

RELEASE DATE: DECEMBER 4, 2009



THE PROVINCIAL COURT OF MANITOBA

IN THE MATTER OF: *THE FATALITY INQUIRIES ACT*

AND IN THE MATTER OF: **HOWARD GLENN FLEURY
 (DATE OF DEATH: December 3, 2005)**

**Report on Inquest and Recommendations of
The Honourable Judge Catherine Carlson
Issued this 1st day of December, 2009**

APPEARANCES:

Mr. R. Tapper, Q.C. and Mr. J. Kendall, for the Crown
Mr. I. Garber, for Ms. Barbara Fleury
Ms. K. Carswell, for the Winnipeg Police Service
Ms. Kimberly Desjarlais

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THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: HOWARD GLENN FLEURY

Having held an inquest with respect to the death of Howard Glenn Fleury on June 22, 23 and 24, 2009 at the City of Winnipeg, in Manitoba, I report as follows:

Howard Glenn Fleury came to his death on December 3, 2005 in the City of Winnipeg, in Manitoba.

The cause of death was multiple gunshot wounds inflicted by members of the Winnipeg Police Service in the course of their duties.

Attached to and forming part of this report are the following:

- Schedule 1: Preliminary matters
- Schedule 2: Material Circumstances and Overview of the Evidence
- Schedule 3: Summary of Witness Evidence – Summary of evidence of the individual witnesses based on the transcript of the inquest hearing and notes taken during the hearing
- Schedule 4: Findings of the Pathologist – Summary of evidence with respect to the death and autopsy findings of pathologist Dr. T. Balachandra
- Schedule 5: Conclusion
- Schedule 6: Recommendations

- Schedule 7: Witness List
- Schedule 8: Exhibit List

Dated at the City of Winnipeg, this 1st day of December, 2009.

Original signed by:

Catherine Carlson,
Provincial Judge

DISTRIBUTION LIST

1. Dr. A. Thambirajah Balanchandra, Chief Medical Examiner
2. Chief Judge Ken Champagne, Provincial Court of Manitoba
3. The Honourable Andrew Swan, Minister Responsible for *The Fatality Inquiries Act*, Minister of Justice and Attorney General
4. Mr. Jeff Schnoor, Q.C., Deputy Minister of Justice and Deputy Attorney General
5. Michael Mahon, Director of Special Prosecutions and Appeals
6. Mr. R. Tapper, Q.C. and Mr. J. Kendall, for the Crown
7. Mr. I. Garber, Counsel for Ms. Barbara Fleury
8. Ms. K. Carswell, Counsel for the Winnipeg Police Service
9. Ms. Kimberly Desjarlais
10. Mr. Mike Anthony, Exhibit Officer, Provincial Court
11. Ms. Aimee Fortier, Executive Assistant and Media Representative, Provincial Court of Manitoba



THE FATALITY INQUIRIES ACT
REPORT BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: HOWARD GLENN FLEURY

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SCHEDULE 1

PRELIMINARY MATTERS

CALLING OF THIS INQUEST

[1] On July 4, 2007, an inquest into the death of Howard Glenn Fleury was called by the Chief Medical Examiner of the Province of Manitoba, Dr. T. Balachandra, pursuant to section 19(3) of *The Fatality Inquiries Act* (the “Act”). This was directed by letter from Dr. Balachandra to then Chief Judge of the Provincial Court of Manitoba, the Honourable Raymond Wyant, for the following reasons:

1. To fulfill the legislative requirement for a mandatory inquest as defined in section 19(3) of the *Act*;
2. To determine the circumstances of Mr. Fleury’s death; and,
3. To determine what, if anything, can be done to prevent similar deaths from happening in the future.

LEGISLATIVE AUTHORITY

[2] Sections 19(3), 25 and 26(1) of the *Act* provide the authority for a provincial judge to hold an inquest with respect to the death of Mr. Fleury. These sections provide as follows:

Inquest mandatory

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

...

(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 judge to hold an inquest with respect to the death.

Ministerial direction for inquest

25 The minister may direct a provincial judge to conduct an inquest with respect to a death to which this Act applies.

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.

MANDATE OF THIS INQUEST

The duties of a provincial judge at an inquest are set out in section 33(1) of the *Act*, as follows:

Duties of provincial judge at inquest

33(1) After completion of an inquest, the presiding provincial judge shall

- (a) make and send a written report of the inquest to the minister setting forth when, where and by what means the deceased person died, the cause of the death, the name of the deceased person, if known, and the material circumstances of the death;
- (b) upon the request of the minister, send to the minister the notes or transcript of the evidence taken at the inquest; and
- (c) send a copy of the report to the medical examiner who examined the body of the deceased person;

and may recommend changes in the programs, policies or practices of the government and the relevant public agencies or institutions or in the laws of the province where the presiding provincial judge is of the opinion that such changes would serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.

