was unwilling to tell Stonechild the specific location of her sister's apartment as she expected her former boyfriend might cause some trouble. Ms. Horse knew that Stonechild was going out drinking that evening, and she also knew that Stonechild had a history of alcohol abuse and fighting while under the influence.<sup>401</sup>

Stonechild and Roy ultimately arrived at the Stonechild residence in the afternoon of November 24. There the boys decided they would obtain some alcohol and go to the home of Doris Binning, expecting to party with the Binnings and their friends. Before leaving the Stonechild residence, he promised his mother that, after the weekend, he would return to the community home from which he was absent without leave. Later in the evening, he phoned the community home manager and repeated this promise to her.

<sup>399</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 350

<sup>400</sup> Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003):885-886

<sup>401</sup> Evidence of Lucille Horse, Inquiry transcript, vol. 6 (September 16, 2003): 886, 943

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Neil persuaded his older brother Marcel to purchase a bottle of Silent Sam vodka for him. With their purchase in hand, the boys walked to Binning's residence, a short distance away. Appendix "K" to this Report shows the location of the Binning and Stonechild residences.

It was an extremely cold night. The temperatures for the night of November 24/25th were recorded at the Environment Canada Office at the Saskatoon International Airport. In the late evening hours of November 24 and the early morning hours of November 25 the temperature fell to minus 28.1 degrees Celsius.

Neil Stonechild was dressed in a white T-shirt, a wool lumberjack jacket, and a leather and fabric baseball style, or what has been referred to as a bomber style, jacket. He wore blue jeans, briefs, spandex pants, cotton socks, and running shoes. He was also likely wearing his trademark baseball cap. It does not appear that he was wearing gloves.<sup>402</sup>

At the Binnings, Roy and Stonechild visited with Julie Binning and Flora Binning. Eddie Rushton was present. Rushton, now deceased, was a friend of Stonechild and was involved in the August 1990 incident with Gary Pratt. Cheryl Antoine was also present at the Binning home. At the time she was Roy's girlfriend and was pregnant with his child. The boys drank virtually all of the vodka.<sup>403</sup> There was some debate as to whether the bottle contained 26 ounces or 40 ounces of vodka. It appears likely that it was 40 ounces. Roy stated that 7 or 8 ounces were left in the bottle when he and Stonechild left the Binnings.<sup>404</sup> Neil had advised Roy that he wanted to see Lucille Horse at Snowberry Downs, and Jason agreed to accompany him. Around 11:00 p.m., they left the Binning residence.<sup>405</sup>

They stopped at a 7-11 confectionery at the corner of 33rd Street West and Confederation Drive to warm up.<sup>406</sup> They then proceeded to Snowberry Downs.

The evidence of Bruce Genaille indicates that Stonechild likely caused a disturbance at the 7-11.<sup>407</sup> Genaille testified that he was stopped by two officers who told him that they were looking for Stonechild in connection with a disturbance at 7-11. The evidence establishes that Cst. Hartwig and Cst. Senger were the officers who stopped Genaille. They checked Genaille's identification and eventually let him proceed on his way.

Meanwhile, Roy and Stonechild had made their way to Snowberry Downs. They went from apartment building to apartment building in search of Lucille Horse. Access to the apartment buildings was controlled by an automatic entry system which allowed a visitor to buzz a resident who could in turn allow the visitor to enter. They pushed buzzers at each building and asked for Ms. Horse without any success.

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<sup>402</sup> Evidence of Stella Bignell, Inquiry transcript, vol. 1 (September 8, 2003): 70; Evidence of Debra Mason, Inquiry transcript, vol. 1 (September 8, 2003): 131-137; Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 575; Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003): 895; and Evidence of Flora Binning, Inquiry transcript, vol. 8 (September 18, 2003): 1445

<sup>403</sup> Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 581-584

<sup>404</sup> Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 443; and Evidence of Jason Roy, Inquiry transcript, vol. 4 (September 11, 2003): 613

<sup>405</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 353

<sup>406</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 354-357

<sup>407</sup> Evidence of Bruce Genaille, Inquiry transcript, vol. 12 (September 25, 2003): 2276-2302



As time passed, Jason became impatient with the search. He told his friend he was leaving.<sup>408</sup> Neil flew into a rage. He cursed Roy repeatedly. Roy described his last sighting of Stonechild when he observed his friend turn the corner at one of the apartment buildings.<sup>409</sup> After Roy's departure, Stonechild continued his search alone. Roy testified that up until the time he left Snowberry Downs, Stonechild did not have any injuries on his face.<sup>410</sup> Roy returned to the 7-Eleven to warm up.

