

RELEASE DATE: May 15, 2020



Manitoba

THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *The Fatality Inquiries Act C.C.S.M. c. F52*

AND IN THE MATTER OF: Taumas Justin LeBlanc (DOD: February 13, 2017)

**Report on Inquest of Judge Julie Frederickson
Issued this 12th day of May, 2020**

APPEARANCES:

Ms Yasothini Mathu, Inquest Counsel

Ms Kimberly Carswell, Winnipeg Police Service

RELEASE DATE: May 15, 2020



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: TAUMAS JUSTIN LEBLANC

Having held an inquest respecting the said death on November 18, 19, 20 and 21, 2019 at the City of Winnipeg, I report as follows:

The name of the deceased is: Taumas Justin LeBlanc

The deceased came to his death on the 13th day of February 2017.

He died by the following means: atherosclerotic cardiovascular disease, with chronic alcoholism, cardiomegaly and physiological stress due to struggle with law enforcement personnel contributing.

Attached hereto and forming part of my report is a list of exhibits required to be filed by me.

Dated at the City of Winnipeg, in Manitoba, this 12th day of May, 2020.

"original signed by:"

Judge Julie Frederickson

Copies to:

Dr. John Younes, Chief Medical Examiner
Chief Judge Margaret Wiebe, Provincial Court of Manitoba
The Honourable Cliff Cullen, Minister of Justice and Attorney General
Mr. Dave Wright, Deputy Minister of Justice and Deputy Attorney General
Ms Michele Jules, Executive Director of Manitoba Prosecution Services
Ms Yasothini Mathu, Inquest Counsel
Ms Kimberly Carswell, Winnipeg Police Service
Exhibit Coordinator, The Provincial Court of Manitoba
Ms Aimee Fortier, Executive Assistant and Media Relations, The Provincial Court of Manitoba



Manitoba

THE FATALITY INQUIRIES ACT
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: TAUMAS JUSTIN LEBLANC

TABLE OF CONTENTS

	<u>Page #</u>
INTRODUCTION.....	1
MANDATE.....	1
LEGISLATIVE AUTHORITY RELEVANT TO THE INQUEST	1
STANDING	2
CIRCUMSTANCES OF TAUMAS LEBLANC’S DEATH	2
Summary of Witness Evidence	2
Medical Evidence	6
WINNIPEG POLICE SERVICE POLICIES	7
Use of Force	7
Excited Delirium	8
WINNIPEG FIRE PARAMEDIC SERVICE PATIENT CARE PROTOCOL	9
Excited Delirium	9
CONCLUSIONS.....	10
APPENDIX “A” - WITNESS LIST	11
APPENDIX “B” - EXHIBIT LIST	12

INTRODUCTION

[1] Late in the evening of February 12, 2017, Ken LeBlanc called 911. He told the operator that his son, Taumas, was intoxicated. Taumas was howling, and although not violent, he was afraid of his son and wanted help removing him from his home.

[2] Two Winnipeg Police Service officers arrived at the home a short time later. Taumas' behaviour quickly escalated, resulting in a struggle with the officers and the use of pepper spray. Taumas was handcuffed and restrained. Based on behaviours Taumas was exhibiting, the officers suspected a medical emergency and requested assistance from Winnipeg Fire Paramedic Services. When Taumas was removed from the home, he stopped breathing. CPR was performed and Taumas was transported to Seven Oaks Hospital, where he was pronounced deceased.

MANDATE

[3] On March 19, 2018, an Inquest into the death of Taumas Justin LeBlanc was called by Dr. John K. Younes, the then-Acting Chief Medical Examiner of the Province of Manitoba. In his letter to the Chief Judge of the Provincial Court of Manitoba, the Honourable Margaret Wiebe, Dr. Younes directed that the Inquest be held for the following reasons:

1. To fulfill the legislative requirement for a mandatory inquest pursuant to *The Fatality Inquiries Act* (the "Act");
2. To determine the circumstances of Taumas LeBlanc's death; and
3. To determine what, if anything, can be done to prevent similar deaths from happening in the future.