Subsection 2 of section 33 specifically provides that a provincial judge:

(b) shall not express an opinion on, or make a determination with respect to, culpability in such manner that a person is or could be reasonably identified as a culpable party in respect of the death that is the subject of the inquest.

This prohibition in subsection 33(2) is not an issue in the end result, as my conclusions as to the material circumstances surrounding the death of Howard Glenn Fleury indicate that none of the police officers involved in the encounter that resulted in Mr. Fleury's death, including the two officers who fired the fatal shots, did anything improper or other than what they were trained and required to do as police officers.

STANDING

[3] A hearing to determine who would have standing to participate in the inquest was held on October 21, 2008.

[4] Section 28(1) of the *Act* provides that a person who is “substantially and directly interested in the inquest” may attend in person or by counsel and may examine or cross-examine the witnesses called.

[5] There were three applicants for standing.

[6] Ms. Hanlin applied for standing on behalf of the Winnipeg Police Service and its members.

[7] Mr. Garber applied for standing on behalf of the deceased's mother, Ms. Barbara Fleury.

[8] Mr. Sawchuk applied for standing on behalf of the deceased's former common law spouse, Ms. Kimberly Desjarlais.

[9] After hearing submissions on behalf of each of the applicants, I determined that each was substantially and directly interested in the inquest and I granted standing accordingly to all three applicants.

[10] At the start of the inquest on June 22, 2009, Mr. Sawchuk advised that although Ms. Desjarlais had anticipated funding would be provided for her legal representation at the inquest by the Manitoba Métis Foundation, that had not materialized. Accordingly Mr. Sawchuk sought leave to withdraw as Ms. Desjarlais' counsel, and that application was granted.

[11] Ms. Desjarlais, having been granted standing, was asked, after the direct examination and cross-examination of each witness by counsel, whether she had questions on cross-examination for the witness. Ms. Desjarlais did attend throughout the inquest hearing. Ms. Desjarlais did ask some questions on cross-examination of one of the witnesses. Her limited participation in questioning witnesses is likely attributed at least in part to the fact she did not have legal counsel representing her. Ms. Desjarlais was asked, at the end of the evidence presented by inquest counsel, whether there were any witnesses that had not been called that she felt needed to be called. Ms. Desjarlais did suggest one witness, namely one of her children (now an adult).

[12] I asked inquest counsel, Mr. Tapper, to meet with Ms. Desjarlais and the proposed witness to canvass whether that proposed witness had evidence to provide that would be relevant and helpful to the court for the purpose of the inquest. Following a recess, Mr. Tapper advised the court that he had done so and determined that the proposed witness' evidence would not add anything to the evidence already heard. Ms. Desjarlais confirmed that, having met with Mr. Tapper, she was satisfied that was the case.

[13] Ms. Desjarlais (in addition to all counsel) made a closing submission after the conclusion of the evidence. She also requested that her daughter, Amanda Desjarlais (also a child of the deceased, and now an adult), be permitted to make a closing submission, and that was allowed.

SCHEDULE 2

MATERIAL CIRCUMSTANCES AND OVERVIEW OF EVIDENCE

[14] At 11:41 p.m. on December 2, 2005, Winnipeg Police received a 911 call. The female caller, who identified herself as Kim Desjarlais, advised that her ex common law, Howard Fleury, 34 years old, was at her residence. She stated that Mr. Fleury was not supposed to be there, that he had come over with her brother and that he was getting mad. Information was provided by Ms. Desjarlais that there were children present in the residence, ages 2 and up, that Mr. Fleury had been drinking and that he had been violent before. Ms. Desjarlais provided her address as 339 Alfred Avenue.

[15] Winnipeg Police Service Constables Robert Stockham and Matthew Barkley were dispatched to 339 Alfred Avenue in response to the 911 call. Information they were provided by the dispatch was:

- The call was domestic
- The address was 339 Alfred Avenue, in Winnipeg
- The caller was Kim Desjarlais
- Ms. Desjarlais' common law or ex common law, Howard Fleury, was in the house breaching an order that he have no contact with Ms. Desjarlais
- Mr. Fleury was intoxicated
- There were children in the house
- Ms. Desjarlais was afraid Mr. Fleury would become violent

[16] While en route to 339 Alfred Avenue, Constable Stockham (the passenger in the police vehicle) did some background investigation regarding Howard Fleury on the computer system in the police vehicle, which included a CPIC (criminal record) check. He scanned Mr. Fleury's criminal record and he learned that:

- There was a court order in effect, as against Mr. Fleury, with Ms. Desjarlais as the protected person
- There was a caution on the system for Mr. Fleury for violence and family violence
- That Mr. Fleury was a large man, being six feet tall and weighing 240 pounds

[17] Constable Stockham verbally informed Constable Barkley (who was driving the police vehicle) of the information he learned about Mr. Fleury. Both Constables Stockham and Barkley were able to view a police photograph of Mr. Fleury on the computer screen in their cruiser car.

