

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

Honourable Mr. Justice D.H. Wright, Commissioner

SUBMISSIONS ON BEHALF OF CST. LARRY HARTWIG

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SUBMISSIONS ON BEHALF OF CST. LARRY HARTWIG

BACKGROUND

1. The mandate of the Commission of Inquiry into Matters Relating to the Death of Neil Stonechild is to look at two primary issues:
 - i) To inquire into any and all aspects of the circumstances that resulted in the death of Neil Stonechild; and
 - ii) To inquire into the conduct of the investigation into the death of Neil Stonechild for the purpose of making findings and recommendations with respect to the administration of criminal justice in the Province of Saskatchewan.

2. It is common ground that Cst. Larry Hartwig of the Saskatoon Police Service (“SPS”) was not involved in the investigation of the death of Neil Stonechild and for this reason we have not made any significant comments on the investigation itself.

3. The evidence supports Cst. Hartwig’s position that any dealings he had with Neil Stonechild were confined to he and Cst. Senger being dispatched to deal with an unwanted and intoxicated guest (ie. Neil Stonechild) at the Snowberry Down apartments. He denies that he knowingly had Neil Stonechild in his custody the night of November 24th or early morning hours of November 25, 1990. Further, it is highly unlikely that he would have had Neil Stonechild in his custody and not been aware of Mr. Stonechild’s identity. He categorically denies that if Neil Stonechild had been in his custody that he would have transported him to the north industrial area of Saskatoon or any such like place and there released him to fend for himself.

4. Our submissions focus on the question of whether or not the evidence that has been heard at the Inquiry supports the suggestion that Cst. Hartwig had any direct dealings with Neil Stonechild on the night of November 24th or early morning hours of November 25, 1990.

ARGUMENT

I. The testimony of Larry Hartwig.

II. Was there a cover-up?

III. The testimony of Jason Roy;

A) Statements and Conduct of Jason Roy;

B) Physical Evidence;

C) Expert Evidence.

I. Testimony of Larry Hartwig

5. Cst. Hartwig testified that he has no independent recollection of his shift of November 24 – November 25, 1990 other than:

- i) The investigation of the assault that took place at Confetti's night club; and
- ii) Attending with Cst. Senger and a senior officer to advise a mother that her estranged husband had shot and killed their two children and then attempted to commit suicide.¹

6. Cst. Hartwig has reviewed the SIMMS printout of a dispatch that he received on November 24, 1990 to attend at Snowberry Down apartments as a result of a complaint of an unwanted and intoxicated guest, ie. Neil Stonechild (P-36). That report indicates that Cst.

¹ Cst. Hartwig pp. 7719-20, 20, Mar 15 – Vol 40 P-180 Cst. Hartwig's Notebook

Hartwig and Cst. Senger were dispatched to the call. There is also a record of the CPIC queries they made from their police car at that time (P-88). The chronology of events as set out in the SIMMS report and CPIC records is as follows:

23:51 – dispatched

23:56 – at scene

23:56 – CPIC query of Tracy Lee Horse (DOB: 74/04/19) by Cst. Senger

23:59 – CPIC query of Neil Stonechild (approximate age: 18 – no DOB indicated) by Cst. Senger

00:04 – CPIC query of Bruce Genaille (DOB: 67/04/21) by Cst. Hartwig

00:17 – Cleared the scene

7. The SIMMS report concluded that Mr. Stonechild was “GOA” meaning he was gone on arrival and was not located.

8. The dispatch records for that night (P-181B and P-37) indicate that at 00:18 hours Cst. Hartwig and Cst. Senger were then dispatched to a suspicious person call at O'Regan Crescent.

9. Based on a review of the SIMMS dispatch record, Cst. Hartwig states that he did not have Neil Stonechild in his custody that night.² He states that if he had known he had Neil Stonechild in his custody he would have arrested him pursuant to the warrant that was on the system.³ He denies that he transported Neil Stonechild to an inappropriate location and

² Cst. Hartwig pp. 7754-56, Mar 15 - Vol 40

³ Cst. Hartwig pp. 7767-68, Mar 15 - Vol 40

released him, such as the north industrial area of Saskatoon, that he has ever done that to any person in his custody or that he had any knowledge of any other member of the SPS being involved in the inappropriate transportation of Neil Stonechild.⁴

10. The suggestion was made to Cst. Hartwig that perhaps he had Neil Stonechild in his custody and did not realize it (ie. that Neil Stonechild provided a false name and as a result of that Cst. Hartwig released Neil Stonechild not realizing who he was). While Cst. Hartwig considered at one time that possibility, he is now satisfied that would not have happened for three reasons:

- a) He had previous dealings with Neil Stonechild and other members of his family which were found in his notes (P-182). Specific dealings with Neil included the following:
 - i) April 20, 1989 street check (P-183);
 - ii) August 10, 1990 – Investigation pertaining to the assault on Eddie Rushton and Neil Stonechild by Garry Pratt et al (see Police Report: P-73, and Cst. Hartwig’s notes P-182);
 - iii) October 21, 1990 – Issuing of a traffic ticket for driving without a license to Neil Stonechild (P-183).

- b) It was noted from the photographs (P-28 #42) that Neil Stonechild had the initials “NS” on his right hand. As was testified to by a number of officers, this is commonly used to identify suspects. Had Neil Stonechild given a false name it would have been observed that the name did not match the initials.

⁴ Cst. Hartwig pp. 7791, 7831, Mar 15 - Vol 40

- c) The CPIC check was for Neil Stonechild of an approximate age of 18. Cst. Hartwig testified and it was confirmed by a number of police witnesses, that if an individual actually had been in their vehicle they would have got a date of birth. A CPIC check with a general age would indicate that the individual was not in the vehicle.

Based on the above Cst. Hartwig is satisfied that as at November 25, 1990 he would have recognized Neil Stonechild if he had seen him and that accordingly if he had been in his custody and given a false name, Cst. Hartwig would have known that was the case and not released him.⁵

11. Both Cst. Senger and Cst. Hartwig were subject to wire taps and surveillance. It was confirmed by S/Sgt. Zoorkan and Chief Superintendent McFayden that neither resulted in any evidence suggesting that either officer was involved in the death of Neil Stonechild.⁶

12. In reviewing the evidence there were no admissions made by Cst. Hartwig in 1990 and 1991 or later when the investigation recommenced in February of 2000 that he was somehow involved in the death of Neil Stonechild. A review of his interview with Sgt. Ken Lyons and Sgt. Nick Hartle that took place on May 18, 2000 (P-184) confirms that Cst. Hartwig had a limited recollection of November 24 – 25, 1990 and he initially considered the possibility he might have had Neil Stonechild in his custody by mistake. However, his statement is consistent throughout that:

- 1. He did not knowingly have Neil Stonechild in his custody;**

⁵ Cst. Hartwig pp. 7744-55, Mar 15 - Vol 40

⁶ Sgt. Murray Zoorkan pp. 5988 – 5990, Jan 6 - Vol 31
Chief/Supt. MacFayden pp. 6140 – 41, Jan 7 – Vol. 32

2. **He did not strike Neil Stonechild or cause him any injury;**
3. **He did not drop Neil Stonechild, or anyone else off in an unauthorized area;**
and
4. **If he had known he had Neil Stonechild in his custody he would have arrested him and taken him to the police station pursuant to the warrant that was on the system for his arrest.⁷**

13. Cst. Hartwig's position on these matters did not change in his testimony at the Inquiry. There is no reason to reject the sworn testimony of Cst. Hartwig.