LEGISLATIVE AUTHORITY RELEVANT TO THE INQUEST

[4] At the time of his death, the applicable sections of the *Act* provided as follows:

Inquest mandatory

19(3) Where, as a result of an investigation, there are reasonable grounds to believe:

- a) that a person while a resident in a correctional institution, jail or prison or while an involuntary resident in a psychiatric facility as defined in *The Mental Health Act*, or while a resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, died as a result of a violent act, undue means or negligence or in an unexpected or unexplained manner or suddenly of unknown cause; or

b) that a person died as a result of an act or omission of a peace officer in the course of duty;

the chief medical examiner shall direct a provincial court judge to hold an inquest with respect to the death.

Provincial judge to hold inquest

26(1) Where a direction is given by the chief medical examiner under section 19 or by the minister under section 25, a provincial judge shall conduct an inquest.

[5] The *Act* was amended by S.M. 2017, c.15, which came into effect on November 1, 2017. Among other things, these amendments rewrote or reorganized the *Act* to improve readability. As Taumas was in police custody at the time of his death, an Inquest into his death remains mandatory (s.19(5)), as does the jurisdiction of a provincial court judge to conduct the Inquest (s.26(1)).

[6] The *Act* requires that a written report be provided to the Minister responsible for the administration of the *Act* setting forth when, where and by what means Taumas died, as well as the cause and material circumstances of his death. The Inquest Judge has the discretion to make recommendations respecting changes to provincial laws or to programs, policies or practices of the government or of public agencies and institutions, to prevent deaths in similar circumstances.

STANDING

[7] Ms Yasothini Mathu was appointed Inquest Counsel and a Standing Hearing was conducted on October 12, 2018.

[8] The Winnipeg Police Service (WPS), represented by their legal counsel Ms Kimberly Carswell, was granted standing.

[9] While Ken LeBlanc did not seek standing and was not present during the Inquest, his statement to police, taken on February 13, 2017 was tendered into evidence.

CIRCUMSTANCES OF TAUMAS LEBLANC'S DEATH

Summary of Witness Evidence

[10] Shortly after 10:30 p.m. on February 12, 2017, Ken LeBlanc called 911 and requested police assistance in removing his twenty-year old son from the house. As he explained to the 911 operator, his son had been drinking and was howling. This howling was keeping him awake, and he needed sleep as he was fighting cancer.

[11] Patrol Sargent Anthony Herntier and his partner, Constable Jeff Boehm, arrived at the LeBlanc residence at 11:03 p.m. They were met by Ken LeBlanc, who told them that his son's alcohol use had accelerated over the past couple of years, coinciding with the death of his mother. She died from cancer, and now Ken was fighting cancer. He told the officers that he loved his son but was afraid of him. He warned the officers that his son was a "big boy". He directed the officers to the basement of the residence, where Taumas was.

[12] The LeBlanc residence is a bungalow-style house, with a set of stairs leading to the basement. Taumas' room was in the basement. All witnesses described the staircase as narrow, and the narrowness was exacerbated by what appeared to be a rail belonging to a chair lift running along the bottom length of the stairs.

[13] When Officers Herntier and Boehm went downstairs, they found Taumas lying on his bed, in his bedroom. He sat up when they entered the room. The entire basement area was cluttered and dirty.

[14] The officers quickly assessed that Taumas was extremely intoxicated. His speech was slurred and was described as babbling. Aside from a t-shirt, he was wearing no other clothes. He made no move to get out of bed. Based on this initial encounter, the officers decided that the best course of action was to leave Taumas be, hopefully to sleep it off. The howling behaviour that caused his father to call for assistance was no longer present.

[15] After returning to the main floor to speak with Ken LeBlanc, the officers heard the bedroom door open and Taumas walking around. When the officers went back downstairs to check on Taumas, they found him pacing in the laundry room area. He was still only wearing a t-shirt. He was a large man, estimated by officers to be 6 feet, 4 inches tall and 260 pounds. Although most of the sounds he made were unintelligible, he did make a disparaging comment about his father in words that officers could understand. This was concerning to Herntier, as Ken LeBlanc had earlier told them he was afraid of Taumas. Taumas gestured to Herntier and then charged at the officers.