Stonechild ultimately gained access to one of the buildings. This building, by chance, was the building where the Horses were babysitting. He banged on the doors of the individual apartments. As he proceeded down the hall, his noisy progress came to the attention of the Horses and Trent Ewart. Ewart had arrived shortly before Stonechild's appearance.<sup>411</sup> Ultimately he arrived at Ewart's door.

Lucille Horse peered through the peep hole of the door and recognized Stonechild.<sup>412</sup> Ewart told Stonechild to leave and threatened to call the Saskatoon Police Service. Ultimately he did so, identifying Stonechild and indicating that the latter was drunk and causing a disturbance.<sup>413</sup> Stonechild mumbled an apology and left.<sup>414</sup> He was not seen again by any of the occupants of the apartment.

Trent Ewart's telephone complaint was received by the Saskatoon Police Service at 11:49 p.m. on November 24, 1990.<sup>415</sup> The Saskatoon Police Service Communications Centre dispatched a police cruiser in the vicinity to proceed to Snowberry Downs and address the call. The cruiser was car 38 and the occupants were Cst. Bradley Senger (Badge #80) and Cst. Lawrence Hartwig (Badge #332). The constables acknowledged the call at 11:51 p.m. reporting that they were en route.<sup>416</sup>

A number of key events took place within the next hour. Their sequence is critical to the findings I make in this Inquiry. The evidence established that Cst. Hartwig and Cst. Senger proceeded to search for Stonechild. I conclude that shortly after 11:51 p.m. the two officers came on Neil Stonechild. He was drunk and probably belligerent and uncooperative. The Constables took him into custody. The cruiser proceeded a short distance down a lane to Confederation Drive. As the car exited the lane, the police intercepted Jason Roy.<sup>417</sup> Roy observed Stonechild in the rear of the cruiser. When asked if he knew the prisoner, he denied that he did. Roy testified his friend was cursing him and calling for help and telling Roy to tell the police who he was. Roy gave the police the name of his cousin, Tracy Lee Horse and his birth date. CPIC records confirm that Cst. Senger conducted a CPIC query of the name "Tracy Lee Horse" at 11:56 p.m.<sup>418</sup> Roy was released.

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<sup>408</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 358; and Evidence of Jason Roy, Inquiry transcript, vol. 3 (September 10, 2003): 454

<sup>409</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 359

<sup>410</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 371

<sup>411</sup> Evidence of Trent Ewart, Inquiry transcript, vol. 7 (September 17, 2003): 1292

<sup>412</sup> Evidence of Lucille Horse, Inquiry transcript, vol. 5 (September 15, 2003): 887

<sup>413</sup> SPS Dispatch Record, exhibit P-67

<sup>414</sup> November 30, 1990 Statement of Trent Ewart, exhibit P-34

<sup>415</sup> SPS Dispatch Record, Inquiry exhibit P-67

<sup>416</sup> SPS Dispatch Record, Inquiry exhibit P-67

<sup>417</sup> Evidence of Jason Roy, Inquiry transcript, vol. 2 (September 9, 2003): 360

<sup>418</sup> CPIC Summary, Inquiry exhibit P-88

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A CPIC query of the name “Neil Stonechild” was made some minutes later (11:59 p.m.).<sup>419</sup> CPIC records also indicate that Cst. Hartwig conducted a CPIC query of the name “Bruce Genaille” at 12:04 a.m. There is then no further record of searches or activities by Cst. Hartwig and Cst. Senger for some 12 minutes. At 12:17 a.m., the officers reported Stonechild GOA (gone on arrival) and cleared the call.<sup>420</sup> They were then dispatched at 12:18 a.m. to investigate a suspicious person looking into garages on O’Regan Crescent. While O’Regan Crescent is only about a block away from Snowberry Downs, approximately six minutes elapsed before the officers indicated on their MDT that they were at the scene (12:24 a.m.). The officers cleared the O’Regan dispatch within 3 minutes of arriving at the scene (12:27 a.m.), indicating GOA on their MDT. Curiously, Cst. Senger conducted a CPIC query of Trent Ewart at 12:30 a.m.; long after the officers cleared the Ewart complaint.