[18] The reference to violence and to Mr. Fleury's size heightened the attention of Constables Stockham and Barkley to the situation. They did not review, and as such, did not know, specific details about Mr. Fleury's criminal record prior to attending on scene at 339 Alfred Avenue, nor during the incident.

[19] Constables Barkley and Stockham arrived on scene at 339 Alfred Avenue at about 11:56 p.m. At 12:13 a.m., 17 minutes later, an ambulance was called for Mr. Fleury by another police officer who had arrived on the scene. The confrontation between Mr. Fleury and Winnipeg police officers, which ended with Mr. Fleury's death, lasted less than 17 minutes.

[20] As Constables Stockham and Barkley arrived on scene, Patrol Sergeant Maurice Rioux also arrived. Patrol Sergeant Rioux had heard the dispatch, deemed the call a serious one, and made the decision to attend on scene. Constables Stockham and Barkley were in police uniform and in a marked police vehicle. Patrol Sergeant Rioux also arrived in a marked police vehicle.

[21] Once on scene, Constables Stockham and Barkley and Patrol Sergeant Rioux walked toward the house and saw a female outside, on the east side of the house toward the back. She appeared distraught and was waving at officers. The three officers walked toward her and she identified herself as Kimberly Desjarlais. She advised Constables Barkley and Stockham that Mr. Fleury was inside the house, had armed himself with a knife, that her children were inside the house and that she was afraid for their safety. She said that Mr. Fleury was acting crazy.

[22] Constables Stockham and Barkley drew their firearms and walked across the back landing and into the porch at the rear of the house. The door into the house from the porch was closed and locked. Constable Stockham knocked on the door, announced "Winnipeg Police" and demanded to be let in. The door swung open to the inside, and a man was standing there holding a knife in his right hand, down at his side. Constable Stockham told the man, who he recognized as Mr. Fleury from the photograph he had viewed on the computer screen in the cruiser car, "Winnipeg Police" and "drop the knife". Mr. Fleury walked toward Constable Stockham and said "Have you ever heard of suicide by cop?" Constable Stockham backed up, out of the porch and onto the back landing, as Mr. Fleury kept walking at him. Constable Stockham repeatedly told Mr. Fleury to drop the knife. At that

point, Constable Barkley deployed pepper spray directly at Mr. Fleury and the spray hit Mr. Fleury right in the eyes.

[23] Constable Barkley, Constable Stockham and Patrol Sergeant Rioux all testified that the pepper spray had no apparent effect on Mr. Fleury. Constable Stockham said that Mr. Fleury, still holding the knife in his right hand, took his left hand and wiped his eyes with the inside of the elbow, went into the house and locked the door.

[24] When Mr. Fleury had opened the door initially, Constable Stockham had seen a number of children, ranging in ages from about 10 to 15, behind Mr. Fleury and inside the house, all crying.

[25] Constables Stockham and Barkley called for backup, advising dispatch that the male inside the house was armed with a knife.

[26] Several backup units arrived on scene over the next short while. Constables Dedieu and Dziver arrived first, followed by Constables Odietu and Kanaski, Constables Grenkow and McCartney and Constables Fraser and Tittlemier.

[27] Constables Dziver and Tittlemier remained outside at the front of the house. Constables Dedieu, Odietu, Kanaski, McCartney and Grenkow went to the back of the residence.

[28] Constables Barkley and Stockham and Patrol Sergeant Rioux decided they needed to enter the house to ensure the safety of the children inside. The plan was to enter through the same back door that Mr. Fleury had just closed.

[29] Patrol Sergeant Rioux knocked at the back door and there was no answer. He knocked again. Constable Stockham yelled “Winnipeg Police, open the door”. At that point, Constables Stockham, Barkley and Dedieu had their firearms out and Patrol Sergeant Rioux had his baton out and in his hand. As Constable Stockham prepared to kick the back door in, one of the children inside opened the door. On the other side of the door, the officers saw a group of children. They did not see Mr. Fleury at that point. All of Constables Stockham, Barkley and Dedieu and Patrol Sergeant Rioux entered the residence through the back door. Constable Stockham asked the children where Mr. Fleury was and the children pointed to Constable Stockham’s left and said that Mr. Fleury was upstairs.

