

RELEASE DATE: (February 15, 2018)



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: An Inquest into the Death of

Christopher Chastellaine

Report on Inquest and Recommendations of
Associate Chief Judge Anne Krahn
Issued this 12th day of February, 2018

APPEARANCES:

Deidre Badcock, Inquest Counsel
Kim Carswell, Counsel for the Winnipeg Police Service
Dan Ryall, Counsel for Winnipeg Regional Health Authority and Seven Oaks
General Hospital

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THE FATALITY INQUIRIES ACT, C.C.S.M. c. F52

**REPORT BY PROVINCIAL JUDGE ON AN INQUEST
INTO THE DEATH OF:**

CHRISTOPHER CHASTELLAINÉ

In the afternoon of May 22, 2014 Christopher Chastellaine went to the liquor store. A cashier at the liquor store noticed that Mr. Chastellaine had been drinking and appeared intoxicated. As a result, the cashier refused to sell Mr. Chastellaine any more liquor. Mr. Chastellaine became angry and left the store. As Mr. Chastellaine was leaving, he spit on the back of the cashier. This was captured on the store's surveillance cameras. The police were called because the cashier wished to press charges.

Members of the Winnipeg Police Service investigated and decided to charge Mr. Chastellaine with assault. They went to Mr. Chastellaine's residence which was nearby and arrested him. He was taken to the Hartford Street police station at approximately 7:00 P.M. Mr. Chastellaine was lodged in a holding room. At midnight the two investigating officers decided to seize Mr. Chastellaine's clothing incident to his arrest. The officers had noted Mr. Chastellaine was wearing the same clothes as they had seen on the video from the liquor store. The officers felt that the clothes would be important evidence to help establish identification. The two officers entered the room with paper clothes, intending that this paper clothing would be given to Mr. Chastellaine when his t-shirt and shorts were seized. Mr. Chastellaine became very upset when officers explained that they were there to seize his clothes. Mr. Chastellaine rose to his feet quickly. He lunged forward and made contact with the head area of Cst. Saurette. Both officers and other officers who had come to offer assistance grabbed Mr. Chastellaine and took him down to the floor. A struggle

ensued while six police officers tried to secure Mr. Chastellaine with handcuffs, ankle shackles and a spit sock. An officer cut his t-shirt off. After Mr. Chastellaine was handcuffed, he became non-responsive. Officers called 911 and began to administer chest compressions.

A forensic pathologist testified that Mr. Chastellaine died of Hypoxic-ischemic brain damage due to transient cardiorespiratory arrest due to excited delirium. In other words, he died of irreversible brain damage caused when his heart stopped beating and he stopped breathing when he was in an altered mental state. A contributing cause of death may have been cardiomegaly (an enlarged heart) which can predispose the heart to develop a fatal rhythm.

This report contains my findings and recommendations after having reviewed the evidence and submissions provided by inquest counsel and counsel for the Winnipeg Police Service. It contains a list of witnesses who testified and a series of exhibits that were admitted into evidence.

Pursuant to the provisions of subsection 33(3) of *The Fatality Inquiries Act*, I am ordering that all Exhibits be returned to the Exhibit Officer, Provincial Court of Manitoba, to be released only upon application with notice to any party with a privacy interest.

Dated at the City of Winnipeg, in Manitoba, this 12th day of February, 2018.

“Original signed by”

Associate Chief Judge Anne Krahn

Copies to: Dr. John Younes, A/Chief Medical Examiner
Chief Judge Margaret Wiebe, Provincial Court of Manitoba
The Honourable Heather Stefanson, Minister Responsible for *The Fatality Inquiries Act*
The Honourable Deputy Minister of Justice & Deputy Attorney General David Wright
Michael Mahon, Assistant Deputy Attorney General
Deidre Badcock, Inquest Counsel
Kim Carswell, Counsel for the Winnipeg Police Service
Dan Ryall, Counsel for Winnipeg Regional Health Authority and Seven Oaks Hospital

Inquest mandatory

[1] This Inquest is required by section 19(3) of *The Fatality Inquiries Act, C.C.S.M. c. F52 (FIA)* because it occurred while Mr. Chastellaine was in the custody of the Winnipeg Police Service.

[2] On June 26, 2015, Dr. Thambirajah Balachandra, then Chief Medical Examiner (“CME”) directed an inquest be held:

- a) to fulfill that mandatory requirement;
- b) “to determine the circumstances relating to his death, including his arrest and the use of restraint devices to control him; and
- c) to determine what, if anything, can be done to prevent similar deaths from occurring in the future.”

[3] I point out that the Chief Medical Examiner specifically directed the court to look at the use of restraint devices to control Mr. Chastellaine.

Standing

[4] I granted standing to Kimberly Carswell as counsel for the Winnipeg Police Service and the Winnipeg Fire and Paramedic Service. I granted standing to Dan Ryall as counsel for the Health Sciences Centre, Seven Oaks General Hospital and the Winnipeg Regional Health Authority. I granted standing to Terry Asham, Christopher Chastellaine’s uncle and to Nicholas and Cage Chastellaine, Christopher Chastellaine’s sons. At the time of the standing hearing, it was thought that a child and family services agency would appoint counsel for Nicholas and Cage Chastellaine. However, some months later I was advised counsel would not be appointed. Inquest counsel notified the family members of the dates for the inquest hearing but Terry Asham, Cage and Nicholas Chastellaine did not appear at any of the dates for the inquest. I do not have any information about the reasons for their absence.

[5] I was notified that Nicholas Chastellaine contacted Inquest counsel on January 31, 2018 inquiring as to what happened with his father. I know Inquest counsel will share this Inquest report with Mr. Chastellaine’s family members.

[6] There was no issue raised about the medical treatment received by Mr. Chastellaine so Mr. Ryall, had a limited role and only appeared when the doctors testified.

The Refusal of Service and the Assault at the Liquor Store

[7] Jonathan Menzies and Jon McDougall were employees of the Manitoba Liquor Control Commission. They testified about their interaction with Christopher Chastellaine at the Manitoba Liquor Mart on May 22, 2014 at around 3:20 in the afternoon.

[8] Mr. Menzies testified he was employed as a product consultant at the liquor store. He was in the aisles of the store when he noticed Mr. Chastellaine. Mr. Chastellaine appeared to be intoxicated as he was speaking loudly, was unsteady on his feet and said he needed more alcohol to get more intoxicated. Mr. Menzies testified they are not allowed to sell liquor to intoxicated persons. He approached Jon McDougall who was working at the cashier desk to advise him not to sell any alcohol to Mr. Chastellaine. Mr. Menzies said he was physically intimidated because Mr. Chastellaine was a large man so he did not want to deny the sale on the “floor” of the store.

[9] Mr. Menzies noted that Mr. Chastellaine was wearing a light blue or teal coloured t-shirt with the sleeves cut off, shorts and sunglasses on his head. I note that the video shows that Mr. Chastellaine’s t-shirt had sleeves.

[10] Jon McDougall was working as the cashier. He noticed as Mr. Chastellaine approached the cashier’s desk that he was swaying back and forth and was unsteady on his feet. He saw Mr. Chastellaine was wearing a teal t-shirt and black shorts. Mr. McDougall said he knew he would have to ask Mr. Chastellaine questions at the till.

[11] Mr. McDougall asked Mr. Chastellaine questions and smelled a substantial odour of alcohol on his breath. Mr. Chastellaine lifted his sunglasses and Mr. McDougall noticed that Mr. Chastellaine’s pupils were dilated. He refused Mr. Chastellaine service because he cannot sell liquor to someone who has alcohol in their system.