[16] Boehm and Herntier struggled with Taumas and managed to take him to the ground. As part of the struggle, Herntier deployed his pepper spray. He told the Court that although Taumas was pepper sprayed, it had little effect on him. It did not appear to cause him pain or incapacitate him. He did not show signs of coughing or irritation. The pepper spray did, however, have a desired result as Taumas wiped at his eyes, allowing Boehm to gain control of Taumas' left hand and successfully handcuff both hands behind his back.

[17] Herntier advised dispatch that Taumas was in custody. Backup units would be arriving shortly thereafter. Up until now, Herntier – who was moving between dealing with Taumas in the basement and keeping Ken LeBlanc informed on the main level of the house – testified that he simply thought that Taumas was a "combative drunk". At the same time, Boehm - who remained in the basement with Taumas - testified that he began to suspect that Taumas was in a state of excited delirium, based on his extreme strength, his lack of response to the pepper

spray, his body temperature (his skin being described as hot to the touch) and his lack of clothing.

[18] Constable Mark Holowka and his partner Constable Kyle Kroeker, along with Constables Brandon Kapchinsky and Darren Chiborak arrived at the LeBlanc residence in response to the call for additional officers. They all testified that the pepper spray in the basement made it difficult to breathe, but it did not appear to be having any effect on Taumas. They decided to move him from the area of the basement most affected by the pepper spray to the open area closest to the bottom of the stairs. He did not respond to police commands to move. When Holowka and Kroeker attempted to help Taumas stand, he intentionally went limp. It took two, and then four, officers to move Taumas.

[19] Once in the open area near the basement stairs, Taumas continued to resist the efforts of officers. He was flailing around, and despite being on the ground on his stomach with his hands cuffed behind his back, he was able to rotate his body position 180 degrees. He was screaming and making indecipherable noises. He was trying to bite and spit at officers.

[20] Due to his size, strength, and lack of cooperation, all officers present recognized that it would be dangerous – to Taumas and to themselves – to attempt to walk him up the narrow staircase. Holowka, Kroeker, Kapchinsky and Chiborak testified that the behaviours Taumas was exhibiting caused each of them to suspect what Boehm did – that Taumas was in a state of excited delirium.

[21] Winnipeg Fire Paramedic Service assistance had been requested to move Taumas out of the home. The request changed to a request for medical assistance, due to suspected excited delirium.

[22] Taumas continued to physically struggle as he was laying face down on the basement floor. The officers took turns to restrain him in an effort to calm him down. He was “shin-pinned”, which was described to the Court as a manner of restraining an individual by placing the officer’s shin on either an arm or a leg. As much force as is necessary to restrain the individual is used, but with care taken to ensure that the individual’s airway is not compromised. In Taumas’ case, given his size and his strength, one officer was at each of his limbs.

[23] Constable Kent Fingas and his partner Constable Jason Williams arrived on scene a short time later. Fingas and Williams also noted the pepper spray in the air and the effect it had on them. They both described Taumas as having extraordinary strength and screaming incoherently. They observed their colleagues becoming fatigued at the effort of shin-pinning Taumas.

[24] Williams had a spit sock with him. He gave it to Kapchinsky and it was placed on Taumas. A spit sock, similar to the one used on Taumas, was tendered into evidence. It is a mesh covered hood that is put over an individual’s head and is meant to prevent the transfer of

bodily fluids. As it is mesh, some fluids can escape, and the individual's face remains visible to officers. It is secured with long ties, which are pulled under the person's arms and tied behind the back. The ties do not go around an individual's neck, and the hood itself is not tight against the face.

[25] Fingas saw that the officers at Taumas' legs were having difficulty maintaining control of them. A decision was made to place Ripp hobbles on Taumas' legs. Due to Taumas' strength, Fingas and officer Kroeker had to work together to successfully secure two Ripp hobbles, which is a task that Fingas said he could normally manage on his own.

[26] Ripp hobbles were described as a strap with a loop. The loop is placed around the legs, and in Taumas' case, one was placed close to his knees and the other by his ankles. The strap is then cinched tight and is self-locking. It is crucial that an individual who is placed in Ripp hobbles not be hogtied, so as to not compromise their airway. The evidence affirmed that Taumas was not hogtied.