[30] An officer directed Ms. Desjarlais and the children who were by the rear door to go into the basement of the residence and to stay there.

[31] Constables Stockham and Barkley, with Patrol Sergeant Rioux and Constable Dedieu, went to the stairway between the first and second levels of the house. The stairway was narrow and steep, had solid walls on each side and consisted of about 12 steps. The male they had seen previously at the back door, and who they by then knew was Howard Fleury, was standing at the top of the stairs holding a knife.

[32] Mr. Fleury, being a large man, took up essentially the entire width of the stairway.

[33] Constables Stockham and Constable Barkley each took up a position at the bottom of the stairway, facing up towards Mr. Fleury. Because the landing of the stairway was narrow, each of them was partly on the stairway landing and partly in a room immediately adjacent to the stairway landing. Patrol Sergeant Rioux was behind them. Constable Dedieu saw some children standing near the kitchen area. He took the children outside and turned them over to Constable Fraser. Constable Dedieu could hear Constables Barkley and Stockham telling Mr. Fleury not to come closer or they would be forced to shoot. He could hear them saying “drop the knife”, “please, we don’t want anyone to get hurt” and “we do not want to shoot”.

[34] The only officers who could actually see Mr. Fleury on the stairway during the entire incident were Constables Barkley and Stockham. Patrol Sergeant Rioux and Constable Dedieu were behind them and could hear what was going on, and could see Mr. Fleury at times when they moved to see what was going on.

[35] Mr. Fleury, while standing at the top of the stairs repeatedly said to the officers “Have you ever heard of suicide by cop?” Constable Stockham repeatedly said “Drop the knife, drop the knife. Winnipeg Police, drop the knife”. Mr. Fleury said words to the effect of “You’re going to have to shoot me. You’re not taking me out of here alive”.

[36] Constables Stockham and Barkley saw, beyond where Mr. Fleury was standing at the top of the stairs, two children poking their heads out of the door of an upstairs room. Constable Stockham told the children to get back into the room. One of the children exited the room and went to Mr. Fleury. Constable Stockham said to Mr. Fleury “Let the kids come downstairs”. Mr. Fleury physically put his hand on the child and led the child back into the room he or she had come from. The conversation then continued between Mr. Fleury and Constables Stockham and Barkley, with Mr. Fleury saying “suicide by cop, suicide by cop”.

[37] Mr. Fleury was about 10 to 12 feet away from the officers when he was at the top of the stairs. He still had the knife in his right hand. Mr. Fleury started coming down the stairs. Constable Barkley pepper sprayed Mr. Fleury again and the spray hit him right in the face. There are some differences in the evidence as to whether the pepper spray affected Mr. Fleury and whether he went back to the top of the stairs or just up a step. Mr. Fleury continued to yell “suicide by cop. Come on, shoot me”. Constables Stockham and Barkley continued to tell him to drop the knife. At one point Mr. Fleury said something to the effect that he could not find a job and people would not hire him because he was native.

[38] Mr. Fleury started coming down the stairs again and stabbed the knife into the wall beside the stairs, at least six times. When he stabbed the wall, the whole blade of the knife went into the wall. He screamed at the officers to shoot him and that they were not going to take him alive. Constable Stockham then pepper sprayed Mr. Fleury again in the face. Constable Dedieu said that Mr. Fleury laughed and said “it’s target practice on me for you guys”.

[39] Constable Stockham said to Mr. Fleury that his kids were there and that he didn’t want to do this in front of his kids. He told him to put down the knife. Mr. Fleury did not, and started coming down the stairs. All the time the constables were screaming at him to drop the knife and not to take another step.

[40] Mr. Fleury kept coming down the stairs and got within about four feet from Constables Stockham and Barkley when each of those officers discharged his firearm. Mr. Fleury fell and landed at the feet of Constables Barkley and Stockham.

[41] An officer called for an ambulance for Mr. Fleury.

[42] Constables Barkley and Stockham were taking steps to handcuff Mr. Fleury when other officers stepped in, ensured their firearms were holstered, and took each of them to a cruiser car. They were each taken to the police station and processed pursuant to the usual police protocol.

[43] Constables Dedieu, Grenkow and Kanaski went upstairs and found three children in one of the rooms, crying. Each officer carried a child, wrapped in a blanket, downstairs and to a cruiser car. The children were taken by Constables Grenkow and McCartney to the police station and those officers took care of them until someone arrived to care for the children.

[44] An ambulance arrived on scene and paramedics attended to Mr. Fleury. Mr. Fleury was taken to the Health Sciences Centre and was pronounced dead in the Emergency Department as a consequence of gunshot wounds.