[12] Mr. Chastellaine became very angry and aggressive. Mr. Chastellaine pounded his fists on the table, he swore and asked, ‘why can’t you serve me?’ Mr. Chastellaine then left the store. Mr. McDougall noticed

something fly by him out of his peripheral vision and felt something hit him. He went to check the video which showed Mr. Chastellaine had spit on him.

[13] Mr. McDougall called the police to report the assault and told them he wanted to proceed with charges. He said the police arrived approximately one hour later. Later in the day he viewed a photo line-up in which he identified Christopher Chastellaine as the person who spit on him.

[14] The evidence of Mr. McDougall and Mr. Menzies was confirmed by the video from the store surveillance which was filed during the inquest. There is no question that Mr. Chastellaine spit on Mr. McDougall and thereby assaulted him.

The Investigation and Arrest of Christopher Chastellaine

[15] Cst. Tyler Lintick and Cst. Robert Saurette, officers with the Winnipeg Police Service, were assigned the call. They were shown the video surveillance of the incident by staff at the liquor store and provided with still photos of the suspect from that video. They used these photos to canvas local hotels in order to determine the suspect's identity. Someone identified the suspect as Christopher Chastellaine.

[16] The officers checked the police computer systems and determined that the still photo from the liquor store matched the photos of Christopher Chastellaine on the police database. Mr. Chastellaine was noted on the police systems to live at 407 Pritchard Avenue.

[17] The officers went to 1-407 Pritchard. Cst. Lintick testified they knocked on the door but no one answered. They left and were able to find a phone number for Mr. Chastellaine. Cst. Lintick called Mr. Chastellaine and requested he meet with them which he agreed to do.

[18] When the officers returned to 1-407 Pritchard they knocked on the door and Mr. Chastellaine came to the door. Cst. Lintick noticed that he was intoxicated because he had glossy eyes, his speech was slurred, he staggered while standing and walking and there was an odour of alcohol coming from him. Both officers also noticed that Mr. Chastellaine was wearing the same clothing they had seen on the video from the liquor store. When they began to explain why they were there, Mr. Chastellaine began to speak over the officers and said, "those dumb fucks wouldn't serve me. I wasn't even drunk. That's bullshit." He then ran back into the house and slammed the door.

[19] The officers spent the next several minutes talking to him and encouraging Mr. Chastellaine to come out of the house. After several minutes, Mr. Chastellaine came out of the house, and without being asked, turned around and offered his hands to be handcuffed. He was advised by the officers that he was being arrested for assault. He was handcuffed and taken to the police station. It was around 7:00 P.M.

[20] Mr. Chastellaine showed no signs of distress, medical or otherwise. Police computer checks revealed that Mr. Chastellaine was bound by a recognizance entered into on May 16, 2014 which required that he abstain from the consumption of alcohol. Given his breach of that condition, police were opposed to his release.

[21] I note that Mr. Chastellaine's criminal record reveals a lengthy history of criminal convictions including convictions for crimes of violence and breaching court orders. Mr. Chastellaine was given an opportunity to call counsel. He was then placed in a holding room.

[22] I find that there were reasonable grounds for the arrest of Mr. Chastellaine and justifiable grounds to detain him for a bail application. It is well accepted that spitting on another person is an assault pursuant to the *Criminal Code* (see *R. v. Maier* 2015 ABCA 59 at para. 28; *R. v. Beaudin* 2012 ONCA 615; *R. v. Charlette* 2010 SKCA 78 at para. 9). Since Mr. Chastellaine was already bound by conditions on a recognizance related to five charges of breaching his recognizance and three charges of assault with a weapon, his lengthy and related criminal record, there were grounds to detain him.

[23] The Prisoner Log sheet indicates that officers checked on him regularly. No problems were identified by Mr. Chastellaine or observed by the police. The notations on the log sheet confirm he was provided water and bathroom breaks when requested.

[24] After lodging Mr. Chastellaine, Csts. Saurette and Lintick left the police station to interview Jon McDougall. They presented him with a photo line-up – an envelope of photos and asked him if he could identify the male who spat on him. Mr. McDougall picked out the photograph of Mr. Chastellaine.

The Physical Struggle with Mr. Chastellaine

[25] Csts. Saurette and Lintick consulted with their supervising sergeant, Sgt. Williams, and decided they would seize Mr. Chastellaine's clothes as evidence, incident to his arrest.

[26] At approximately midnight, Csts. Lintick and Saurette went into the holding room intent on seizing Mr. Chastellaine's clothing. The officers were holding a set of paper clothes that were going to be provided to Mr. Chastellaine so that he would have something to wear once his clothing was removed.

[27] The officers began to explain to Mr. Chastellaine that they would be seizing his clothes. Both officers testified that Mr. Chastellaine's demeanor changed dramatically. Cst. Lintick testified it was like a "switch flipped" for Mr. Chastellaine. Cst. Saurette testified that Mr. Chastellaine's demeanor took a "180 [degree turn]". Mr. Chastellaine became extremely belligerent and began yelling at the officers. Cst. Lintick testified Mr. Chastellaine said, "This is fucking bullshit. I am not giving you my fucking clothes. You don't need my fucking clothes for a warrant."

[28] Both officers testified they did not know what Mr. Chastellaine meant when he talked about a warrant. Both officers testified that they tried or would have attempted to explain themselves regarding how the clothes would be seized, but they did not have an opportunity because the situation became volatile very quickly. They testified ordinarily they would have explained the reason for seizing the clothes and then provided Mr. Chastellaine with some privacy to change into the paper clothing. But they did not have an opportunity to explain themselves any further.

[29] Once Mr. Chastellaine began yelling loudly at Csts. Lintick and Saurette, other police officers came to the door of the holding room. Cst. Lintick was on Mr. Chastellaine's left side and Cst. Saurette on his right. Both officers noticed that Mr. Chastellaine was very angry, clenching his fists and glaring at them. When they entered the room Mr. Chastellaine had been sitting on the end of a bench which was attached to a picnic-style table. He suddenly jumped up and lunged towards Cst. Saurette. Cst. Saurette testified that Mr. Chastellaine head-butted him to the mouth area which momentarily stunned him. Cst. Saurette testified he grabbed Mr. Chastellaine by the head with an open hand and tried to control his head by pushing it down and away. Cst. Saurette was concerned that Mr.

Chastellaine might spit at him. He said this was a particular concern because he knew from the police database that Mr. Chastellaine had Hepatitis C.

[30] Cst. Lintick said they were trying to control Mr. Chastellaine down to the ground when they tripped and fell down. Mr. Chastellaine was on his front. Cst. Lintick still had hold of Mr. Chastellaine's left arm. Cst. Saurette was trying to control Mr. Chastellaine by administering a shin pin across his lower back. The shin pin involved Cst. Saurette using the shin of his lower leg and pinning it across Mr. Chastellaine's lower back, upper buttock area and applying almost his entire body weight to keep Mr. Chastellaine on the ground. While he was doing this, Mr. Chastellaine pushed up, similar to a one arm push-up, lifting Cst. Saurette with the push. This was noteworthy to Csts. Saurette, Lintick, and Finlayson. Cst. Saurette was himself a large man, weighing 240 pounds. This "push-up" indicated to the officers that Mr. Chastellaine was exhibiting extraordinary strength. Cst. Saurette punched Mr. Chastellaine in the back of the shoulder two or three times to gain his compliance but this had no effect.

[31] Cst. Finlayson testified he was working on some paperwork at the Hartford police station on the evening of May 22, 2014. The typing area is a short distance from the holding room where Mr. Chastellaine was being held. He heard a loud commotion. He heard a male screaming, "Fuck you you're not taking my clothes for no fucking warrant." He heard officers telling him to relax and calm down. He walked towards the room and saw a large man on the floor with Cst. Saurette applying a shin pin. He saw the male (Mr. Chastellaine) push up, lifting Cst. Saurette off the ground. He concluded that the male was extremely strong and that Cst. Saurette was in danger. He could see officers were struggling to keep hold of Mr. Chastellaine. He tried to get hold of Mr. Chastellaine's right arm which he was holding underneath his body. He told Mr. Chastellaine to relax and give us your arms, stop resisting. He heard Mr. Chastellaine respond by laughing, saying "fuck you".