[27] Holowka and Fingas testified that they were surprised at Taumas' on-going display of strength, which showed no signs of abating after a prolonged struggle with officers. Despite being restrained by handcuffs, two Ripp hobbles and being continuously shin-pinned, Taumas was constantly moving about, arching his back, screaming and make indiscernible noises. His skin was hot. He continued throughout to be able to physically lift the officers who were shin-pinning his arms. He was still in an agitated state when paramedics arrived.

[28] Paramedic Scott Pettitt arrived at the LeBlanc residence and was by Taumas' side in the basement at 11:59 p.m.

[29] Pettitt knew that excited delirium was suspected, and that alcohol was the only known intoxicant in Taumas' system. No evidence of drugs or drug paraphernalia was found, and as the Court learned from the toxicology report, no evidence of drug use was found in Taumas' system.

[30] Pettitt testified that although the scene and Taumas were relatively controlled (compared to other excited delirium calls that he has attended), Taumas was being restrained by officers and exhibiting signs of agitation. He could not form words in response to questions, responding instead with growls and grunts, and was physically bucking the officers.

[31] Winnipeg Firefighters, who were on scene prior to Pettitt, were monitoring Taumas' vital signs. His heart rate was high. This information was conveyed to Pettitt, and he gave direction to have the medications drawn up.

[32] Sometime after Pettitt arrived but before the medications were given, Taumas vomited. Pettitt reassessed his airway and was satisfied that it was not compromised. He did not ask that the spit sock be removed, as it was not endangering Taumas.

[33] At 12:04 a.m., the first dose of medications, consisting of Haloperidol and Midazolam, were administered together by injection. Taumas continued to display signs of agitation. Five minutes later, a second injection – this time of Midazolam only – was given.

[34] Approximately three minutes after this second injection, the agitation stopped. This was described as a normal reaction to the medications, which are intended to be a chemical sedation. Taumas could now be moved up the stairs and out of the house.

[35] Due to his size and the narrowness of the staircase, a decision had been made to use a “mega mover”, described as a large tarp with handles, to safely move Taumas. He was rolled onto this device and, with the assistance of firefighters and police officers, carried out of the basement.

[36] According to Pettitt, Taumas’ level of consciousness changed as he was being carried upstairs. He became unresponsive. Once they got him up the stairs and outside, Taumas was not breathing.

[37] Taumas was quickly brought to the ambulance, where it was determined that he was in cardiac arrest. Pettitt and his supervisor began treatment. They were unable to regain a strong pulse. Taumas was transported by ambulance to Seven Oaks Hospital, where he passed away.

Medical Evidence

[38] The autopsy report and medical examiner’s report were filed by consent.

[39] Dr. Rhee, a pathologist, performed the autopsy at the Health Sciences Centre on February 14, 2017. In addition to an Autopsy Technical Assistant, also present were an Anatomic Pathology Resident, two officers from the Winnipeg Police Service Forensic Identification Section and an investigator from the Independent Investigation Unit.

[40] Taumas’ weight was noted to be 111 kg (245 pounds) and his height 188 cm (6 feet, 2 inches), slightly less than estimated by the police officers. Abrasions and contusions were noted to his head, neck, trunk and extremities, including those consistent with having been produced by restraints applied to the wrists, thighs and ankles.

[41] Dr. Rhee’s report notes that there were no signs of physical trauma to Taumas’ head or skull. There were no signs of trauma to the neck and throat area.

[42] In examining the heart, Dr. Rhee found that Taumas was suffering from severe coronary artery heart disease. The extent of his heart disease was so unusual for his age that it was suggested family members consider genetic screening.

[43] In addition, Taumas had an enlarged heart. He was moderately obese. His post-mortem toxicology for ethanol was 259 mg%. To put this into context, the blood alcohol level for impaired driving is 80 mg%.

[44] The immediate cause of death was due to heart disease (atherosclerotic cardiovascular disease). Other conditions that contributed to his death but which were unrelated to the immediate cause were chronic alcoholism, enlarged heart (cardiomegaly) and physiological stress due to struggle with law enforcement personnel.

WINNIPEG POLICE SERVICE POLICIES

Use of Force

[45] Constable Daniel Bryson was qualified as an expert witness in the areas of the WPS training regarding use of force and excited delirium.