II. Cover-up?

14. Throughout the Inquiry there has been a suggestion that there was a cover-up of the police involvement in the death of Neil Stonechild. Particulars of the alleged cover-up were far and few between. Concerning Cst. Hartwig we note the following:

- a) A SIMMS record was prepared and maintained confirming that Cst. Hartwig and Cst. Senger were dispatched to try and locate Neil Stonechild (P-36).
- b) Although we only have the police file that existed as at December 5, 1990 (P-61) we know by that time Sgt. Keith Jarvis who was investigating the death of Neil Stonechild, had obtained and recorded in his report and his notes the fact that Cst. Hartwig had been dispatched to try and locate Neil Stonechild on the night of November 25, 1990.⁸

Sgt. Jarvis believed that he would have requested a follow-up from Csts. Hartwig and Senger as to whether they had any contact with Neil Stonechild. Cst.

⁷ Cst. Hartwig's Interview P-184 pp. 8, 9, 11, 14, 15, 16, 27, 29, 30, 31

⁸ P-61, P-106, p. 87

Hartwig testified that he has no direct recollection of that but it is possible such a request was made in writing or simply orally. He also advises that his response could have been in writing or orally. Bearing in mind the SIMMS record showed that Neil Stonechild was “GOA” it is not unlikely that Hartwig and Senger simply confirmed orally that the record was in fact correct and that they had not had any contact with Neil Stonechild.

- c) If members of the Saskatoon Police Service were attempting to cover- up the fact that Cst. Hartwig had dealings with Neil Stonechild, preparing a SIMMS record that showed that he had been dispatched to locate Neil Stonechild and Sgt. Jarvis preparing a report and putting it on file and in his notes would be completely contrary to an alleged cover-up.
- d) Chief/Supt. McFayden, who oversaw the RCMP investigation confirmed that the SPS was fully cooperative.⁹
- e) Any cover-up would have to include numerous members of the SPS. Yet no one, including Cst. Ernie Louttit and Sgt. Eli Tarasoff, both who personally were interested in the file and were actively reviewing the circumstances surrounding the death of Neil Stonechild, had heard anything suggesting that Cst. Hartwig or any other members of the SPS were involved in the death of Neil Stonechild.¹⁰ Cst. Louttit was working on the street and dealing directly with Neil’s family, friends and former associates on a daily basis. Sgt. Tarasoff had a son who was

⁹ Chief/Supt. McFayden pp. 6115 – 16, 6184-85, Jan 7 - Vol 32

¹⁰ Cst. E. Louttit pp. 2683-84, pp. 2891-92, Oct 8 - Vol 15

Sgt. E. Tarasoff pp. 3486-8, Oct 14 - Vol 18

Sgt. E. Tarasoff pp. 3490-91, Oct 14 - Vol 18

the same age and a friend of Neil Stonechild. Sgt. Tarasoff also had contact with Marcel and on a couple occasions, with Jason Roy as well. He did not hear any suggestion that Neil Stonechild was in the back of a police car.¹¹

- f) The “theory” that Cst. Hartwig had turned Neil Stonechild over to the operators of the paddy wagon who then left him in the north industrial area of Saskatoon is completely without foundation. Only one of the operators of the paddy wagon was called, Cst. Geoff Brand, and he categorically denied that this took place.¹² There is absolutely no evidence to support this allegation and further to cover this up would have involved almost every member of the Saskatoon Police Service, which frankly is not conceivable.
- g) Former Sgt. Jim Maddin testified that he had heard the names Hartwig and Senger mentioned in relation to the Neil Stonechild death sometime in 1990 or 1991. It is somewhat unusual that he didn’t mention this in his interview with the RCMP (P-123) and the first he mentioned it was quite some time later when he spoke to the press in his capacity as Mayor. Nonetheless, he confirmed that when he heard their names there was nothing unusual about it, no attempt to cover this up was made by anyone, it was not disclosed to him as being anything confidential and having reviewed both the SIMMS records and the police report which showed that Hartwig and Senger’s dealings with Stonechild were documented he indicated it was not surprising that he would have heard their names mentioned. He did not hear that they had any direct dealings with Neil Stonechild nor that they had done anything wrong.¹³ S/Sgt. Murray Zoorkan

¹¹ Sgt. E. Tarasoff p. 3474, Oct 14 - Vol 18

¹² Cst. Brand pp. 2736, 2741-45, Oct 7 - Vol 14

¹³ Sgt. Maddin pp. 5527-39, Nov 28 - Vol 29

confirmed as well that it would not be unusual to have heard the names Hartwig and Senger mentioned in those circumstances and if you wanted to hide that fact you would not record it.¹⁴

- h) Finally, what is missing throughout is any reason for Csts. Hartwig and Senger to drop off Neil Stonechild other than at the police station. There was a warrant for his arrest. There was no need to charge him or do any complicated paper work. All they had to do was take him to the police station and turn him in. There was no motive or reason for them wanting to leave him at large. Every description of Cst. Hartwig has been that he was a hard working police officer who played things by the book. As Sgt. Wooley testified, Cst. Hartwig would give his mother a jaywalking ticket and if there was a warrant out for the arrest of Neil Stonechild and he had him in his custody he would have brought him in.¹⁵

III. Testimony of Jason Roy

15. At the end of the day, Jason Roy is the only person who claims to have first hand knowledge that Neil Stonechild was in the back of a police car. There are two issues that the testimony of Jason Roy raises:

1. Did he see Neil Stonechild in the back of a police car on November 24 – 25, 1990? and
2. If he did see Neil Stonechild in the back of a police car was Cst. Larry Hartwig one of the occupants of that police car?

¹⁴ S/Sgt. Zoorkan pp. 5984-88, Jan 6 - Vol 31

¹⁵ Sgt. Wooley pp. 3561-62, Oct 15 - Vol 19

16. Our position is that while Jason Roy may at this time honestly believe that he saw Neil Stonechild in the back of a police car, he in fact, did not. On November 24, 1990 Roy and Neil Stonechild, after consuming a considerable amount of vodka and while in a highly intoxicated condition, walked to the Snowberry Down apartments where Neil Stonechild was attempting to locate an ex-girlfriend, Lucille Horse. Because Neil did not know the specific apartment number of Lucille, they banged on a number of doors trying to locate her without apparent success. Roy, after a period of time, wanted to abandon the search and was aware that the police would be arriving soon, either as a result of someone in the apartment building telling them that the police were being called or his recognition that an intoxicated person moving down the hall, banging on one door after another, late on a Saturday night, would soon attract police attention. Neil and Jason Roy argued and then parted company.

17. Jason Roy made his way to the 7-11 store where he bought the “munchies” which the witnesses at the Binning residence confirmed he returned with.¹⁶ While en route to the Binning’s, Roy was stopped by Cst. Hartwig and Cst. Senger who asked Roy for his name. He gave them the name and birth date of his cousin Tracy Lee Horse. This might have been because he thought the police had a warrant out for his arrest although the reality is that there was no warrant and he was not on the loose from a group home. We suspect he gave the false name because he was concerned that the police were investigating the ruckus Neil had caused at the Snowberry Down apartments and his name may have been provided to the police as one of the people who was also involved. Undoubtedly Cst. Hartwig or Cst. Senger would have asked him about Neil Stonechild (as they did with Bruce Genaille) and at that point he would have known for certain that the police were trying to locate Neil Stonechild.