[32] Cst. Finlayson administered four to five knee strikes to Mr. Chastellaine as a means to secure his compliance with pain. This did not have the desired effect. Cst. Finlayson said he was also lifted off the ground. Cst. Finlayson was 6'4", 250 pounds with his equipment. Cst. Finlayson also applied shin pins to Mr. Chastellaine's back and upper arm.

[33] Cst. Myles Winter was in the police station when his attention was drawn to interview room one because of loud swearing and yelling by a male voice. He looked into the room and saw Csts. Lintick and Saurette trying to explain to Mr. Chastellaine that they would be seizing his clothes. He heard Mr. Chastellaine yelling words to the effect of “fuck off, get the fuck out of the room, your not taking my fucking clothes.” He heard the officers trying to calm Mr. Chastellaine down and explain why they wanted to seize his clothes. He saw the male throw the paper clothing at Csts. Lintick and Saurette and say, “your not getting my clothing without a warrant.” He was concerned the male might act out so he went to find Cst. Hollywood and asked him to come to the room.

[34] Cst. Winter said when he returned to the room, Mr. Chastellaine was still sitting on the bench but he stood up suddenly with his fists clenched. Mr. Chastellaine’s body was tense and rigid. Cst. Winter had moved into the room and was standing to Mr. Chastellaine’s right side. When Mr. Chastellaine jumped up, the three officers grabbed hold of him and tried to control him down to the ground. Cst. Winter was a smaller man, 6 feet tall and 167 pounds. He assumed the role of trying to restrain and maintain control of Mr. Chastellaine’s legs. Cst. Winter grabbed the legs in a bear hug and tried to keep Mr. Chastellaine from getting up or kicking out. Mr. Chastellaine was moving his legs and thereby moving Cst. Winter around. He too observed Mr. Chastellaine do something like a push-up which lifted Cst. Saurette who had most of his weight applied across Mr. Chastellaine’s back in a shin pin. Cst. Winter could hear officers continually repeating, “stop resisting”, “give us your hands”, “calm down” and “relax.” He heard Mr. Chastellaine laugh during the fight.

[35] Cst. Penner was in the police station when he heard a commotion in the interview room. He went to the room and saw officers trying to control a prisoner. The prisoner was on his stomach. He determined they needed leg shackles. He retrieved them from the sergeant’s wall and provided Cst. Winter with a pair of leg shackles. He saw Cst. Winter was having some difficulty so grabbed the feet and assisted with getting the leg shackles on Mr. Chastellaine. Cst. Penner then left the room. Cst. Winter applied the leg shackles and wrapped the chain between the ankle cuffs and then around the table leg which was affixed to the floor. He did this to minimize movement of the legs. At that point, he felt Mr. Chastellaine give up the fight and he saw handcuffs applied. It appeared to Cst. Winter that things were under control so he left the room.

[36] Cst. Lintick said Mr. Chastellaine stopped resisting and gave up his right arm and allowed it to be guided to his lower back where he was handcuffed. Cst Lintick estimated that the physical struggle took 20 seconds. Cst. Saurette estimated the intense struggle took 30-40 seconds.

[37] Cst. Hollywood testified that he was in the nearby typing room when Cst. Winter approached him to tell him that a male was being quite aggressive, that the male was large and the other officers might need help. He returned to the room with Cst. Winter and saw that Cst. Saurette was right in front of Mr. Chastellaine explaining why they wanted to seize his clothes. He saw Mr. Chastellaine ball up the paper suit and throw it in protest. Csts. Saurette and Lintick then moved forward and the physical altercation occurred. Cst. Hollywood was concerned with controlling Mr. Chastellaine's head. Cst. Hollywood knew he had Hepatitis C from having been assigned to watch over Mr. Chastellaine that evening when Csts. Saurette and Lintick were out taking a witness statement. He saw Cst. Finlayson come in to help out. Someone gave Cst. Hollywood a spit hood. He managed to secure the hood. He testified that he recalled the spit hood was on when Mr. Chastellaine stopped actively resisting and Cst. Hollywood rose from the floor. The spit sock or hood is a mesh covered hood that is put over a person's head and secured with ties. It is meant to prevent the transfer of bodily fluids.

[38] Cst. Kull testified he was in the lunch room when he heard a loud commotion coming from one cell. When he went to the door, several officers were already inside the cell attempting to restrain a large male. The male was yelling loudly and swearing and at times laughing at the efforts of the officers to restrain him. He could hear the officers loudly telling the male to stop resisting. Someone called out to get a spit net on him. Cst. Kull testified he knew from past experience that it is difficult to get a spit hood on someone who is actively resisting so he entered a short distance into the room to help secure the spit hood. He said he would only have made incidental contact with Mr. Chastellaine while the spit hood was being secured.

[39] Cst. Kull felt Mr. Chastellaine stop actively resisting and heard someone ask him if he was going to cooperate. Mr. Chastellaine nodded his head in the affirmative. The handcuffs were then applied. This evidence is consistent with the evidence of Cst. Lintick who testified Mr. Chastellaine stopped fighting. Cst. Lintick asked him if he was finished

fighting, and Mr. Chastellaine indicated yes and allowed himself to be handcuffed.

[40] Cst. Saurette testified someone at that point started cutting off Mr. Chastellaine's clothes but he could not remember who that was. Cst. Finlayson testified he called for seat belt cutters so that he could cut the t-shirt off Mr. Chastellaine and end the struggle. Cst. Remillard was in the vicinity and provided a multi-tool with seatbelt cutters. Cst. Finlayson cut off Mr. Chastellaine's shirt. He said he definitely did not cut Mr. Chastellaine's shorts off. Cst. Finlayson said he thought he would have left the shirt in the room and it would have been taken as part of the investigation. None of the other officers who testified could recall who removed Mr. Chastellaine's clothes.

[41] Sgt. James Hay was the sergeant on duty at the time of the physical fight with Mr. Chastellaine. He heard yelling in the interview room from a prisoner and thought the officers might need assistance. He testified he brought a pair of shackles with him. He saw Cst. Saurette on the prisoner's back and still saw the prisoner lift his chest off the ground. He saw a number of officers in the room trying to control the prisoner and get him handcuffed. At that point he testified he was not concerned the prisoner was in medical distress. He had no physical contact with the prisoner.

[42] Mr. Chastellaine's breathing was laboured from the struggles so they decided they should roll him into the recovery position. Cst. Finlayson testified that Mr. Chastellaine was still coherent and laughing at them when they had to make four attempts to roll him onto his side into the recovery position.

[43] Cst. Kull testified Mr. Chastellaine went from outright taunting to a very relaxed state very quickly. He thought perhaps this was the fatiguing effect after the "adrenaline dump" of the struggle. He went to move Mr. Chastellaine into the recovery position on his side so that his body weight would be off his chest and assist him in recovering his breath. At this point he noticed that Mr. Chastellaine was very limp, his head sagged as if he was unconscious. Cst. Kull said Mr. Chastellaine went from passive cooperation to limp in a matter of seconds. Cst. Kull used his pocket knife to cut the spit hood off and noticed then that Mr. Chastellaine's eyes were unfocused. He explained everything was happening very fast.