[46] With respect to use of force, he explained how new recruits are initially trained and the re-certification process that takes place for all officers every two years thereafter. Training involves both classroom-setting teaching as well as dynamic role play. Included in this training is a component of mental health training. All officers who testified were up to date in their re-certification training.

[47] Bryson explained that officers are trained to apply a level of force in relation to the level of resistance being offered by the subject. This was described as the principle of escalation.

[48] Levels of resistance displayed by individuals were described as part of a continuum and include:

1. psychological intimidation
2. verbal non-compliance
3. passive resistance
4. defensive resistance
5. active aggression, and
6. aggravated active aggression.

[49] Levels of force which may be employed by officers are:

1. police presence
2. verbal direction
3. soft empty hand control
4. hard empty hand control
5. intermediate weapons, and
6. lethal force.

[50] These levels of force are part of a control continuum. The principle of preclusion means that a progression through each of the levels before arriving at an appropriate one is not necessary. Once compliance is achieved, the level of force decreases.

[51] In addition to the levels of force used by officers, they also have at their disposal restraining devices, such as the handcuffs, spit sock and Ripp hobbles used with Taumas.

[52] Officers only engaged in use of force when Taumas became combative. He was the aggressor, charging at them. Once he was handcuffed, the level of force applied by the officers decreased.

Excited Delirium

[53] WPS officers are also trained in excited delirium. It is part of their use of force training. The subject matter is also described in a WPS policy. At the time of the incident, it was captured in a policy titled, *Injury or Death – Non-Member*. It has since been updated to a stand-alone policy titled, *Excited Delirium Syndrome*.

[54] Excited delirium can be caused by intoxication due to drugs, alcohol or psychiatric illness, or a combination of all. Bryson testified that the most common symptoms associated with excited delirium are:

1. inappropriately dressed for the weather (in particular, underdressed)
2. skin hot to the touch
3. sweating profusely
4. diminished pain response
5. extraordinary strength
6. disoriented
7. making animal noises or keening
8. speaking in unintelligible words or babbling, and
9. an aversion to shiny objects (such as glass or mirrors).

[55] Officers are trained to recognize excited delirium as a medical emergency, one that requires immediate medical intervention. This is due to the imbalance in the individual's body chemistry, resulting in an elevated heart rate. Based on case studies and other teachings, Bryson indicated that often the outcome for individuals suffering from excited delirium is not positive. The policy warns that an individual may suffer cardiac arrest at any time during or after the struggle.

[56] The policy in place at the time of Taumas' death directed officers to request medical assistance immediately if excited delirium is suspected, closely monitor the person's breathing, airway and heart rate, not hog-tie a person who is handcuffed with feet shackled, and once a person is under control, place them in a semi-seated position.

[57] The actions of the officers responding to Taumas were in accordance with the policy, with the only exception being Taumas' position. They were unable to place him in a semi-seated position as he continued to struggle throughout. The only way they were able to maintain control over him was to keep him on his stomach.

[58] The current policy is consistent with, and builds on, the former policy. When requesting medical assistance, officers are now directed to request Advanced Care Paramedic assistance and to communicate their belief of excited delirium, along with the cues displayed by the person. As set out in the section below, Advanced Care Paramedics or supervisors are required to administer the medications in the case of suspected excited delirium.

WINNIPEG FIRE PARAMEDIC SERVICE PATIENT CARE PROTOCOL

Excited Delirium

[59] The Patient Care Protocol for signs or symptoms of excited delirium was tendered into evidence. According to the dates on the document filed, it was approved in November 2010 and revised in September 2016. It outlines the steps to be taken, and by whom. The type of medication, also referred to as chemical restraint, and the dosage is also specified.

[60] With respect to the chemical restraint, the steps are outlined in boxes outlined with a dotted black line, which the protocol indicates is to be performed by an Advanced Care Paramedic and Medical Supervisor.

[61] Pettitt testified that it was his understanding at the time of the incident that, although he was an Advanced Care Paramedic, he could not administer the Haloperidol and Midazolam without his supervisor being present. He referred to it as an unspoken rule that existed at the time.