¹⁶ Cheryl Antoine – p. 2239, Sept 25 – Vol 12

18. Roy returned to the Binning residence, delivered up the munchies and when asked where Neil Stonechild was, logically concluded that he had been picked up by the police. He did not express that he had seen Neil with blood all over his face in a police car screaming for his life.¹⁷

19. In the next few days questions were being asked about the whereabouts of Neil. Roy may very well have continued with his assumption that he must have been picked up by the police. The body of Neil was found and Roy then attended Neil's funeral. Everyone at the funeral observed the marks on Neil's nose which were significantly pronounced as a result of the freezing and thawing process. (We now have the benefit of the photo enhancements which show the condition of Neil's injuries as at the time of death as well as the expert testimony of Dr. Lew who confirmed what Dr. Adolph, the pathologist, Dr. Fern, the coroner, Cst. Rene Lagimodiere, the initial police investigator, and Sgt. Robert Morton, the identification officer, all stated, that there were no gashes or blows to Neil's face but only what were described as minor abrasions or "scratches"). However when Jason Roy saw the body at the funeral, the marks on the nose would have seemed very pronounced and appeared as a "gash". He expressed shock to his girlfriend, Cheryl Antoine, when he saw the body indicating that when he had last seen Neil, he was not suffering any injuries.¹⁸

20. Roy now had a second assumption. The first is that Neil was picked up by the police. The second is that he must have suffered an injury to his face while in police custody. These two assumptions led Roy to testify at the Inquiry that when he last saw Neil Stonechild he was in the back of a police car bleeding from a gash across his nose, screaming for his life. We will

¹⁷ Cheryl Antoine pp. 2247-48, P-55, pp. 2-3 Julie Binning pp. 2123-24, 2155-6, P-53 p. 1 Sept 25 – Vol 12

¹⁸ Cheryl Antoine pp. 2248-49, P-55 pp. 3-4, Sept 25 – Vol 12

review the statements made by Jason Roy, the physical evidence and the expert evidence, all which suggest that this was not possible.

21. It is possible that Jason Roy is lying. He could be doing this to protect a third party who was involved in the death of Neil Stonechild or to protect himself if he felt there were some possible repercussions if he identified a third party as being involved. Gary Pratt confirmed that being a “rat” on the street was a virtual death sentence.¹⁹

22. The other conclusion, and we agree the more likely one, is that Jason Roy took his assumption that Neil Stonechild was picked up by the police, added to it his assumption, after he saw the condition of Neil’s face at the funeral, that Neil must have suffered a gash to his face while in the custody of the police and that combined with the pressure that was placed upon him by family, friends and peers to explain what happened to Neil on the night of November 24 – 25, 1990, led him to the belief that he in fact did see Neil Stonechild in the back of a police car.

23. Those assumptions and beliefs have now become “fact” in his mind. Dr. Yuille confirmed that peer expectations can lead to a false memory.²⁰ The expert testimony of Dr. Yuille and Dr. Arnold, which in a large part did no more than confirm what any experienced fact finder already knows, is that peoples’ memories and recollections are altered and molded by beliefs, assumptions and outside pressures and this can eventually lead to a belief in a certain set of facts which although honestly held, is not accurate.²¹ As Dr. Richardson put it, the brain doesn’t like “holes” and we tend to fill them up.²² Jason Roy didn’t know what happened to Neil after he last saw him outside the Snowberry Down apartments. He filled the “holes” in his

¹⁹ Gary Pratt pp. 6332-33, Jan 7 – Vol 32

²⁰ Dr. Yuille pp. 7487-88, Mar 12 – Vol 39

²¹ Dr. Yuille pp. 7447 – 7456, Mar 12 – Vol 39 Dr. Arnold pp. 7035 – 7038, Mar 10 – Vol 37

²² Dr. Richardson p. 5785, Jan 5 – Vol 30

memory with the assumptions he made. The experts confirmed how Jason Roy in these circumstances could come to now honestly believe that he saw Neil Stonechild in the back of a police car when in fact he did not.²³

24. Set out below is a review of the statements attributed to Jason Roy, the physical evidence and the expert evidence, all which suggest that his present testimony, that he saw Neil Stonechild in the back of a police car, is not reliable.

A. Statements of Jason Roy

25. We heard considerable evidence from various witnesses as to what they had heard about the possibility that Neil Stonechild was in the back of a police car. Some of these statements were attributed to rumour and innuendo, some of them attributed to Jason Roy, either first or second hand. Everyone's memories are somewhat clouded by the passage of time and the fact that the full "story" or "theory" that Neil Stonechild was seen in the back of a police car bleeding and screaming for his life received widespread publication and distribution as a result of the February 22, 2000 Star Phoenix article (P-72). The RCMP investigation and their interview of the various witnesses only took place thereafter. However, Jason Roy's statements and conduct on November 25, 1990 and over the course of the next few years thereafter, casts serious doubt on whether he ever actually saw Neil Stonechild in the back of a police car. We refer to the following.

26. Jason Roy returned to the Binning residence in the early morning hours of November 25, 1990. The people who were at the residence that night recall the following:

²³ Dr. Arnold – pp. 7031-7038, Mar 10 – Vol 37 Dr. Richardson – pp. 5856-58, Jan 6 – Vol 31

Cheryl Antoine:

- Neil and Roy left to get “munchies” with no mention of locating Neil’s old girlfriend.²⁴
- Roy returned with the munchies and said “look what I got”.²⁵
- When asked of Neil’s whereabouts she confirmed her statement to the RCMP (P-55) that Roy said he “thought” he saw Neil in the back of a police car and did not mention any injuries.²⁶
- Stella Bignell called the next day and also called and spoke to Roy the day Neil’s body was found. To Cheryl’s knowledge Roy never told Mrs. Bignell that he had seen Neil in the back of a police car, nor did Cheryl.²⁷ This is confirmed by Mrs. Bignell’s testimony that she never heard this until late in the spring of 1991. This led to discussions about Roy possibly seeing a hypnotist to help him remember.²⁸
- Roy, to Cheryl’s knowledge, never spoke to Mrs. Bignell again after the funeral.²⁹
- Cheryl provided a detailed description of the interview Roy had with the police. This matches the description of the interview where Roy says he gave his statement to the police that he saw Neil in the back of a police car (Cheryl pp. 2218-19, Roy p. 374-77, 484-92). This also matches Sgt. Jarvis’ description of the statement he took from Roy (P-6) that forms part of P-61 and in which Roy makes no mention of seeing Neil in the back of a police car. Cheryl confirms that she was present throughout the interview and

²⁴ Cheryl Antoine p. 2235, Sept 25 – Vol 12

²⁵ Cheryl Antoine p. 2239, Sept 25 – Vol 12

²⁷ Cheryl Antoine pp. 2241-42 P-55 pp. 2-3, Sept 25 – Vol 12

²⁸ Cheryl Antoine pp. 2223-24, 2230-31, 39, Sept 25, Vol 12

²⁹ Cheryl Antoine p. 2230, Sept 25, Vol 12

Roy did not say anything about Neil being in the back of a police car. Roy himself acknowledged that she was present throughout.³⁰

Julie Binning:

- She recalled Neil and Roy leaving and then Roy returning alone. Someone asked what happened to Neil. Julie recalls Roy's reply:

“We just asked him where Neil was and he said that he had lost Neil. He had – he just lost Neil on the way back. And then we – we asked him like how did he lose how did you lose Neil?” and then he said “he might have been picked up by the police.”³¹ (emphasis added)

- The group then stayed up and played cards. Roy did not seem upset.³²
- Roy acknowledged to her that he was really drunk and wasn't sure about what happened.³³

Flora Binning:

- She recalled Neil leaving to get some “munchies” and possibly some alcohol. She had no recollection of Roy at all.³⁴ Roy never did give her information directly about Neil

Stonechild.³⁵

³⁰ Cheryl Antoine pp. 2209-10, 2218-19, pp. 2247-48, P-55, P-56 p 2, Sept 25 – Vol 12
Roy p-707, Sept 11 – Vol. 4, 374-77, Sept 10 – Vol 3

³¹ Julie Binning – pp. 2123-24 See also p. 2156 and P-53, p. 1, Sept 25 – Vol 12

³² Julie Binning pp. 2194-95, Sept 25 – Vol 12

³³ Julie Binning p. 2167, P-53 pp. 2-3, Sept 25 – Vol 12

³⁴ Flora Binning pp. 1415-1417, Sept 18 – Vol 8

³⁵ Flora Binning p. 1442, Sept 18 – Vol 8

27. There was no indication by any of them that Roy was upset. In fact they stayed up and played cards. Roy told Commission counsel that when he got home he went to bed and that somebody probably asked him what happened to Neil and he would have said "He got picked up". Yet at the Inquiry he testified how traumatized he was over seeing Neil in the police car and told the RCMP (P-7) that he was "scared shitless" when he saw him.³⁶ The statements attributed to Roy, his demeanour and conduct are all inconsistent with him having seen Neil in the back of a police car, bleeding and screaming for his life.