[44] Cst. Saurette and Cst. Finlayson were both involved in moving Mr. Chastellaine into the recovery position. Cst. Saurette testified that when Mr. Chastellaine went limp, it occurred to him that he might be feigning to regain his strength and fight again or he might be in a medical emergency. He checked for breath and a pulse. He was able to detect both a breath and a pulse. He checked again moments later and was unable to detect a pulse and could not see a rise and fall of his chest to indicate he was breathing.

[45] Cst. Finlayson testified when he saw Mr. Chastellaine go limp he performed a sternum rub. This is an uncomfortable, painful stimuli meant to determine if the person is playing “possum”. There was no response to the sternum rub. Cst. Finlayson tried to push on pressure points behind the ear, there was no response. He gently slapped Mr. Chastellaine’s face and said, “talk to us buddy, talk to us Chris.” There was no response. After 30 seconds or so of these checks he was convinced this was a medical emergency and First Aid efforts were started. Cst. Finlayson checked for a pulse and believed he detected a very faint pulse but it was fading.

[46] Cst. Hollywood retrieved the automated external defibrillator (AED) and Cst. Lintick called for an ambulance. Officers removed the leg shackles and the handcuffs. Cst. Kull began to perform chest compressions. He alternated with Cst. Saurette in performing chest compressions until the fire and paramedic officers arrived.

[47] The AED was used but it kept telling officers, “shock not advised.”

[48] There are some natural discrepancies in the accounts of the different police witnesses. I attribute the discrepancies that arise in the recount of the same event by different witnesses based on different perceptions and each witness’s different focus on a sudden and very quickly evolving event. The account of the officers as a whole is generally confirmed by two other prisoners who were in adjoining rooms but did not have a view of the room where Mr. Chastellaine was because their doors were closed.

[49] Jolene Pottinger provided a statement that she had been placed in the cell/interview room at around 6:00 P.M. After she had been in the room for some time she heard screaming and a scuffle. She could hear “don’t resist” and “only making it harder on yourself”. After the altercation it was quiet. She also heard someone say, “call the paramedics” and “Chris get

up, Chris get up”. Before these sounds, she had heard nothing from the male and in fact, did not know he was there. There was no window in her room so she could not see anything.

[50] John Blyan was in the room across from Ms. Pottinger, his sister. In order to prevent him from communicating with his sister the police had turned on a radio earlier in the evening. He could see out a metal grate in the closed door of his room. At some point he saw a number of police officers walking by. He could hear a commotion like someone getting thrown against a wall, he heard someone yelling for help, he heard “stop resisting”, he heard someone say to stop, and he heard grunting. Then everything went quiet.

Arrival of Fire and Paramedic Service

[51] The fire and paramedic service report indicates that the “Time of Alarm” was at 37 seconds after midnight. The fire engine was dispatched at 1 minute 57 seconds after midnight to the District 3 police station at 260 Hartford Avenue. The time of arrival is noted to be at 5 minutes 23 seconds after midnight. The dispatcher recorded the following information: “Male in 40s is partly unresponsive, staggered breathing...male unresponsive, likely cardiac arrest...doing chest compressions”. I conclude that this was information transmitted by Cst. Lintick and recorded by the dispatcher.

[52] Mr. Nick Carlson testified that he was working that night as a firefighter. He and his partner, Serge Arpin were the first unit on scene at the Hartford police station. On route they had been told that it was “Code 99” which means no breathing and no pulse. He was met at the door of the station by police officers and taken to a cell. He saw a male on his back and a police officer performing chest compressions. He saw that an AED device was attached to the male’s chest. The male was naked except for something covering his penis. Nick Carlson took over chest compressions after attaching their defibrillator. He explained that the AED is fully automated to facilitate its use by the public but the fire services defibrillator is much more sophisticated and provides more information. His unit began to use a bag valve to help Mr. Chastellaine breathe. He testified that paramedics arrived shortly after and they were able to regain a pulse and blood pressure.

[53] Mr. Terry Drysdale was one of the paramedics who arrived on scene shortly after the firefighters arrived. Mr. Drysdale was certified as an advanced care medic. This position provided him with the expertise and knowledge to interpret diagnostic equipment like an electrocardiogram (EKG) which measures heart rhythms as well as administer a variety of medications. When he arrived he saw Mr. Chastellaine on the floor on his back. He was naked except for a “towel” covering his groin. He performed an assessment and confirmed the patient was asystole – flatlined - that is, he had no pulse and was not breathing. He injected one milligram of epinephrine, a drug meant to stimulate the heart. After the injection of the epinephrine, Mr. Chastellaine’s heart began to beat again. He also inserted an endotracheal tube into Mr. Chastellaine’s throat with a bag valve to help him breathe because he was not breathing on his own.

[54] He applied a 12 lead EKG which would allow him to gather information regarding the rhythm of the heart and measure blood pressure. These heart rhythms can then be transmitted to the on-call cardiologist which was done. Mr. Drysdale saw ST elevations on all leads, depression in some which lead him to think that this was a myocardial infarction, a heart attack. However, the cardiologist advised him that the leads were showing global elevations because the patient had been asystole. Dr. Jassal was the on-call cardiologist. Dr. Jassal directed that the patient be taken to the nearest hospital which was Seven Oaks General Hospital. Mr. Drysdale explained that if Dr. Jassal had determined that the patient was having a heart attack, then protocol would have demanded he be taken to St. Boniface Hospital.

[55] Mr. Drysdale and Mr. Carlson confirmed in testimony that they did not see any physical injuries on Mr. Chastellaine. They saw no cuts, wounds or blood on the floor in the interview room. This was consistent with the statements provided by the remaining firefighters and paramedics who provided written statements which were filed with the Court.

[56] Firefighter Brad Mazor provided investigators with a written statement confirming that when he saw the male he was naked in the room with a “green cloth” covering his groin.

The Investigation of the Scene

[57] None of the police witnesses could recall removing Mr. Chastellaine’s underwear or shorts. Cst. Lintick recalled that Mr.

Chastellaine's shorts came down during the police struggle with him. Cst. Finlayson remembered that he cut off Mr. Chastellaine's t-shirt but he did not know what happened to it from there. He assumed it had been left in the room. None of the other officers could recall who cut off Mr. Chastellaine's t-shirt.

[58] Cst. Nick Doyon, an IDENT officer was called at 15 minutes after midnight once it was clear that there had been a critical incident. All of the involved officers were briefed by Sgt. Hay that they would be taken to the Public Safety Building. Their clothing would be seized and they would be photographed. They would be asked to provide statements but were not obligated to provide statements until they had time to consult with their police association representative, counsel and the police psychologist. All of the officers provided type-written statements some days later. Most of these statements were not dated as to when they were written. As a result, Cst. Doyon only had limited information when he was called in to collect exhibits and photograph the scene. He was told there had been a cardiac event involving six officers.

[59] A pair of black underwear and a pair of black exercise shorts with an elastic waist band were seized by identification officer Cst. Nick Doyon from the picnic table in the interview room. The shorts were intact and had not been cut. The underwear was ragged and torn. A portion of the underwear was detached from the elastic waistband but the elastic waistband was intact and still in a circle. The bottom leg hole areas of the underwear were ragged and torn. The nature of the tearing on the underwear is not consistent with them having been cut off Mr. Chastellaine's body. It may well be that the underwear was tattered unrelated to this incident.

[60] Cst. Doyon also seized a spit hood from underneath the table in the interview room where Mr. Chastellaine had been detained. There was a small amount of blood on the spit hood. There was no blue t-shirt in the room.

[61] Cst. Doyon saw no other blood in the interview room where Mr. Chastellaine had been.

[62] He took photographs of the involved officers and their uniforms. The uniforms were intact and the officers had no injuries including on their hands. He examined the uniforms and boots for blood but did not find any.