[45] The report of identification officer Sergeant F. Weiss (part of Exhibit 1) confirmed that Constable Stockham's firearm had 4 rounds of ammunition unaccounted for and that Constable Barkley's firearm had 3 rounds unaccounted for. This is consistent with the fact that Mr. Fleury sustained 7 gunshot wounds.

[46] Each of the officers that had been on scene was processed pursuant to the police protocol required after a shooting involving police. The equipment of each officer was seized, each was dealt with within the context of a homicide investigation, each was required to see a psychologist to determine his or her fitness to give a statement, and then each gave a statement regarding the incident.

[47] After the incident, four identification officers from the Winnipeg Police Service attended on scene and prepared the report that was marked as Exhibit 1 at the inquest.

[48] We know now (although the officers did not know it during the incident), from toxicology analysis done on Mr. Fleury's blood and urine after his death, that Mr. Fleury had ingested a quantity of cocaine prior to the incident, as well as alcohol.

[49] We also know now (and again the officers did not know this at the time), based on documents included as part of Exhibit 1, that Mr. Fleury had a significant criminal record for domestic violence, including 6 convictions for violent offences with respect to which the victims were either Ms. Desjarlais or children of Ms. Desjarlais and Mr. Fleury. He also had convictions for a weapons offence and an offence of resisting arrest that arose from incidents involving Ms. Desjarlais.

[50] On June 21, 2005, Mr. Fleury was charged with an assault on Ms. Desjarlais, and was released on a recognizance which included conditions that he have no contact or communication with Ms. Desjarlais and that he stay 2 city blocks away from the home, workplace, school or place of worship of Ms. Desjarlais. This is the recognizance he was subject to at the time of the December 3, 2005 incident.

[51] In addition to the incidents for which Mr. Fleury was convicted, members of the Winnipeg Police Service had been called to a number of other incidents of alleged domestic violence involving Mr. Fleury and Ms. Desjarlais.

[52] This history of domestic violence provides some context for the 911 call made to police by Ms. Desjarlais and her concerns for the safety of her children who were inside the house with an intoxicated and armed Mr. Fleury.

SCHEDULE 3

SUMMARY OF WITNESS EVIDENCE

[53] Eight of the ten witnesses called at the inquest are current members of the Winnipeg Police Service, including the two officers who discharged their firearms, Constables Barkley and Stockham. One witness, Patrol Sergeant Rioux, is a retired member of the Winnipeg Police Service. The only civilian witness was Mr. Fleury's former common law wife, Ms. Kimberly Desjarlais.

Evidence of Constable Daniel Dedieu

[54] Daniel Dedieu is a constable with the Winnipeg Police Service. On December 2, 2005, Constable Dedieu had been on the force for nine months and five weeks – nine months of training and five weeks on general patrol.

[55] On December 2, 2005, his partner was Constable Randy Dziver and they were stationed in District 3, covering the northwest corner of Winnipeg.

[56] During the evening of December 2, 2005, he and Constable Dziver were completing dealing with a missing persons call when they heard a call over the radio system in their police cruiser car. The call was seeking assistance on a domestic related incident involving a male with a knife at 339 Alfred Avenue. Constable Dedieu was driving. Constable Dziver voiced that they could assist and it took them five minutes to get to 339 Alfred Avenue.

[57] When they arrived on scene, Constable Barkley was in the front yard, with his firearm drawn and at his side. That heightened Constable Dedieu's sense of alertness because seeing an officer armed made him think that someone other than the officer must be armed. Constable Dziver got out of the car. Constable Dedieu parked the vehicle, and then attended to the front of the house with Constables Barkley and Dziver.

[58] Constable Barkley provided information that there was a suicidal male inside the house and that he was armed with a knife. Constable Barkley advised that the male had been previously pepper sprayed with no effect, and that the male was potentially crazy, mentally ill, emotionally or psychologically disturbed. He also said that there were several children inside the house.

[59] During his training, Constable Dedieu had learned that pepper spray is sometimes ineffective with people who are very goal oriented, who are induced by alcohol or drugs and those who are psychologically or emotionally disturbed.

[60] Constable Barkley advised that his partner, Constable Stockham was at the back of the house and that they would be entering through the back door. He asked Constables Dedieu and Dziver to stay at the front of the house in case the male with the knife came running out the front door. Constable Dedieu unholstered his firearm and kept it in the “ready” or “sul” position – that is, unholstered and pointed downwards. Constable Barkley went to the back of the house.

[61] Constable Barkley then voiced over a radio that he wanted Constable Dziver to attend to the back of the house with him. Constable Dedieu was told by Constable Dziver that he should go to the back and that he (Constable Dziver) would stay in front. Constable Dziver was a senior officer so Constable Dedieu went to the back and joined Constable Barkley.