28. Jason Roy was aware on November 25, 1990 that Mrs. Stella Bignell was trying to locate Neil. Mrs. Bignell confirmed that she was looking for information about Neil's death and was phoning around.³⁷ Roy did not tell her, nor either of Neil's brothers, Marcel or Jason, about seeing Neil in the back of a police car. Jason Roy attended Neil's funeral and again did not make any statements to Mrs. Bignell or her family about seeing Neil in the back of a police car. When Mrs. Bignell was interviewed by the Star Phoenix on March 4, 1991 (P-1) she still had not heard anything that suggested Neil was in the back of a police car. The first time that Mrs. Bignell states that she heard anything about Neil being in the back of a police car was when Jason Roy spoke to her at a bingo some time later in the spring of 1991.³⁸ Even at that time he did not mention anything about Neil being injured or bleeding.³⁹

³⁵ Jason Roy, P-8 p. 23, P-7 p. 2

³⁶ Stella Bignell pp. 50 – 53, Sept 8 – Vol 1

³⁸ Stella Bignell – pp. 65-66, Sept 8 – Vol 1

³⁹ Stella Bignell– p. 59, Sept 8 – Vol 1

29. Marcel did not have any information about Neil being in the back of a police car until at least after late spring of 1991 and never passed any information on to his mother or Cst. Louttit. He had no recollection of ever speaking directly to Jason Roy. He was trying to piece things together.⁴⁰ In his statement to the RCMP (P-5) the information he eventually attributed to Jason Roy is that Roy saw Neil laying in the back seat, apparently knocked out and no mention of any injuries.⁴¹

30. Tracy Lee Horse, Roy's good friend, never heard anything about Neil being in a police car until the investigation began in 2000.⁴²

31. Jason Stonechild spoke to Cst. Louttit in December of 1990 and he still believed Neil's death was gang related.⁴³ Cst. Louttit who kept in contact with the family never heard of any police involvement.⁴⁴

32. While we can appreciate that Roy may have had some concerns about speaking to the police about this matter, it is inconceivable that if he had actually seen Neil in a police car that he would keep this information from Stella Bignell and her family, knowing that they were trying to first of all learn where Neil was and then after his body was discovered, trying to find out what had happened to him.

⁴⁰ Marcel Stonechild – pp. 334-42, Sept 9 – Vol 2

⁴¹ Marcel Stonechild P-5 p. 3, Sept 9 – Vol 2

⁴² Tracy Lee Horse pp. 1477, 1489-90, Sept 18 – Vol 1

⁴³ Cst. Louttit pp. 2825-27 Ex. P-65, Oct 8 – Vol 15

⁴⁴ Cst. Louttit pp. 2683-84, 2891-92, Oct 8 – Vol 15

33. Cheryl Antoine stated that when Jason Roy saw Neil's body at the funeral he was shocked to see injuries to his face and specifically the gash across his nose. He told her that Neil was not suffering any injuries when he had last seen him.⁴⁵ This directly contradicts his testimony now that when he saw Neil in the back of a police car he had a gash across his nose and his face was covered in blood.⁴⁶

34. Various people were pressing Roy to provide details of what had happened the night Neil had gone missing. Some of these people suggested Jason Roy undergo hypnosis to assist him in trying to recall what had happened.⁴⁷ This culminated in a visualization exercise with Brenda Valiaho in November of 1991 where Jason was seeking her assistance in "recalling" what had happened that night.⁴⁸ She believed that at this session in November, 1991, Roy for the first time, disclosed that he had seen Neil in the back of a police car.⁴⁹ This difficulty in recalling what had taken place with Neil Stonechild is consistent with someone who has reconstructed and assumed what happened and then adopted it as fact.

35. Dinah Fraser testified that sometime after Neil Stonechild's death she spoke to Jason Roy and he said that he had seen Neil Stonechild in a police car screaming "they are going to kill me". She did not recall him making any reference to seeing blood nor did she refer to any

⁴⁵ Cheryl Antoine pp. 2247 – 49, Sept 25 – Vol 12

⁴⁶ Jason Roy – pp. 371, Sept 10 – Vol 3, 823-24, Sept 15 – Vol 5, P-7 p. 2, P-8 p. 21

⁴⁷ Cheryl Antoine p. 2231 & 2247, Sept 25 – Vol 12, Gary Horse – p. 1024 – 25, Sept 15 – Vol 6
Julie Binning, p. 2161 – 62, Sept 25 – Vol 12

⁴⁸ Brenda Valiaho, pp. 1069 – 70, 1098, 1103, 1109 – 10, Sept – Vol 6

⁴⁹ Brenda Valiaho pp. 1086 – 87, 1111 – 12, 1121, Sept 16 – Vol 6

injuries.⁵⁰ She is not sure about when she received this information. She did not make a note of it, nor did she advise anyone of it. In relation to her evidence we note the following:

- a) She had heard that the Pratts were involved in Neil's death and phoned the police about it. Yet, she did not contact anyone including her superiors, the Crown Prosecutor's Office or even the Stonechild family to advise of the information she says she received from Roy.⁵¹
- b) Stella Bignell never ever heard this information from Dinah Fraser nor did any other family member. Perhaps more significantly even Pat Pickard who also operated a group home in 1990 and continues to do so, never heard anything about Neil being in the back of a police car until 2000.⁵²
- c) It is clear that by the time she spoke to Jason Roy it was after the funeral and by that time Jason Roy would have already been assuming that Neil had been picked up by the police and based on what he saw at the funeral that Neil had suffered a gash to his nose. In other words Roy had already concluded what had happened with Neil and at best was passing this on to Fraser. We would suggest that Fraser herself recognized the speculative nature of his story and that is why she did not make a note of it nor take any action.

36. Jason Roy gave a written statement to the police on November 30, 1990. (P-6) The statement is a free narrative statement and is written in his own hand. In it he makes no mention whatsoever that he saw Neil in the back of a police car. When he was first interviewed by the RCMP he made no reference to this statement and that was because the police file (P-61) at that time had not yet been located and no one knew of the existence of the statement.

⁵⁰ Dinah Fraser p. 1542-43 and p. 1558, Sept 22 – Vol 9

⁵¹ Dinah Fraser p. 1570-71, Sept 22 – Vol 9

⁵² Pat Pickard pp. 241-242, Sept 8 – Vol 1

Once the file was found and his statement located Roy was challenged as to why he had not mentioned this statement earlier. His explanation was that he had forgotten about it but that it was a false statement and that he had in fact told the SPS about Neil being in the back of a police car. (It is interesting to see how his counsel led him through this area at his interview with Commission counsel).⁵³ This is contradicted by Cheryl Antoine who confirmed she was present throughout when he gave his statement to the police. Roy confirmed that she was present throughout. She stated that when Roy spoke to the police he made no mention about Neil being in the back of a police car and that after the statement she and Roy discussed him undergoing hypnosis to help him recall what had happened. When asked then why it would be dated November 30th when he says he gave it December 20th Roy changed his testimony to state that he was not asked to date it, only to sign it, even though the narrative is fully in his handwriting.⁵⁴

37. Jason testified at the Inquiry that the November 30, 1990 statement (P-6) was in fact given two days before his birthday (ie. December 20th) when he was arrested and he gave the statement so that he would be released from custody at the police station.⁵⁵ A review of the police records indicates that Jason in fact never was in custody at the police station on that date but had been arrested on a shoplifting charge and released on an Appearance Notice.⁵⁶ Chief/Supt. McFayden confirmed that Jason Roy never ever stated to the RCMP that he had been taken to the police station where he was held in custody and told to change his statement.⁵⁷

⁵³ Jason Roy, P-8 pp. 20-35

⁵⁴ Jason Roy p. 642, Sept 11 – Vol 4

⁵⁵ Jason Roy pp. 379 – 81, 382-83, Sept 10 – Vol 3

⁵⁶ P-18, 21, 27, 40, Cst. Lewis pp – 1496-1525, Sept 22 – Vol 9

⁵⁷ Chief/Supt. McFayden p. 6176, Jan 7 – Vol 32

38. More significantly, we know that the statement of November 30, 1990 was already in existence on December 5th or 6, 1990 when Cst. Louttit copied the file. Therefore this could not have been a statement given by Jason Roy on December 20th.