[63] Cst. Doyon also attended the hospital and took photographs of Mr. Chastellaine. He was unconscious. No physical injuries were observed by Cst. Doyon.

At Seven Oaks Hospital

[64] Dr. Boxer-Meyrowitz was in charge of the Intensive Care Unit (ICU) at the Seven Oaks Hospital on May 23, 2014. At the time, he had 38 years experience working as a medical doctor with a speciality in internal medicine. Dr. Boxer-Meyrowitz testified he had done a significant amount of work in cardiology.

[65] As the doctor in charge of the ICU, all major decisions were brought to his attention. When Mr. Chastellaine came to the ICU he was in critical condition which meant that he had a life-threatening condition. Dr. Boxer-Meyrowitz said it was clear early on that the prognosis for a recovery for Mr. Chastellaine was poor. On the Glasgow coma scale which measures the level of an individual's neurologic injury on a scale of zero to 15, with a fully alert, normal person scoring 15, Mr. Chastellaine was graded a three. Dr. Boxer-Meyrowitz testified Mr. Chastellaine did not respond to verbal stimulation, he did not move and he had no apparent level of consciousness. Mr. Chastellaine's level of consciousness never changed.

[66] Dr. Boxer-Meyrowitz theorized that it was possible that Mr. Chastellaine had an underlying undiagnosed heart muscle disorder which could have precipitated the fatal arrhythmia. He explained that two early EKGs showed a current of injury that is sometimes seen in a coronary spasm. After the initial EKGs, the remainder of the EKGs showed normal heart rhythms. In his view, the enlarged heart that was seen at autopsy has to have been caused by some underlying heart disease. He said it could have been caused by undiagnosed chronic hypertension or, if Mr. Chastellaine was an alcoholic, he could have had alcoholic cardiomyopathy which would have predisposed him to cardiac arrhythmias.

[67] Dr. Boxer-Meyrowitz explained that asystole, as the paramedics found Mr. Chastellaine, is generally fatal:

It – asystole, when it appears, is reflective of the duration in cardiac arrest. If a person has a recoverable cardiac arrest, they're usually in ventricular fibrillation. Asystole is, is a

terminal event and suggests that the heart had stopped for a sufficient period of time to result in irreversible brain injury.

[68] Dr. Boxer-Meyrowitz testified that agitated delirium is an “acute confusional episode with extreme agitation. So the person is in a delirious state and does not know what they’re, they’re doing, and is in a high level of stress.” He testified that a state of excited delirium is a life-threatening condition. He explained such a condition would be very difficult to control outside of the hospital because the person needs to be sedated and may need mechanical ventilation. He also said that four point restraints might be used in hospital for a person suffering from agitated delirium, if the person was likely to injure themselves or staff.

[69] After consultation with family members, Mr. Chastellaine was removed from life support and he died on May 26, 2014 at 2:10 a.m.

The Autopsy Results

[70] Dr. Raymond Rivera is an autopsy pathologist with forensic expertise. At the time of testifying, he was the Autopsy Medical Director at the St. Boniface Hospital in Winnipeg, an assistant professor at the Department of Pathology at the University of Manitoba and a medical examiner for the Office of the Medical Examiner. Dr. Rivera performed the autopsy on Mr. Chastellaine.

[71] Dr. Rivera determined Mr. Chastellaine’s height to be six feet and his weight was 235 pounds. He saw no significant physical injuries but did note the following minor injuries:

- 1.) a small scrape or superficial abrasion to the outside of the left knee;
- 2.) on the back of the upper right thigh was a small, superficial bruise;
- 3.) a small bruise on the right wrist;
- 4.) a scabbed over scrape on the back of the right elbow;
- 5.) deep tissue bruising to the upper, midline back and midline, lower back that only became visible when the tissue was dissected during autopsy;
- 6.) a small purple-yellow bruise on the left, lower abdomen;

7.) rib fractures from resuscitative efforts (which occurred after the physical fight with the police).

Dr. Rivera testified that he was unable to precisely determine the age of the injuries described at 1-6 above other than to say they were seconds to hours and perhaps as much as a few days old. He said that none of these injuries would have been fatal. They were all minor in nature. I concluded from his testimony that these minor injuries could have resulted from the physical struggle with the police that preceded Mr. Chastellaine's loss of consciousness.

[72] Dr. Rivera did not see any signs of physical trauma to Mr. Chastellaine's head or skull area. There were no signs of trauma to the neck and throat area.

[73] Dr. Rivera concluded that there was no anatomical cause of death immediately after the autopsy. In other words, there was no physical disease or injury which caused the death. After further investigations and receipt of the toxicology results, he concluded that Mr. Chastellaine died because of:

- a.) Hypoxic-ischemic brain damage due to or as a consequence of
- b.) Transient cardiorespiratory arrest due to or as a consequence of
- c.) Excited delirium.

Other significant conditions contributing to the death but not causally related to the immediate cause (a) above: Cardiomegaly.

[74] Dr. Rivera had the benefit of a consultation examination from a neuropathologist. Dr. Rivera explained that this examination determined "Mr. Chastellaine had suffered hypoxic ischemic brain damage, which means there wasn't enough oxygen flowing to his brain and it then resulted in damage to his brain, which then resulted in swelling, death of the neurons which are cells that make up the brain, as well as herniation, which means that the brain had swelled inside the skull and put pressure on other parts of the brain."

[75] Dr. Rivera explained that transient cardiorespiratory arrest means that "something caused Mr. Chastellaine to temporarily stop breathing, as well as have his heart stop. And more often than not, the two go hand in hand." If the heart stops beating there is no longer blood carrying oxygen

to the brain and eventually, without oxygen, the brain shuts down the rest of your bodily functions, including breathing.

[76] Cst. Saurette testified that when Mr. Chastellaine was rolled into the recovery position, he checked again for vital signs and could not find signs of breathing or a pulse. Cst. Kull monitored the pulse at Mr. Chastellaine's feet but could not detect a pulse. Cst. Finlayson testified he detected a weak but fading pulse after Mr. Chastellaine was rolled into the recovery position. Cst. Finlayson testified that while chest compressions were being performed he could feel the pulse of the blood circulating in coordination with the compressions. Cst. Kull testified after he became fatigued doing chest compressions, he would monitor Mr. Chastellaine's pulse at his feet. He was not able to feel a pulse. Based on this testimony and the response of the AED, I conclude that Mr. Chastellaine's heart stopped beating and he stopped breathing when the police observed him lose consciousness.

[77] Dr. Rivera found that Mr. Chastellaine had an enlarged heart or cardiomegaly. This was a significant finding as an enlarged heart means the heart is more prone to develop an abnormal rhythm also known as a fatal arrhythmia. Mr. Chastellaine's heart developed a fatal arrhythmia. This was evidenced by the application of the AED by the police officers. The AED communicated the direction to the officers "do not shock". Dr. Rivera explained that if the AED does not detect a heart rate, it will not advise to shock. Dr. Rivera testified,

The AED shocks the heart when it finds that it's in a shockable rhythm or a rhythm where a shock to the heart will actually change it from fibrillating – which means that it's twitching – to then properly beating. In Mr. Chastellaine's case, when they put the AED or the external defibrillator device on him, no shock was advised because his heart had actually stopped by that time, and if it stops there's no point – or the protocol is you don't shock a heart that's already stopped. You only shock a heart that [is] fibrillating or twitching.

[78] There are a number of causes for an enlarged heart. These include high blood pressure, morbid obesity, persistent and regular alcohol or cocaine use or a genetic condition. As a genetic condition, an abnormality in the DNA causes the person to develop an enlarged heart. Frequently, deaths from genetic cardiomegaly are seen in younger people who die suddenly during a physical exertion or playing a sport. In those cases, an

autopsy reveals the enlarged heart and no other signs of disease. Dr. Rivera was not able to determine the cause of Mr. Chastellaine's enlarged heart based on the examinations he conducted. He explained that he could not determine whether Mr. Chastellaine had undiagnosed high blood pressure at autopsy.