[62] Constable Dedieu observed a female, who remained unidentified to him, standing to the side at the back of the house. He put his firearm back in his holster at that point.

[63] Constable Dedieu entered the back porch area. Present there were Constable Barkley, Constable Stockham and Patrol Sergeant Rioux. He observed Patrol Sergeant Rioux trying to open the back door but it was clearly locked. He could also see Patrol Sergeant Rioux banging on the door and calling for someone named “Howard” to let them in. Constables Stockham and Barkley suggested the door be kicked in. However, Patrol Sergeant Rioux stated that he did not want to do that because he was concerned about the safety of the children on the other side of the door.

[64] At that time, Constable Dedieu observed that Constable Stockham and Constable Barkley had their firearms in the sul position. He withdrew his firearm as well. Patrol Sergeant Rioux had his baton in his hand. Constable Dedieu could hear children crying on the other side of the door.

[65] Patrol Sergeant Rioux persuaded one of the children on the other side of the door to open it.

[66] Constable Dedieu saw Constable Barkley and Constable Stockham rush in to the house and saw them go to the bottom of the staircase leading from the first floor to the second floor. Constable Stockham was on the left side of the stairway

and Constable Barkley was on the right. They both had their firearms pointed up the stairs. Patrol Sergeant Rioux rushed in after them and Constable Dedieu was behind Patrol Sergeant Rioux. He was acting as a covering officer for Constables Barkley and Stockham. From the position he was in, he could not see directly up the stairway though he could do so if he leaned over and he did do that at various times.

[67] Once Constables Barkley and Stockham were at the bottom of the stairway, he heard them yelling at the male at the top of the stairs to drop the knife and saying “we don’t want anyone to get hurt” and “we do not want to have to shoot, put down the knife”. Constable Dedieu described this as the officers using tactical communication.

[68] Constable Dedieu looked through the kitchen area leading to the living room. He could see three or four children crying and hiding behind the Christmas tree. He walked over to the children, reassured them, and took them toward the back door. During this time, he continued to hear Constables Stockham and Barkley repeatedly telling the male, whom they referred to as “Howard” to drop the knife.

[69] He turned the children over to Constable Fraser and then returned inside, to the stairway area. At that point Constables Barkley and Stockham were telling Howard not to come any closer or they would have to shoot. He looked over Patrol Sergeant Rioux’s shoulder (who was in front of him) and got a clear view of the male at the top of the stairs. He observed that the male had a large, muscular, stocky build, that he was situated about halfway down the stairs took up the whole width of the narrow stairway. He observed that the male was brandishing an eight inch knife (the blade was in the upright position), and that he was becoming increasingly agitated in his tone of voice and actions, and was stabbing into the wall with the knife and pacing up and down the stairs. Constable Dedieu’s impression was that the male was mentally ill or emotionally disturbed, or that he was under the influence of drugs or alcohol.

[70] Constable Dedieu stated that the male made a number of comments, including “No, I’m not putting the knife down” and “I’m not leaving”. Constables Barkley and Stockham continued to give verbal demands to put the knife down, told him that they had firearms pointed at him and that if he came any closer to them with the knife, they would be forced to shoot. They said “We don’t want to shoot, put down the knife, we want to help”. The male said “Shoot me, shoot me, I want to die, I’ve got nothing to live for, I’ve lost my job. If I put the knife down

you guys will beat the shit out of me. That's why I lost my job. I have no reason to live anymore".

[71] Constable Dedieu could hear some children crying from upstairs. Constable Dedieu had the thought that the male might go up and barricade himself with the children while holding the knife. Constable Dedieu said that he tried a new theme with the male and said words to the effect of "Come on Howard, there are kids here, don't do this in front of them, we want to help, put down the knife". He said that Constables Barkley and Stockham picked up on this theme with the male and were saying similar words to him. Howard then began to pace up and down the stairs. Constable Dedieu looked over Patrol Sergeant Rioux's shoulder and saw that Howard was about halfway up the stairs, about six to eight feet away from Constables Barkley and Stockham, and in a position of advantage over the officers. Howard took a couple of steps down and then went back up those steps again. Whenever Howard stepped down, the voices of Constables Barkley and Stockham became increasingly loud and urgent and they told him to drop the knife. Both still had their guns drawn and at that point, Constable Stockham took out his can of pepper spray and deployed it. Constable Dedieu did not see where the spray hit. The pepper spray affected him (Constable Dedieu) and he observed that Constables Barkley and Stockham seemed to be affected by the pepper spray.