39. Roy acknowledged that he never told anyone about the “false” statement (P-6) and that when finally confronted with this statement he was surprised that it existed.⁵⁸ He was adamant that the statement was given two days prior to his birthday (ie. December 20th).⁵⁹ When challenged on these matters at the Inquiry, Roy reverted to his normal posture when challenged with facts that contradicted his testimony and that was to offer no explanation.⁶⁰ Other examples of this type of testimony from Roy include the following:

a) Roy at various times gave a detailed description of the driver of the police car. He gave this description to Gary Horse⁶¹ and he indicated to Father Andre Poilievre that he could identify the driver and had seen him at a function they were attending.⁶² He described an officer who was well over six feet tall, had a moustache, curly hair and pop bottle thick glasses. He indicated that he would have no difficulty identifying this officer. This was confirmed with Commission counsel by Roy and he stated that he assumed he was describing either Cst. Hartwig or Cst. Senger.⁶³ By the time he got to the Inquiry, it was clear that this physical description did not in any way match Cst. Hartwig, who was likely the operator of his police car on November 25, 1990, or Cst. Senger. His testimony at the Inquiry then became that he could not recall a physical description of the driver of the police car or explain why this description didn't match Cst. Hartwig or

⁵⁸ Jason Roy pp. 737-739, Sept 15 – Vol 5

⁵⁹ Jason Roy p. 380, pp. 479 – 87, Sept 10 – Vol 3

⁶⁰ Jason Roy pp. 484 – 492, Sept 10 – Vol 3, pp. 712 – 25, Sept 11 – Vol 4, p. 737 – 752, Sept 15 – Vol 5

⁶¹ Gary Horse pp. 1026 – 1031, Sept 16 – Vol 6

⁶² Father Andre Poilievre pp. 1383 – 86, Sept 17 – Vol 7

⁶³ Jason Roy pp. 505 – 520, Ex. P-8, pp. 15 – 20, Sept 10 – Vol 3

Cst. Senger.⁶⁴ Dept. Chief Wiks testified that they had received this description from the RCMP and they were asked to check to see if they had any officers with thick glasses. Three were identified. None were Cst. Hartwig or Cst. Senger.⁶⁵

- b) When interviewed by Commission counsel Roy readily agreed with his own counsel's statement that the size of the bottle of liquor purchased was a 40 ounce of Silent Sam vodka and that there was no doubt about this.⁶⁶ When it became obvious at the Inquiry that there was some question about his level of impairment the size of the bottle became a 26 or 40 ounce,⁶⁷ and when confronted with his earlier statement given at Commission counsel's interview he stated that he did not know.⁶⁸
- c) At various times Jason Roy stated that he did not go to the police with his story because he was scared to talk to them but then directly contradicts that by stating that he gave them a statement initially that said that he saw Neil Stonechild in the back of a police car and that later in 1991 when the police still hadn't done anything about it he had gone down to the police station himself to speak with an investigator from homicide and told him he had seen Neil, bleeding, in the back of a police car.⁶⁹

⁶⁴ Jason Roy pp. 595 – 600, pp. 614 – 622, pp. 666 – 7, Sept 11 – Vol 4

⁶⁵ Deputy Chief Wiks p. 6732, Jan 9 – Vol 34

⁶⁶ Jason Roy Ex. P-8 p. 6, p. 410, Sept 10 – Vol 3

⁶⁷ Jason Roy p. 369, p. 432, Sept 10 – Vol 3, pp. 837 – 38, Sept 15 – Vol 5

⁶⁸ Jason Roy pp. 581-584, Sept 11 – Vol 4

⁶⁹ Jason Roy pp. 710-11, Sept 11 – Vol 4

- d) Jason Roy maintained that he recalled throughout that he had seen Neil Stonechild in the back of a police car bleeding and screaming for his life. He could not offer any explanations why he didn't tell anybody at the Binning residence initially; why if he had such a clear recollection he would have discussed undergoing hypnosis to try and help him recall what happened that night or why he went through a visualization exercise with Brenda Valiaho in November of 1991 to assist him in recalling.
- e) Roy had been saying throughout that he had seen Neil "handcuffed" in the back of the police car. At the Inquiry he said that he actually could not see the handcuffs and was simply assuming Neil was in handcuffs.⁷⁰ Along the same lines he stated that he could not see if the operator of the vehicle had a moustache or glasses yet that is exactly how he described the driver of the police car to a number of people.⁷¹
- f) He stated that he had never heard that Gary Pratt was possibly involved in the death of Neil Stonechild.⁷² This seems frankly impossible in light of the fact that everyone including the police and people on the street as well as Stella Bignell and her family were aware that Gary Pratt had been involved in assaulting Neil Stonechild and Eddie Rushton, that Neil was called to testify against Gary Pratt and as a result the word on the street was that Gary Pratt or someone from the Pratt family was involved in the death of Neil Stonechild. (Interestingly, Gary Pratt, who was good friends with Marcel⁷³ and who had spoken to Jason Roy before 2000, had not heard of any suggestion that the police

⁷⁰ Jason Roy P-7, p. 2, p. 668 p. 716, Sept 11 – Vol 4

⁷¹ Jason Roy p. 667, Sept 11 – Vol 4

⁷² Jason Roy P-8 pp. 40-41, pp. 587-592, Sept 11 – Vol 4

⁷³ Gary Pratt pp. 6351-52, Jan 8 – Vol 33

were involved until after the RCMP investigation began in 2000.⁷⁴) There is no explanation as to why he would be fearful of the Pratts and sought them out to ensure them that he was not fingering them in the death of Neil Stonechild if in fact he was telling everyone it was the police.⁷⁵

- g) Roy said he was unlawfully at large from a group home. When it was shown that he in fact wasn't he changed his answer to that he was on the run. When asked for an explanation – he had none.⁷⁶ He said he was arrested on December 20, 1990, gave a false statement and was delivered to Kilburn Hall.⁷⁷ At the Inquiry, he had to admit that didn't happen.⁷⁸

40. When asked for an explanation for all of these obvious contradictions his response was invariably the same: he didn't have one.