[79] Other than the enlarged heart, there were no other signs of heart disease in Mr. Chastellaine.

[80] Dr. Rivera concluded that it was a state of excited delirium that precipitated Mr. Chastellaine's heart and breathing to stop. Dr. Rivera described excited delirium as "a condition wherein a person has excitation or agitation associated with an altered mental state, then they die, usually suddenly." An altered mental state manifests itself as incoherent thought and speech and/or bizarre behavior. It can be related to the use of a stimulatory drug like cocaine. In some cases of excited delirium the person has been involved in some type of physical exertion and exhibits extreme or superhuman strength. The literature has also documented profuse sweating in some persons who are in a state of excited delirium. Dr. Rivera testified that "in quite a few instances of excited delirium in the literature, they have been somehow restrained." Dr. Rivera confirmed that some but not all of these indicators could be present in a case of excited delirium.

[81] There was evidence of alcohol, marijuana and oxycodone in Mr. Chastellaine's system. Dr. Rivera testified none of these are stimulatory drugs and so would not normally be associated with a case of excited delirium.

[82] A blood sample was taken when Mr. Chastellaine was first admitted to hospital. It revealed a 181 mg% of alcohol in his blood. The legal limit for driving requires less than 80 mg% of alcohol in your blood. Since Mr. Chastellaine had been in police custody for five hours by that time, he would have had a higher alcohol level when first arrested. The toxicology report describes this level of alcohol usually associated with intoxication in the average social drinker.

[83] I am not convinced that Mr. Chastellaine was in a state of excited delirium immediately before he lost consciousness. Both Dr. Rivera and Dr. Boxer-Meyrowitz testified that individuals in a state of excited delirium are incoherent. I had the benefit of hearing detailed testimony of the physical struggle with Mr. Chastellaine – something Dr. Rivera did not

have. Based on the evidence I heard, I conclude that Mr. Chastellaine was not incoherent. While many might not have reacted in the way that he did, his comment, “you are not taking my clothes for no warrant” is related and responsive to the officers telling him they wanted to seize his clothes. He was responsive to Cst. Lintick and agreed he would stop fighting when Cst. Lintick saw he was relenting and asked him if he was done fighting. Cst. Lintick testified Mr. Chastellaine “had his wits about him at that time.” Cst. Saurette and Cst. Finlayson testified when the resistance from Mr. Chastellaine diminished, Mr. Chastellaine was breathing heavily but still talking to them and coherent. The officers testified that he let himself be handcuffed.

[84] There certainly are aspects of Mr. Chastellaine’s behaviour which were unusual, such as his laughter during the intense physical struggle. All officers involved with him during the struggle described hearing him laugh. Cst. Lintick testified he found it “unsettling.” Cst. Saurette testified the “laughing stuck with me.” Cst. Finlayson testified Mr. Chastellaine was saying “fuck off” and laughing as if he was enjoying the fight. All the officers interpreted his laughter as a mocking of the police efforts to restrain him. Cst. Hollywood is the only officer who testified that Mr. Chastellaine along with the laughter said words to the effect of “it takes five of you” [to control him]. Cst. Hollywood interpreted Mr. Chastellaine’s words as meant to berate, belittle or mock the police.

[85] I do not find this description of Mr. Chastellaine’s behavior to be markedly different from his angry reaction to the officers when they went to arrest him earlier in the day. Cst. Lintick testified Mr. Chastellaine was angry and belligerent when he said, “those fucks wouldn’t serve me, I wasn’t even drunk. That’s bullshit.” It is also consistent with his angry reaction at the liquor store when he pounded on the table and swore at the clerk when refused service. Based on this evidence, I cannot conclude that Mr. Chastellaine was showing an altered mental state such that he was incoherent or out of control during the physical struggle with the police.

[86] The notable observation that is consistent with excited delirium is Mr. Chastellaine’s display of extraordinary strength. However, I also note that Mr. Chastellaine was a large man, in the prime of his life and could well have been a strong person. The natural adrenaline rush of the fight would also have contributed to his strength. As explained by Dr. Rivera, when a person is confronted “with a situation where they’ve either got to fight or flee, right, the body wants to prepare itself for that by then pumping out

excitatory hormones or adrenaline, which then means I've now got something that's keyed up both my body and my central nervous system in order to be able to then get into a physical altercation to fight or to run away as fast as I possibly can or flee."

[87] Dr. Rivera agreed that "you don't necessarily have to have an altered mental state in order for the heart – especially if it's a heart that's not exactly normal such as a heart that's enlarged and already pre-disposed or prone to going into a fatal heart rhythm..." to stop.

[88] I am not sure that Mr. Chastellaine was in a state of excited delirium prior to the cardio-respiratory arrest because I find he was coherent, he had not consumed a stimulatory drug as is more typical in cases of excited delirium. (For example see the Inquest report of Laura Lee Draper and Arthur Randy Gill - July 14, 2005) I believe it is more likely the physical exertion of the struggle and the resulting adrenaline rush caused Mr. Chastellaine's heart and breathing to stop because his enlarged heart (cardiomegaly) predisposed him to developing a fatal arrhythmia.

[89] In the end, whether Mr. Chastellaine's heart stopped because of the intense physical exertion in resisting the officers' efforts to restrain him or he entered a state of excited or agitated delirium, his heart stopped and his breathing stopped and irreversible brain damage resulted. Once his heart stopped, there was little that could be done to save him. As Dr. Boxer-Meyrowitz testified, asystole, as observed by Paramedic Drysdale is a terminal event.

[90] I did explore with the witnesses if the outcome for Mr. Chastellaine could have been improved by some assistance with breathing prior to paramedic arrival in addition to the chest compressions already performed by police officers. This was not supported by the medical evidence. Mr. Drysdale had the ability to offer advanced care in assisting him with breathing by intubating him by virtue of his training. I concluded that it would not be practical to require police officers to have advanced medical training.

The Authority to Seize Clothes Incident to Arrest

[91] There is common law authority which authorizes the police to search and seize evidence incident to arrest. The framework for the

common law authority was recently clarified by the Supreme Court of Canada in *R. v. Saeed* 2016 SCC 24 at paragraph 37:

- 1.) The individual has been lawfully arrested;
- 2.) Search is truly incidental to the arrest in the sense that it is for a valid law enforcement purpose related to the arrest;
- 3.) The search is conducted reasonably (*R. v. Fearon* 2014 SCC 77 (CanLii)).

At paragraph 38 the Court pointed out that in some contexts the accused's privacy interest is so high police are precluded from relying on search incident to arrest. The Court noted that the common law framework must be modified by the courts to allow only reasonable searches.

[92] In *R. v. Caslake* the Supreme Court said it is the Court's duty to set boundaries on the common law authority to search and seize incident to arrest.

[93] In *Cloutier v. Langlois*, 1990 CanLII 122 (SCC), [1990] 1 S.C.R. 158 the Supreme Court explained some limitations to the common law search and seizure incident to arrest:

1. This power does not impose a duty. *The police have some discretion in conducting the search. Where they are satisfied that the law can be effectively and safely applied without a search, the police may see fit not to conduct a search. They must be in a position to assess the circumstances of each case so as to determine whether a search meets the underlying objective.*
2. The search must be for a valid objective in pursuit of the ends of criminal justice, such as the discovery of an object that may be a threat to the safety of the police, the accused or the public, or that may facilitate escape or act as evidence against the accused. The purpose of the search must not be unrelated to the objectives of the proper administration of justice, which would be the case for example if the purpose of the search was to intimidate, ridicule or pressure the accused in order to obtain admissions.