[62] He testified further that things have changed, and as an Advanced Care Paramedic, he does not have to wait for a supervisor to be present in order to give these medications. This understanding is consistent with the new Winnipeg Police Service policy on Excited Delirium, which directs officers to request Advance Care Paramedic assistance in order to prevent delays in administering the medication.

[63] In this case, there is no evidence that there was a delay in administering the medications to Taumas. Although it was not indicated precisely when the paramedic supervisor arrived on scene, it was established that within five minutes of arriving at Taumas' side, the first injection was given.

CONCLUSIONS

[64] In my opinion, the police officers and the paramedics all performed in accordance with the relevant policies and with their training. Their actions did not exacerbate the situation and, given the circumstances, kept Taumas as safe as possible.

[65] Herntier and Boehm were at the LeBlanc residence in response to a request for help from Ken LeBlanc. Their initial assessment – that intervention was not required – was appropriate and would have ended their involvement had Taumas not become combative.

[66] Their use of force during the struggle was in accordance with the Use of Force policy. They did not use their tasers or batons. Their firearms were not drawn nor used. The least restrictive tools (pepper spray, handcuffs and later, Ripp hobbles and a spit sock) were used.

[67] From the evidence, it is clear that the officers on scene quickly realized that Taumas was likely in a state of excited delirium; that they recognized it to be a medical condition requiring urgent attention; and that the steps they took to restrain him were aimed at protecting him from injuring himself or themselves and to reduce his struggling in order to prevent his heart rate from further increasing.

[68] The officers were careful to not compromise Taumas' airway or ability to breathe. Although best practices would have him in the recovery position, as opposed to lying on his stomach, the Court appreciates that this was a dynamic situation, with Taumas' strength and actions making the recovery position less optimal. Indeed, if he had been on his side, it may have resulted in a more intense struggle with officers.

[69] Paramedics were at Taumas' side within 14 minutes of being requested. The type and dosage of medications given to Taumas was consistent with the protocol. Although there may have been confusion as to the necessity of having a paramedic supervisor present prior to administering the medications, there is no evidence to suggest that this caused any delay in the treatment of Taumas. Pettitt testified that any confusion about the interpretation of the protocol has since been resolved, and the new stand-alone Winnipeg Police Service policy on excited delirium aligns with this understanding.

[70] Individuals displaying signs of excited delirium are medically at-risk. When combined with other underlying health conditions, this risk is increased. In Taumas' case, the severity of his heart condition, complicated by other health conditions, greatly elevated his risk. Nothing the police or paramedics did contributed to increasing this risk.

[71] Given the circumstances, I respectfully make no recommendations.

APPENDIX "A" - WITNESS LIST

1. Jeff Boehm
2. Mark Holowka
3. Anthony Herntier
4. Kent Fingas
5. Kyle Kroeker
6. Brandon Kapchinsky
7. Darren Chiborak
8. Jason Williams
9. Scott Pettitt
10. Daniel Bryson

APPENDIX "B" - EXHIBIT LIST

Description

1. Binder of Materials
 - Tab 1: CD of 911 Call by Ken LeBlanc and Critical Incident Call by Patrol Sargent Herntier;
 - Tab 2: Transcript of Statement by Ken LeBlanc, made on February 13, 2017 (dated February 13, 2019 in error);
 - Tab 3: Winnipeg Police Service Event History;
 - Tab 4: Winnipeg Police Service Forensic Identification Report, dated February 13, 2017;
 - Tab 5: Winnipeg Police Service Restraining Device Policy (SEALED);
 - Tab 6: Winnipeg Police Service Excited Delirium Policy (in place at time of incident);
 - Tab 7: Winnipeg Fire Paramedic Services Excited Delirium Policy;
 - Tab 8: Toxicology Services Report by Tracy Cherlet, dated August 21, 2017;
 - Tab 9: Autopsy Report by Dr. Rhee, dated September 25, 2017;
 - Tab 10: Report of the Medical Examiner by Dr. D. Taylor, dated October 12, 2017.
2. Patient Care Report Produced by the Winnipeg Fire Paramedic Service
3. Spit Sock
4. Photographs of Taumas LeBlanc (SEALED)
5. Curriculum Vitae of Winnipeg Police Service Constable Daniel Byrson
6. Recertification Training Table
7. Winnipeg Police Service Excited Delirium Policy (current)