B. Physical Evidence

41. It is unfortunate that the enhanced photographs that were ultimately prepared by the University of Saskatchewan and supplied by the RCMP depicting the condition of the body of Neil Stonechild at the time of his death were not available at the outset of the Inquiry (P-188 and P-190). Those photos confirmed the testimony of the coroner, Dr. Fern⁷⁹, the pathologist, Dr. Adolph⁸⁰, Dr. Dowling⁸¹ and the initial investigating officers⁸², that there were no injuries

⁷⁴ Gary Pratt pp. 6320-22, 6330, 6342-44, Jan 8 – Vol 33

⁷⁵ Gary Pratt pp. 6245, pp. 6342 – 44, Jan 7 – Vol 32, Jason Roy, pp. 677-691, Sept 11 – Vol 4

⁷⁶ Jason Roy p. 415, pp. 498 – 02, P-18, 19, 20, Sept 11 – Vol 4

⁷⁷ Jason Roy P-8, p. 32

⁷⁸ Jason Roy pp. 770-772, Sept 15 – Vol 5

⁷⁹ Dr. Fern pp. 1792-3, 1829-31, 1835-38, Sept 23 – Vol 10

⁸⁰ Dr. Adolph pp. 1965-66, 1989, 2109-20, Sept 24 – Vol 11

⁸¹ Dr. Dowling p. 1209, 1218, 1227, 1271, Sept 17 – Vol 7

⁸² Cst. Lagimodiere pp. 1685-86 and P-61, Sept 23 – Vol 10

indicating that a beating had been suffered by Neil Stonechild and certainly no evidence of a gash to his nose. The photos (P-188 and P190) directly contradict Jason Roy's testimony that Neil Stonechild had a significant gash to his nose that was bleeding and had resulted in his face being covered with blood.⁸³ The photos do not reveal any blood on the clothes of Neil Stonechild and none was observed.

42. The marks on the nose which are seen in the photos (P-28 #41) taken at the autopsy and which were the photos most often on display at the Inquiry, all became more pronounced postmortem as a result of the freezing and thawing process and not as a result of any injuries.⁸⁴ That explains why those at the scene did not see what was depicted in the autopsy photos.⁸⁵ Marks and scrapes that were seen are common from falling down in a disorientated state.⁸⁶

43. Not only is there no physical evidence to support the testimony of Jason Roy but what physical evidence there is directly contradicts his testimony that Neil Stonechild had a gash to his nose which was covering his face in blood.

44. Jason Roy testified that when the police asked him for his identification he gave the name Tracy Lee Horse. We note from the CIPC record this was done at 23:56. Eight minutes later (ie. 00:04) Bruce Genaille was CPIC'd by Cst. Hartwig. Genaille was asked to provide identification which he did. He remained outside the police car for 5 – 10 minutes while his identification was verified.⁸⁷ He was adamant that there was no one in the back of the police

⁸³ Jason Roy: p. 376-78, Sept 10 – Vol 3, p. 626, P-8, p. 21, Sept 11 – Vol 4

⁸⁴ Dr. Adolph, pp. 2013 – 15, Sept 24 – Vol 11 Dr. Lew pp. 8165-67, Mar 17 – Vol 42

⁸⁵ eg. Cst. Lagimodiere, p. 1682, Sept 22 – Vol 9

⁸⁶ Dr. Dowling p. 1170, 1211, 1229, Sept 17 – Vol 7

⁸⁷ Bruce Genaille p. 2280, p. 2287, Sept 25 – Vol 12

car.⁸⁸ The distance from where Jason Roy states he saw Neil Stonechild in the police car to the area where the body of Neil Stonechild was found is eight kilometers. Although no expert evidence was called it is not conceivable that in eight minutes that Cst. Hartwig and Cst. Senger would have transported Neil Stonechild to the north industrial area, stopped the car, removed him from the car, got back in the car and drove back to the Confederation Drive area in time to question Bruce Genaille. Bruce Genaille's evidence directly contradicts that of Jason Roy and corroborates that of Cst. Hartwig that they did not at any point in time have Neil Stonechild in their custody.

45. When the name "Neil Stonechild" was queried on CPIC, no date of birth was given but only an approximate age. Cst. Hartwig testified and others confirmed, this would be done where no date of birth was available suggesting that the individual being queried was not present and in custody at the time. This supports Cst. Hartwig's position that at no point in time did he have Neil Stonechild in his custody. Because they were looking for Stonechild it would be common for them to send out a general CPIC query for the name.⁸⁹

C. Expert Evidence

46. The expert testimony establishes that Neil Stonechild was not in the back of a police car handcuffed and bleeding from a gash to his nose caused by handcuffs or anything else. This evidence consists of the following:

Dr. Fern:

He was the coroner who attended at the scene. He did not see any evidence of a beating and no evidence of a gash to the nose of Neil Stonechild.

⁸⁸ Bruce Genaille p. 2282 – 84, 2286 – 87, Sept 25 – Vol 12

⁸⁹ Cst. Hartwig – pp. 7760 – 61, Mar 15 – Vol 40

The marks on the wrists were consistent with the marks on the abdomen; both having been likely caused by folds of clothing.⁹⁰

Dr. Adolph:

Dr. Adolph was the pathologist. He also confirmed there was no evidence of a beating and no evidence of a gash to the nose of Neil Stonechild. He maintained, under cross examination, that what he saw was something tantamount to a scratch consistent with having fallen in the weeded area where the body was found.

Again, the marks on the wrist would be consistent with having been caused by clothing and not by handcuffs.⁹¹

Dr. Dowling:

Dr. Dowling testified that although he could not state for certain what had caused the injury to Neil Stonechild's nose he stated it was not likely caused by handcuffs. He described the superficial nature of the injury and agreed it was consistent with Neil Stonechild wandering in the field where he was found, becoming disorientated, falling and eventually succumbing to the cold.⁹²

Dr. Emma Lew:

Dr. Lew is a qualified expert in the area of forensic pathology. (P-187) She does not

⁹⁰ Dr. Fern pp. 1829 – 1831, Sept 23 – Vol 10

⁹¹ Dr. Adolph pp. 2018 – 19, Sept 24 – Vol 11

⁹² Dr. Dowling p. 1227, Sept 17 - Vol 7

dabble in this area. She does not deal with the occasional case in this area. She does this for a living every day and is well qualified based on both her education and experience. She further had the benefit of reviewing the enhanced photographs. Her conclusions were clear; which are set out in her report. (P – 189):

1. The marks on the wrists of Neil Stonechild were not caused by handcuffs. They are postmortem marks which are consistent with being created by the folds and cuffs in the clothing of Neil Stonechild similar to the marks seen on the abdomen of the body. The striation marks as depicted in the enhanced photograph (P – 190) confirm this.⁹³

2. The marks on Neil Stonechild's face are consistent with having been caused by falling in the weeded area where his body was found face first in the snow. They were not caused by handcuffs.⁹⁴

47. The only evidence which suggested that the marks on the wrists were caused by handcuffs and that the injury to the nose was caused by a blow from a handcuff was Gary Robertson.

48. While it was noted by the Commissioner that because of the less restricted rules of evidence, Mr. Robertson's testimony could be heard, this does not in any way enhance its weight or credibility. Concerning Gary Robertson we submit the following:

⁹³ Dr. Lew pp. 8167-75

⁹⁴ Dr. Lew p. 8161, Mar 17 – Vol 42

1. That he is not qualified to in any way interpret the marks observed on Neil Stonechild's body. He is basically a photogrammetrist who in less than even an amateur way, was trying to expand his area of expertise to include forensic pathology. He does not have the education, training or experience to interpret marks on the human body or comment on what would have caused them.
2. At best and in the end he acknowledged this, all he could do is measure the marks.⁹⁵ But the marks he measured were those that were left after the autopsy and not those depicted as at the time of death and as a result his evidence is of virtually no value in any event.
3. The answers he gave on cross examination were evasive and when challenged on obvious areas of contradiction he would proceed to provide elaborate explanations which invariably did not address the point in issue. The examples are too numerous to mention but a cursory reading of even a few pages of his cross examination establishes this.
4. The lack of depth and understanding of what he was testifying to is perhaps best illustrated by the trite and almost meaningless responses he gave to his undertakings to produce his working papers on the measurements he took or on how long the cuffs were on the model.⁹⁶
5. It is impossible to give credibility to a witness who proposes to put himself

⁹⁵ Gary Robertson p. 4236, Oct 21 – Vol 22

⁹⁶ Gary Robertson pp. 4209-11, 4278-79, Oct 21 – Vol 22, P-192

forward as an expert and in doing so provides a curriculum vitae (P – 96) listing education at the University of Ottawa and then has to acknowledge that in fact he did not complete any university classes.⁹⁷ Besides going directly to his credibility, this casual attitude towards something as significant as whether he completed the university classes at all illustrates why his testimony cannot be relied upon in terms of accuracy either.