Thus, the time between the Horse CPIC and the clearance of the Ewart complaint was 21 minutes. It took an additional 6 minutes for the officers to arrive at O’Regan Crescent, the scene of the next dispatched complaint. What happened in this 27 minute interval? Where were Hartwig and Senger and what were they doing?

I am satisfied that Cst. Hartwig and Cst. Senger had adequate time between the Snowberry Downs dispatch and O’Regan Crescent dispatch to transport Stonechild to the northwest industrial area of Saskatoon.

I am also satisfied that Stonechild died in the early morning hours of November 25, 1990, as a result of cold exposure. The evidence establishes that Stonechild was not seen alive or heard from after the night of November 24/25, 1990. Further, Dr. Adolph, the Pathologist, stated that the time of death could have been as early as November 25, 1990.

### Counsels’ Submissions

Counsel for the officers and the other police parties at the Inquiry offered a number of submissions as to why Stonechild could not have been in the custody of Cst. Hartwig and Cst. Senger on November 24/25, 1990. The following are the principal arguments that were advanced.

It was submitted by Counsel for the two Constables, and for the other Saskatoon Police Service parties, that Roy’s evidence could not be trusted in light of the inconsistencies and contradictions in his testimony. There were a number of errors and inconsistencies in Roy’s evidence, but, as I have noted, most can be explained by the disorientating lifestyle he was leading at the time. However, as I stated in my review of the evidence, I have found that the core of Roy’s testimony—that he was stopped by the police on November 24/25, 1990, and that he observed Stonechild in the back of a police car—to be credible and corroborated by other evidence. Further, Roy’s evidence of his encounter with the officers stands uncontradicted by the evidence of Cst. Hartwig and Cst. Senger who maintained throughout their testimony that they had no recollection of stopping Roy and no memory of the 25-plus minutes they spent on a dispatch call involving Stonechild on November 24/25, 1990, notwithstanding the fact that Stonechild turned up dead on November 29, 1990.

It was also submitted that the CPIC query of Stonechild at 11:59 p.m. in fact provides evidence that Stonechild was not in the officers’ custody. The argument made was that

<sup>419</sup> CPIC Summary, Inquiry exhibit P-88

<sup>420</sup> SPS Dispatch Record, Inquiry exhibit P-67



since Cst. Senger did not include Stonechild's date of birth in the query, but rather inputted "18" in the age field, Stonechild must not have been in their custody. If he had been in their custody, at that time, it was said that they would have obtained a date of birth and entered that in the CPIC query. However, as other counsel pointed out in their submissions, the absence of a date of birth in a CPIC query could be the result of an uncooperative prisoner who refused to answer questions.

It was also submitted that Roy's evidence must be rejected because it would have been impossible for Cst. Hartwig and Cst. Senger to have arrested Stonechild by the time they stopped Roy. It was argued that the interval between 11:51 p.m. (the time the officers indicated that they were en route) and 11:56 p.m. (the time they stopped Roy) did not afford the officers enough time to arrive at Snowberry Downs, meet with Trent Ewart, find Stonechild, arrest Stonechild, and then proceed to Confederation Drive where they encountered Roy.

This argument obviously depends upon the assumption that the officers apprehended Stonechild after a search of Snowberry Downs and after meeting Trent Ewart. This assumption is not founded on the evidence. The evidence suggests that Stonechild fled the Ewart apartment after Ewart threatened to call the police. It is therefore far more likely that the officers would have encountered Stonechild outside of Ewart's apartment building either on or near the Snowberry Downs complex. The evidence is not clear whether or not the officers even spoke with Trent Ewart at all that evening. His written statement given to Sgt. Jarvis on November 30, 1990, suggests that he did speak with the police, but he denied such contact when he testified. Cst. Hartwig and Cst. Senger neither recalled nor recorded any contact with Ewart.