3. The search must not be conducted in an abusive fashion and in particular, *the use of physical or psychological constraint should be proportionate to the objectives sought and the other circumstances of the situation.* (Emphasis added)

[94] The foregoing principles demonstrate that sometimes even when there is some basis to seize evidence related to a lawful arrest this does not eliminate the need for proportionality in seizing the evidence. The use of force in my view must be measured and carefully considered in the context of all of the circumstances because the manner of seizure must be reasonable.

[95] In *R. v. Backhouse* 2005 CanLii 4937 (ONCA) the Court dealt with the seizure of clothing incident to arrest. There were grounds to believe that the accused person might have been involved in a shooting and police wanted to do forensic gunshot residue testing on the clothing. The only way to do this testing was by seizing the clothes. In concluding that the seizure of the clothes was not done in an abusive fashion the Court relied on the fact that there was no force used in the seizure and the accused was immediately provided with a new set of garments. At paragraph 144 the Court refers with approval to *Paul* where the court said that seizures are justified to preserve evidence that may go out of existence or be otherwise lost.

[96] The seizure of Mr. Chastellaine's clothes was not needed to conduct any further forensic testing on the clothes themselves. The evidentiary need for the clothing was to establish identification.

[97] In *R. v. Kitaitchik* 2002 CanLii 45000 (ONCA) the Court considered the seizure of an accused's clothing incident to arrest. The police wanted to test the clothing for fibers that might link him to the scene of a murder. In commenting on the nature of the seizure the Court said that you cannot infer that the seizure of clothing is as traumatic or akin to a strip search although clearly it is an intrusive act. The court relied on the fact that no force or intimidation was used to remove the clothing to uphold the reasonableness of the search. The Court relied on the fact that the search was affected quickly with no apparent embarrassment to the detained person.

[98] Given this legal context, was the seizure of Mr. Chastellaine's clothes properly conducted incident to arrest? Cst. Lintick testified that he

noticed when he arrested Mr. Chastellaine that he was wearing the same clothes as he had observed on the video capturing the offence he had reviewed at the liquor store. He consulted with Sgt. Williams, who agreed he should seize the clothes. He explained that the clothes would be “good evidentiary value” as he could be seen to be wearing these clothes on the video. In response to my question as to why a picture of Mr. Chastellaine in his clothes would not have sufficed, he explained that he did consider a picture but was concerned that if the picture was later shown to the witness for identification and you could see Mr. Chastellaine’s face, the identification would be compromised.

[99] It would have been possible to address such a concern by obscuring the face prior to showing it to a witness. In any event, it would not have been necessary to show the witness the picture since the picture itself could be relied on to demonstrate to a trier of fact that the person captured on the liquor store video was the same as the picture of the person arrested.

[100] Cst. Saurette testified that Sgt. Williams had directed the seizure of clothing as it was direct evidence that he was the person at the liquor store who committed the offence. When he was asked why a photograph of Mr. Chastellaine wearing those clothes would not have sufficed he said:

Because it is common practice that you seize clothing as if you take a photograph it might not be the exact same clothing that is seen in the photograph so therefore to seize the exact same clothing that he was wearing plus the time frame that we had identified and we went to Mr. Chastellaine’s residence was shortly thereafter, the ah, his time at the MLCC [liquor store] so therefore he was viewed in the exact same clothing that was in the video.

He testified it is common practice to seize clothing. And he tried to explain to Mr. Chastellaine that this would be done without the use of force but Mr. Chastellaine escalated the situation when he jumped up and head-butted Cst. Saurette.

[101] Sgt. Kenneth Williams testified that prior to retiring from the police service in 2017, he was with the service for 28 years and 11 of those were as a sergeant. He spent 10 years in the major crimes unit. He made no notes related to this matter and was not in the police station at the time the

physical confrontation with Mr. Chastellaine occurred. His signature does appear on the prisoner log sheet confirming that Mr. Chastellaine was not in medical distress and had no medical complaints when he was brought into the police station. He did note that Mr. Chastellaine denied being intoxicated.

[102] Sgt. Williams confirmed that he would have directed or would have given the investigators permission to seize Mr. Chastellaine's clothing. He testified that he gave no thought to photographing Mr. Chastellaine in his clothes because they needed the clothes as evidence in court. When he was asked if he would ever accept no as an answer from a suspect, he responded, "It is evidence, we have a right to take it, we're taking it." He said in such circumstances he would explain to the offender why the clothes would be seized, provide him with the opportunity to consult with counsel and then take the clothes.

[103] When I asked Sgt. Williams whether the police policy to seize the clothing should contain a necessity component, that is, is it necessary to seize the clothing, he responded,

Based on my 28 ½ years experience as a police officer, absolutely not, every piece of evidence that we need for court we need for a reason, I have seen cases thrown out because somebody's photo line-up is not accepted in court, or for a wide range of reasons. As much evidence as we can collect we are collecting to give the court the opportunity to evaluate it.

[104] I am satisfied there was a basis for the officers to seize Mr. Chastellaine's clothes incident to arrest. They had reasonable grounds to arrest Mr. Chastellaine for assault for spitting on Mr. McDougall. There was a relationship between the seizure of the clothes and the offence for which he was arrested. The officers' intention in approaching Mr. Chastellaine to seize his clothes was to provide him with an alternative set of clothes and give him privacy when changing his clothes. However, in my view there was no thought given to whether it was **necessary** to seize the clothing in order to establish that Mr. Chastellaine was wearing the same clothes that could be seen on the video from the liquor store. A photograph of Mr. Chastellaine would have provided the same evidence to the Court without the need to seize the clothing. The courts have recognized that taking someone's clothes is an intrusive act. Therefore in my view there should be some proportionality between the taking of the clothes and the

evidentiary need for the clothes. This was not a situation where the clothes themselves were needed for forensic testing.

[105] While I do not ascribe any fault to the investigators for deciding to seize the clothes, in fact the *Fatality Inquiries Act* specifically prohibits me from ascribing fault, I do see an opportunity to prevent further deaths in similar circumstances if the police service's policy recognizes that it should be necessary to seize clothes incident to an arrest. There must be some proportionality between the investigative need for the clothes and the nature of the offence. The circumstances before me at this Inquest demonstrate that if thought is given at the outset to whether it is necessary for clothes to be seized it would help avoid similar physical confrontations.

[106] In this case, it is clear that the officers considered the seizure of the clothes to be routine. When they approached Mr. Chastellaine for his clothes, he had been in custody for some five hours without incident, so I can understand why they did not anticipate any difficulty in seizing the clothes. As explained by Cst. Saurette, he tried to de-escalate the situation by attempting to explain how they would not be using force to take the clothes but Mr. Chastellaine was not in a state to listen to such an explanation. Cst. Saurette testified the situation escalated quickly such that they were only able to react to Mr. Chastellaine when he jumped up and head-butted him. I am satisfied at that point, the officers were justified in using reasonable force to subdue Mr. Chastellaine to prevent any further assault or injury. The use of the handcuffs and leg shackles were justified based on the extreme level of strength exhibited by Mr. Chastellaine. The spit sock was necessary because Mr. Chastellaine was in custody for spitting on someone and he was noted on the police system to have Hepatitis C.

[107] I was specifically directed to consider the use of restraints by the Chief Medical Examiner. I noted that Dr. Boxer-Meyrowitz testified that hospital staff are sometimes required to use four-point restraints when a person is in a state of excited delirium. I am satisfied that the use of restraints was necessary once Mr. Chastellaine demonstrated by head-butting Cst. Saurette that he was a danger to officers. I accept the evidence of the officers that their attempts to control him were to minimize injury to themselves and to Mr. Chastellaine.