49. Other examples of contradictions and reversals of positions by Mr. Robertson include the following:

- a) He defined photogrammetry as including “science and engineering” and proceeded to refer to “engineering” repeatedly while attempting to qualify himself as an expert.⁹⁸ However when confronted with the fact that he had not completed any engineering classes he then said that engineering had nothing to do with photogrammetry notwithstanding his earlier evidence on the point.⁹⁹

- b) Notwithstanding that he had no medical training or anything of the like¹⁰⁰ he proceeded to provide an opinion as to whether the marks were antemortem or postmortem.¹⁰¹ When challenged on this he stated that he had confirmed this by consulting with a doctor associate. When asked to elaborate, it turned out that this consisted of an email letter that he had received in July of 2003 (his report was given in November of 2000) from a general practitioner who practiced somewhere in Phoenix.¹⁰²

⁹⁷ Gary Robertson pp. 4031-4042, Oct 20 – Vol 21

⁹⁸ Gary Robertson pp. 3978, 3981, 3986, 3995-97, Oct 20 – Vol 21

⁹⁹ Gary Robertson pp. 4024-4042, Oct 20 – Vol 21

¹⁰⁰ Gary Robertson pp. 4023-24, Oct 20 – Vol 21

¹⁰¹ Gary Robertson p. 4064, Oct 20 – Vol 21

¹⁰² Gary Robertson pp. 4087-91, p. 4111, Ex. P-99, Oct 20 – Vol 21

- c) He stated that there should be five “identifiers” to match the measurements of a mark with a known object but then acknowledged on cross examination that for the nose there were only three identifiers.¹⁰³
- d) In his report he stated that the dimensions of a skin indentation are always larger than the object that made it (P-103). At the hearing he told Mr. Halyk (we suspect because now there was a measurement problem) that the dimensions of an indent are not larger. When confronted with his report he then said that it is possible that it could be larger.¹⁰⁴ He offered no explanation for this varying position.
- e) His skin indentation testing consisted of testing on four pigs and one human test.¹⁰⁵ He then acknowledged that the model he used for the human test was left handed while the marking he looked at on Neil Stonechild was on his right hand. He suggested that the model was similar to Neil Stonechild notwithstanding it was a female, he used the wrong hand, the handcuffs were placed on the front and not the back and the model was 5' 2" and 135 pounds. He finally acknowledged that he measured from the distance of Neil Stonechild's second knuckle to the mark as indicating proximity for the model but then had to acknowledge that the measurement of the model was to the fourth knuckle because it was on the opposite hand. When caught in this obvious error he then

¹⁰³ Gary Robertson pp. 4218 and 4344, Oct 21 – Vol 22

¹⁰⁴ Gary Robertson pp. 4198, 4212, 4217, Oct 21 – Vol 22

¹⁰⁵ Gary Robertson p. 4011 and p. 4065, Oct 20 – Vol 21

stated that the measurement was meaningless anyway which raised the question as to why he had testified to it in Chief in the first place.¹⁰⁶

- f) He believed that the freezing and thawing process would make no difference¹⁰⁷ and went so far as to say his “testing” showed thawing had no impact on the marks.¹⁰⁸
- g) He superimposed the handcuffs over the picture of the nose notwithstanding that there was no orientation nor could he say that it in anyway suggested mechanically that this injury could occur that way. The question arises then why did he do this?
- h) When asked about how much research and development he did on skin indentation marks he stated approximately 20% and when challenged further stated maybe it was 2%.¹⁰⁹
- i) He gratuitously offered in his report that the bruising and swelling on the nose of Neil Stonechild indicated a possible fracture. He acknowledged he had no training, he had done nothing to confirm this, but stated that the “images”, ie. photos, speak for themselves. Ironically when reference was made to Dr. Dowling’s testimony that based on the location of the marks he didn’t think you could move the handcuffs that far up the hand, Robertson’s explanation was that

¹⁰⁶ Gary Robertson pp. 4263-69, Oct 21 – Vol 22

¹⁰⁷ Gary Robertson p. 4127-28, Oct 21 – Vol 22

¹⁰⁸ Gary Robertson p. 4107, Oct 21 – Vol 22

¹⁰⁹ Gary Robertson pp. 4122 – 4123, Oct 21 – Vol 22

you could not rely on what you saw in the photos.¹¹⁰

- j) Finally, while he stated that he had scanned the images for a higher resolution etc. none of these images were actually produced nor were we given anything we can concretely look at to see the actual points he measured from other than in the most general terms.¹¹¹

50. The concerns with the testimony of Mr. Robertson, combined with the volume of testimony from the other expert witnesses that directly contradicted him, leads to the end result that his evidence should be rejected in its entirety.

51. Based on the above we submit that the evidence of Jason Roy does not support a conclusion that Neil Stonechild was in the back of a police car pleading for his life on November 24 – 25, 1990. Concerning Cst. Hartwig, even if you did accept Mr. Roy's testimony, it does not prove that Cst. Hartwig was an occupant of such a police car. To the contrary, the physical description given by Jason Roy to Gary Horse, Father Poillievre and Commission counsel, of the police officer that he said he saw in the car, is clearly not that of Cst. Hartwig or Cst. Senger and is direct evidence that even if Jason Roy is correct about seeing Neil Stonechild in the back of a police car, it was not a police car occupied by Cst. Hartwig or Cst. Senger.

52. The evidence establishes that Jason Roy and Neil Stonechild both were in a highly intoxicated condition the evening of November 24, 1990. This includes Roy's general comments that he was "wired" meaning intoxicated with alcohol and/or drugs throughout that

¹¹⁰ Gary Roberotson pp. 4230-33, pp. 4272, Oct 21 – Vol 22, pp. 4384-85, pp. 4413, Oct 22 – Vol 23

¹¹¹ Gary Robertson pp. 4166-67 – Oct 21 – Vol 22

period of time and it affected his memory.¹¹² The evidence shows that he would have been highly impaired. This is based on the testimony of others who observed he and Neil Stonechild.¹¹³ This also would include the expert testimony of Dr. Richardson.¹¹⁴ Roy acknowledged that he weighed approximately 120 pounds at the time.¹¹⁵ This combined with the amount of alcohol he consumed, whether it was a 26 ounce or a 40 ounce of vodka as he was certain he had consumed, would have left him highly intoxicated and would have undoubtedly affected his memory and recollection. Dr. Arnold confirmed that contrary to Brenda Valiaho's testimony, visualization would not help one get below the effects of alcohol.¹¹⁶

53. One final comment concerning Jason Roy relates to the evidence of Keith Jarvis. It is suggested that Sgt. Jarvis acknowledged that Jason Roy told him he saw Neil Stonechild in the back of a police car. There is no mention made of this in Sgt. Jarvis' reports, in the statement that he obtained from Jason Roy or his notes (P-6 & P-61, P-106) When Sgt. Jarvis met with the RCMP he quite frankly acknowledged that he had no recollection of the Neil Stonechild matter. A summary of his first meeting with the RCMP stated that the police provided him with "considerable prompting". (P-108) We are not suggesting this was done for a nefarious reason, but accept it was done only because they were trying to see if by suggesting to him what they understood had happened he might recall the case. The prompting would have included that Jason Roy saw Neil Stonechild in the back of a police car.