Counsel for the officers also submitted that Stonechild could not have been in the custody of Cst. Hartwig and Cst. Senger, because Bruce Genaille did not observe anyone in the back of the cruiser when he was stopped by the officers. This submission is based upon the assumption that Genaille was stopped by Cst. Hartwig and Cst. Senger at 12:04 a.m. on November 25, 1990, which was the time they conducted the CPIC query of Bruce Genaille. The evidence, however, indicates that this is an assumption that cannot be sustained. I point to the fact that Cst. Senger conducted a CPIC query of Trent Ewart at 12:30 a.m., long after they had cleared the call. Cst. Hartwig suggested that this after-the-fact CPIC query was conducted for "intelligence purposes". As I have indicated above, in the case of the Genaille CPIC query, Genaille's testimony established he was stopped by the officers prior to the Ewart complaint. His uncontradicted evidence was that the officers questioned him about a disturbance at 7-11 and not Snowberry Downs. As I have noted, Genaille would have certainly remembered a reference to Snowberry Downs, as he lived in that apartment complex at the time. Further, Genaille testified that he was not aware of any disturbance at Snowberry Downs prior to departure for the evening. I can only conclude from this evidence that Cst. Hartwig and Cst. Senger stopped Genaille prior to receiving the Ewart complaint. Why would Cst. Hartwig conduct a CPIC query of Genaille at 12:04 a.m.? Perhaps it was for "intelligence purposes". Perhaps they were not sure that the individual in their custody was indeed Neil Stonechild, and they were considering tracking down Genaille to identify him. There could be any number of reasons.

I would like to address one final argument made by Counsel for Cst. Hartwig. Counsel submitted that the officers must not have had Stonechild in their custody on November 24/25,

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1990, because if they had, they would have delivered him to a detention centre. Counsel submitted that the officers had no motive to do anything else. This Inquiry heard evidence of other situations where SPS officers decided to transport prisoners to remote locations rather than a recognized detention facility. One of these officers testified as to his motives:

“THE COMMISSIONER: Why did you do it?

Q. MS. KNOX: Yes, why?

A. I’ve thought about that for a long time. I don’t know. It seemed like a good idea at the time.

Q. Good idea in what context, sir?

A. What I can recall of the incident, the person was dealt with several times during my shift in which he was making a nuisance of himself at a hospital, as a matter of fact, and he was requesting a ride home. The hospital, of course, would not pursue any charges for his actions and it was a case of him requesting a ride home every night.

Q. So as a result of his requesting a ride home from the hospital and your being repeatedly called to the hospital, is that what you’re saying?

A. Yes.

Q. You dealt with him in the manner that you did?

A. Yes.<sup>421</sup>

Ultimately, the evidence did not establish what was going through the minds of Cst. Hartwig and Cst. Senger on November 24/25, 1990. The evidence did, however, establish on the balance of probabilities: a) that Neil Stonechild was last seen in their custody at approximately 11:56 p.m. on November 24, 1990; b) that he died of cold exposure in a remote industrial area in the early hours of November 25, 1990; and c) that there were injuries and marks on his body that were consistent with handcuffs.

### 2 | The Discovery and Identification of the Body of Neil Stonechild

On November 29, 1990, Richard Harms and Bruce Meyers were constructing a fence on property adjoining the Hitachi plant on 58th Street. They noticed a body lying in the snow covered field to the north of their location.

The Saskatoon Police Service was called at 12:52 p.m. Cst. Rene Lagimodiere, now a Sergeant, was dispatched to the scene and arrived at 12:58. He carried out a preliminary investigation. The police noted when the body was turned over, that the sleeves of the deceased’s jacket were pulled down over his hands, obviously to keep him warm. They also observed that the deceased’s right running shoe was missing and that the wool sock on the right foot was so worn in the heel area that the skin was exposed and discolored by dirt or gravel.

Lagimodiere was able to identify footprints made by the deceased and followed them back to a gravel parking lot off 57th Street. On cross-examination, Lagimodiere indicated that he

<sup>421</sup> Evidence of Bruce Bolton, Inquiry transcript, vol. 17 (October 10, 2003): 3297-3298