[72] After the pepper spray was deployed Howard said "Come on, it's target practice on me for you guys" and then he laughed. The conversation between Howard and Constables Stockham and Barkley got louder to the point that Constables Stockham and Barkley were screaming at Howard to drop the knife.

[73] It was obvious to Constable Dedieu that Howard was getting closer to the officers. As he got closer to them, Constables Barkley and Stockham fired several rounds and Howard fell. Constable Dedieu saw him fall and he was bleeding from the gunshot wounds.

[74] Constable Dedieu saw Constable Barkley turn over his firearm to Patrol Sergeant Rioux and leave with another officer. He saw Constable Stockham trying to roll Howard from his side onto his stomach so that he could be handcuffed, but Patrol Sergeant Rioux told Constable Stockham to leave him where he was. He could hear children crying from upstairs so when Constable Grenkow came inside, he, Constable Grenkow and another officer went upstairs and found the children. He and Constable Grenkow checked the children and made sure they were not injured. They put blankets over the heads of the children so that they would not see the scene at the bottom of the stairs and to avoid the contamination from the

pepper spray. Constable Dedieu took one of the children and the other two were taken by Constable Grenkow and another officer. They were turned over to another officer outside.

[75] At that point, Constable Dedieu was told to wait in a car. He was conveyed to the District 3 Station and then to the Public Safety Building and he was interviewed. The police service has a protocol in place to deal with its members who are involved in traumatic incidents. Equipment is seized, a homicide investigation is conducted of the incident, the officers are allowed to seek the services of a psychologist to determine if they are fit to give a statement and then a statement is provided. That what is happened here.

[76] Ms. Desjarlais asked Constable Dedieu on cross-examination why the officers did not just grab Mr. Fleury when he was on the stairway. Constable Dedieu's response was that the officers could not do so without risking getting stabbed. He said that they are trained not to grab someone who is armed with a knife, a hammer, or a screwdriver because they could get stabbed. In order to tackle Mr. Fleury, due to the narrowness of the stairway, only one officer would have been able to go up the stairs, which would have increased the risk of an officer getting stabbed.

[77] Constable Dedieu testified about what officers call the "reactionary gap". That is the amount of space that an officer requires in order to respond to an attack by someone with an edged weapon such as a knife. This space takes into account an officer stepping off the line of attack and drawing his or her firearm. The training mandates that the minimum distance is 21 feet. The closest point that Constable Dedieu said Mr. Fleury was to Constables Barkley and Stockham was approximately 6 to 8 feet, but he said Mr. Fleury may have been even closer to them than that.

Evidence of Constable Jimmy Anis

[78] Constable Anis has been a police officer with the Winnipeg Police Service for 13 years and is with the Forensic Identification Unit.

[79] As a forensic identification constable, his job is to attend crime scenes, search and collect evidence at the scene and to process the documentation of notes and photographs taken.

[80] Constable Anis is one of four identification officers that attended at 339 Alfred Avenue in Winnipeg, on December 3, 2005 after Mr. Fleury had been taken from the residence by ambulance. Retired Sergeant Frank Weiss was the scene supervisor. Constable Bill Ralph was the scene photographer. Constable McKinnon assisted in the investigation. Constable Anis was the exhibit officer. This was the first police involved shooting that Constable Anis had investigated.

[81] Constable Anis prepared a report with respect to this incident (part of the document marked as Exhibit 1 at the inquest). By his evidence, he adopted that report and confirmed the findings made in that report are accurate.

[82] Three other reports were prepared by Identification Unit officers, namely the reports of Sergeant Weiss, Constable Ralph and Constable McKinnon (all part of Exhibit 1). It was agreed amongst counsel that it would not be necessary for these individuals to be called as witnesses and that Constable Anis would be the only identification officer called. Constable Anis confirmed his understanding that the reports of these three officers are also accurate.

[83] Constable Anis also was responsible for enlarging the drawings of the scene done by Constable Ralph, which were marked as Exhibits 4 and 4 at the inquest.

[84] Constable Anis' testimony described the photographs that were taken at the scene and the two drawings done of the upper and lower floors of the residence at 339 Alfred Avenue. His evidence identified the areas of blood concentrations on the walls beside the stairs and the stab marks in the walls beside the stairs. There were approximately eight stab marks to the drywall beside the stairs. The other photographs of note were of Sergeant Weiss standing in the stairway and Constable Anis testified the width of the stairwell was 28.5 inches.

[85] Constable Anis also described and identified the bloodstained knife turned over to him by Constable Degroot at 2:05 a.m. on December 3, 2005.

[86] No bullet holes were found in the home. Seven bullet casings were found and seized.

[87] The RCMP were brought in to investigate bloodstain analysis and to do firearm analysis.