54. Unfortunately the various meetings and interviews with Sgt. Jarvis were not recorded by

¹¹² Jason Roy pp. 723-725, Sept 11 – Vol 4

¹¹³ Lucille Horse p. 908, Sept 16 – Vol 6 Cheryl Antoine – pp. 2250-53, P-55 p. 1, Julie Binning P-53, p.1, Sept 25 – Vol 12

¹¹⁴ Dr. Richardson pp. 5789-93, Jan 5 - Vol 30

¹¹⁵ Jason Roy p. 411, Sept 10 – Vol 3

¹¹⁶ Dr. Arnold p. 6991 and 7009, Mar 10 – Vol 37

the RCMP so we do not know the nature and extent of what was actually said. When Sgt. Jarvis met with the RCMP for the last time on October 12, 2000, he indicated twice in his free narrative statement that it was not known what happened to Neil after he and Roy separated.¹¹⁷ He stated that he had some knowledge of Jason Roy saying something about Neil Stonechild being in the back of a police car but he was clear that he did not know if this was something Roy told him or as a result of what he had been told to him by the RCMP.¹¹⁸ This was the last of a number of meetings and contacts by the RCMP with Sgt. Jarvis. Dr. Yuille confirmed that without knowing the contents of the first contacts it is difficult to assess the significance of the statements attributed to Keith Jarvis in the last interview with the RCMP and his interview with Mr. Martel, for the simple reason that you do not know what prompting or suggestions may have been given to him which ultimately led to his statements.¹¹⁹ Even the addition of the words that he recalled Jason Roy being “quite happy” might be nothing more than adding emphasis to try and convince the questioner that he in fact recalled the incident when in reality he did not.¹²⁰

55. In light of this and based on the testimony that we heard from Dr. Yuille and Dr. Arnold, it is not surprising that when Sgt. Jarvis was interviewed by the investigator for the Commission that he might state that Jason Roy said that he saw Neil Stonechild in the back of a police car. However, under oath and subject to lengthy cross examination, Sgt. Jarvis maintained his position that he had no recollection of Jason Roy ever having said that and even more significantly maintained his position that if Jason Roy had said that he would have recorded it.

¹¹⁷ Keith Jarvis P-107, pp. 2 – 8

¹¹⁸ Keith Jarvis Ex. P-107, p. 8

¹¹⁹ Dr. Yuille, pp. 7576-7587 – Mar 12 – Vol 37

¹²⁰ Dr. Yuille, p. 7629, Mar 12 – Vol 39

56. Keep in mind as well the testimony of Cheryl Antoine who states that she was present throughout the interview of Jason Roy by the police and testified that Jason Roy did not mention anything to the police about Neil Stonechild being in the back of a police car but had only said that he was really drunk and left Neil behind at the 7-11/apartment, which is what he states in P-6.¹²¹ Gary Horse, Roy's close friend, said that Roy told him he had spoke to the police but never ever told him that he had given a false statement.¹²² In fact, Roy's story that the November 30, 1990 statement was false or even that he had given a false statement at all to protect his life, never came up until the written statement (P- 6) surfaced in 2001 and he was confronted with it. He never ever told the RCMP about any false statement. It is not conceivable that if Roy had given a false statement as he now describes that not a word would have been mentioned to the woman he was living with, his best friend, the RCMP, or anyone else for that matter. When Commission counsel confronted him with it, Roy's legal counsel took the lead in trying to explain it away (P-8).

CONCLUSION

57. Cst. Hartwig's position is that he did not in any way contribute to the death of Neil Stonechild. It is our submission that the evidence supports this and does not support what remains a baseless allegation, that somehow or other he was responsible for the transportation of Neil Stonechild to the area where his body was eventually found. The only observation we make concerning the investigation of Neil Stonechild's death is that had it been more thorough or had it resulted in determining how Neil Stonechild ended up in the north industrial area of Saskatoon, Cst. Hartwig would not have faced the anguish and trauma that he has gone through over the course of the past three and a half years and which continues now as a result

¹²¹ Cheryl Antoine pp. 2221 – 23, pp. 2247 – 48, Sept 25 – Vol 12

¹²² Gary Horse p. 1031, Sept 16 – Vol 6

of being falsely accused of being involved in the death of Neil Stonechild. We are not in anyway trying to diminish the pain that Neil's mother and family have suffered in losing a son and brother and not knowing the circumstances of his death. It is however a reality of this case that this matter has had a significant impact on Larry Hartwig and his family as well and as he testified will likely impair his future advancement as a police officer no matter what the outcome of this Inquiry is.

58. How did Neil Stonechild come to his unfortunate death? As much as Mrs. Bignell would like to know and frankly so would Cst. Hartwig, unfortunately the evidence here does not provide us with an answer to that question. How did Neil Stonechild get to the north industrial area of Saskatoon? There are a number of possible explanations:

- He may have been dropped off there. This could have been done by any number of parties, which we acknowledge included the police, but also somebody who he had an altercation with or someone who had some sort of dispute or grudge with him.¹²³ The violent nature of the world Neil Stonechild lived in was graphically described by Gary Pratt and Cst. Louttit, amongst others.¹²⁴ Pat Pickard testified that Neil was very scared of the prospect of having to testify against the Pratts.¹²⁵

- Is it possible that he got into an altercation at the 7-11 which resulted in him being hauled away by whoever he got in the dispute with? Flora Binning testified that she had heard he had been beaten up at the 7-11, picked up and driven away.¹²⁶ This to some

¹²³ Lucille Horse: Neil got into a lot of fights when he was drinking. p. 943, Sept 16 – Vol 6

¹²⁴ Gary Pratt pp. 6289-92, 6632-33, Jan 8 – Vol 33

¹²⁵ Pat Pickard pp. 179-180, Sept 8 – Vol 1

¹²⁶ Flora Binning p. 1429, Sept 18 – Vol 8

extent corresponds with Bruce Genaille's testimony that when he was being questioned by the police about Neil Stonechild that night they referred to a disturbance at the 7-11.¹²⁷ Julie Binning in her statement also mentioned the 7-11.¹²⁸ Cst. Louttit testified that Jason Stonechild told him Neil was at a party at a 7-11 in the north end where a female saw him get picked up by the Pratts.¹²⁹

- He could have been driving through the area by a cab, couldn't pay the fare and was dropped off.
- He could have been in that area looking for more alcohol, remembering that there was a boot leg liquor location nearby which sold Silent Sam vodka, the type of vodka he was drinking that night.¹³⁰
- Maybe he rode there in the 1970's model Nova that Jerry Mason says was outside waiting for Neil that night.¹³¹
- He could have been looking to do a break and enter in the industrial buildings there.
- Maybe he walked there, not necessarily from Snowberry Downs, but from some other place he may have got to that night.

¹²⁷ Bruce Genaille – p. 2280, Sept 25 – Vol 12

¹²⁸ Julie Binning P-53, p. 1 – Sept 25 – Vol 12

¹²⁹ Cst. Louttit, pp. 2826-27, Oct 8 – Vol 15

¹³⁰ Gary Pratt, pp. 6315 – 6317, Jan 8 – Vol 33

¹³¹ Jerry Mason pp. 150-51, Sept 8 – Vol 1

- Finally, he could have been going to the Provincial Correctional Centre to turn himself in. The fact of the matter is that it was only a couple of blocks away from where he was found.

59. All of the above are only speculation at best. What we do know is that there is no evidence to establish that Cst. Larry Hartwig was involved in Neil Stonechild ending up in the north industrial area of Saskatoon.

ALL OF WHICH IS RESPECTFULLY SUBMITTED.

DATED at the City of Regina, in the Province of Saskatchewan, this
6th day of May, A.D. 2004.

McDOUGALL GAULEY

Per: _____
Aaron A. Fox, Q.C.
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