[108] Ms. Carswell and Ms. Badcock both submitted that I should make no recommendations as a result of this Inquest. Ms. Badcock argued there

can never be too much evidence and officers should be taught to always gather the best evidence. Ms. Badcock pointed out that a photograph might not provide a true representation of the colour of the t-shirt worn by Mr. Chastellaine. She further argued there are frailties in eye-witness identification so that the seizure of the actual clothes is the best evidence.

[109] Ironically, the t-shirt in this case was never recovered or seized after Mr. Chastellaine went into medical distress. Ms. Carswell and Ms. Badcock suggested that the colour of a piece of clothing that can be seen lying on the floor in the hospital room where Mr. Chastellaine was taken is in fact the same colour as the t-shirt Mr. Chastellaine is wearing in the video from the liquor store. I agree with them that it may be the t-shirt based on the distinctive blue colour. Such a determination was available to me based on just the photograph even though the t-shirt was never seized or retained.

[110] Ms. Carswell submitted that while the outcome was tragic, nothing would have prevented this outcome. Ms. Carswell cautioned against the Court parsing the circumstances second by second, minute by minute with the benefit of 20/20 hindsight. She argued that the officers were lawfully entitled to seize the clothing. They were being thorough and complete.

[111] In my view, any physical confrontation that can be avoided is the best protection for deaths that result because of physical exertion. It is clear that the intense physical struggle, whether in a state of excited delirium or intense anger, caused Mr. Chastellaine's heart to fail and his breathing to stop.

[112] I have found a report entitled, "Police Encounters with People in Crisis", an Independent Review conducted by the Honourable Frank Iacobucci for Chief of Police William Blair, Toronto Police Service, July 2014 helpful. This thorough review was commissioned by the Toronto Chief of Police. The report contains 84 recommendations to address and reduce fatalities that occur in police interactions.

[113] The review by Justice Iacobucci confirms that modern policing has evolved and police forces have adapted to try to achieve a balance between the minimal use of force required in the circumstances and recognizing the police officer is exercising judgment in a situation of great pressure and stress (at paragraph 42). I am also cognizant of the direction from the Supreme Court of Canada to avoid "Monday morning

quarterbacking” (*R. v. Cornell* 2010 SCC 31 at paragraph 24) when assessing the reasonableness of police actions. And yet, an inquest does provide an opportunity to look at a set of circumstances and see if alternatives that are easier to see from a dispassionate distance might have helped prevent similar tragic results. As noted in Justice Iacobucci’s review, and a number of the officers I heard from testified to, events such as those that occurred here are traumatic not only for the deceased’s family but for the officers involved. In my view, there was an opportunity when Mr. Chastellaine first became angry for the officers to back out of the room. The need to seize the clothing was not so urgent, that it needed to be done immediately. There is a growing recognition that de-escalation techniques can avoid violent confrontation in some situations. Backing away and locking Mr. Chastellaine in the room, could have provided everyone with an opportunity to consider different approaches. It appears there was time to do this because Cst. Winter heard and saw Mr. Chastellaine express his vociferous displeasure at turning over his clothes so he went to go retrieve his partner, Cst. Hollywood. When he returned, Mr. Chastellaine was still seated.

[114] **I recommend that the circumstances of this Inquest be used in scenario-based training to demonstrate that backing away from a confrontation is an option to be considered and can be a useful de-escalation technique.**

[115] **I recommend that the Winnipeg Police Service’s training reflect that police officers should consider in what circumstances it is necessary to seize clothing from a suspect incident to arrest.**

[116] The “Police Encounters with People in Crisis” report suggests that “debriefs” can be a helpful way to create a culture of self-assessment and improvement. Justice Iacobucci suggests at recommendation 26 that a procedure should be developed which maintains confidentiality in the debriefing process, even when independent investigations are occurring, in order to promote candid analysis and continuous education.

[117] **I recommend that the Manitoba Government study the feasibility of legislation which would allow for confidential debriefing processes for police services to promote candid analysis of the circumstances surrounding a death to promote self-assessment and continuous education.**

[118] In the spirit of ongoing education, **I recommend that the facts of this Inquest be used in scenario-based training to exemplify circumstances where it would not have been necessary to seize the actual clothing from a suspect.** As I have described above, in my view, a photograph would have provided the same evidentiary value in this case and not required taking Mr. Chastellaine's clothes.

Conclusion

[119] Mr. Chastellaine was lawfully arrested and detained in custody. The police had lawful authority to seize his clothes. The law requires that the seizure of his clothes must be done in a reasonable manner. Once Mr. Chastellaine struck Cst. Saurette in the face with a head-butt, the police officers used reasonable force and restraints to control Mr. Chastellaine to avoid any further injury or assault. Mr. Chastellaine suddenly lost consciousness because his heart stopped beating and he stopped breathing. Mr. Chastellaine's enlarged heart increased the likelihood of developing a fatal arrhythmia. This caused irreversible brain damage despite quick efforts by the police officers to move to life-saving measures such as chest compressions.

[120] The recommendations I have made seek to address an earlier point where alternative approaches might have avoided the violent physical confrontation that occurred between Mr. Chastellaine and the police officers.

[121] The loss of life is traumatic for the deceased's family. It is stressful for the police officers involved. Any approach that seeks to reduce the opportunities for physical confrontation is worth considering.

Dated at the City of Winnipeg, in Manitoba, this 12th day of February, 2018.

“Original signed by”

Associate Chief Judge Anne Krahn

RECOMMENDATIONS

- 1. I recommend that the circumstances of this Inquest be used in scenario-based training to demonstrate that backing away from a confrontation is an option to be considered and can be a useful de-escalation technique.**
- 2. I recommend that the Winnipeg Police Service's training reflect that police officers should consider in what circumstances it is necessary to seize clothing from a suspect incident to arrest.**
- 3. I recommend that the Manitoba Government study the feasibility of legislation which would allow for confidential debriefing processes for police services to promote candid analysis of the circumstances surrounding a death to promote self-assessment and continuous education.**
- 4. I recommend that the facts of this Inquest be used in scenario-based training to exemplify circumstances where it would not have been necessary to seize the actual clothing from a suspect.**

WITNESS LIST

Jon McDougall	MLCC Employee
Jonathan Menzies	MLCC Employee
Cst. Tyler Lintick	WPS
Cst. Robert Saurette	WPS
Cst. Brett Finlayson	WPS
Cst. Scott Hollywood	WPS
Cst. Jamie Kull	WPS
Cst. Myles Winter	WPS
Cst. Aaron Penner	WPS
Cst. Remillard	WPS
Sgt. Ken Williams	WPS
Nick Carlson	WFPS (Firefighter)
Terry Drysdale	WFPS (Paramedic)
Brad Mazor	WFPS (Firefighter)
Jolene Pottinger	Civilian statement
John Blyan	Civilian statement
Dr. Boxer-Meyrowitz	Doctor at Seven Oaks Hospital
Dr. Raymond Rivera	Pathologist
Kim Witt	OCME
Cst. Nick Doyon	WPS

EXHIBIT LIST

Exhibit No.	Exhibit Description
1	Volume # 1 (Crown's Inquest material)
2	Volume #2 (Crown's Inquest material)
3	Volume #3 (Crown's Inquest material)
4	Volume #4 (Crown's Inquest material)
5	MLCC Video
6	Photo Line Up
7	DVD Statements of Pottinger and Blyan
8	CV of Dr. Raymond Rivera
9	Mr. Chastellaine's shorts – in brown bag labeled: Black Shorts (1R1)
10	Mr. Chastellaine's underwear – in brown bag labeled: Black Underwear (1R2)
11	WPS Spit Sock – in brown bag labeled: Spit Sock (1R3)