Evidence of Ms. Kimberly Desjarlais

[88] Ms. Desjarlais had lived with Mr. Fleury for a number of years. They had separated about 6 months before the incident on December 3, 2005.

[89] Ms. Desjarlais and Mr. Fleury had eight children together. At the time of the incident, their ages ranged from two to nineteen years old.

[90] Ms. Desjarlais has been a non drinker of alcohol for eleven years.

[91] As at December 2, 2005 incident, a court order was in place that prevented Mr. Fleury from having contact with Ms. Desjarlais.

[92] Notwithstanding that order, on December 2, 2005, Ms. Desjarlais invited Mr. Fleury over to her home at 339 Alfred Avenue, for the purpose of talking to him and trying to work things out. She did confirm that she invited him over from time to time to talk and sometimes he would bring alcohol with him.

[93] Mr. Fleury had drinking issues in the past. He had also had some past confrontations with the law. A lot of the offences with which he had been charged related to violence by Mr. Fleury toward her or the children.

[94] When Mr. Fleury was at her home on December 2, 2005, he started drinking alcohol.

[95] She identified herself as the maker of the 911 call that was played in court.

[96] She confirmed that she made the 911 call because she was concerned about Mr. Fleury's drinking, that he had armed himself with a knife or knives, and that he was going to become violent. She had tried to talk to him but he did not respond to her. She did not know that Mr. Fleury had consumed cocaine that day, and did not learn that he had until advised of the toxicology results after Mr. Fleury's death.

[97] Ms. Desjarlais' children were at home when she made the 911 call.

[98] After making the 911 call, she was in the living room/dining room area with Mr. Fleury. She could see a police car pulling up outside the home. She obtained a couple of knives that Mr. Fleury had on his person. They were knives from her kitchen. Ms. Desjarlais also gathered up a number of kitchen knives and gave all the knives to her daughter, Natasha, and told Natasha to hide the knives upstairs.

[99] Ms. Desjarlais then went outside to speak to police. At that time, she was aware that Mr. Fleury still had a knife. She identified the knife marked as an exhibit in court as the knife being held by Mr. Fleury and as coming from her kitchen.

[100] Ms. Desjarlais advised one of the officers outside that Mr. Fleury was inside with a knife. They walked to the back door and it was locked. Ms. Desjarlais confirmed all of her children were in the house. Ms. Desjarlais confirmed that Mr. Fleury had not threatened to do any harm to her or the children. When she made the 911 call she just wanted Mr. Fleury to be removed peacefully, as he had been, from time to time, in the past. The officer asked her if Mr. Fleury had ever been violent toward the children and she said “no”.

[101] Ms. Desjarlais was outside by the back door and there were four officers present. There was some discussion between the officers about what they were going to do if Mr. Fleury were to open the door. The older officer told the other officers that they would knock the knife out of Mr. Fleury’s hand. One of the younger officers asked why they would do that when they would be safer with “this”, motioning to the side of his belt. Ms. Desjarlais does not know what was there, specifically whether that was the pepper spray or not. The officers were asking for the door to be opened. She could hear them telling Mr. Fleury to drop the knife.

[102] Ms. Desjarlais could not recall whether, when she was outside with the police officers initially, the officers were talking about suicide to each other. She did not hear the two younger officers’ verbal interaction with Mr. Fleury when the door first opened, because she was speaking to the older officer.

[103] While the officers were demanding that the door be opened, Ms. Desjarlais was trying to figure out if there was a way that she could get back in the house so that she could go and talk to Mr. Fleury, but there was no way she could get in.

[104] The door then opened. The only child who came outside was her son, Christopher. She assumed the pepper spray had been used (although she did not see it happen) because Christopher told her he had been pepper sprayed. Then about four more children came outside. She directed them to go to the basement. She remained outside with the officers. She could hear the officers swearing and could not hear Mr. Fleury at all.

[105] Ms. Desjarlais went into the basement with the children. The police closed the basement door. While in the basement she could hear the police swearing and

telling Mr. Fleury to drop the knife. She first said that she did not recall Mr. Fleury saying anything at all, but then agreed with Ms. Carswell's suggestion on re-examination that she told an officer later that she had heard Mr. Fleury said "I won't go". Then she heard a number of gunshots.

[106] Ms. Desjarlais said that when she heard the gunshots, she knew she did something wrong.

[107] She knew that three children were upstairs with Mr. Fleury. On December 2, 2005 they were ages 11, 2 and 1.

[108] A young police officer came to the basement and told Ms. Desjarlais and the children with her that they had to leave the house. Ms. Desjarlais told him that she was going nowhere and he said he would talk to the sergeant. He returned and said they could not stay there and he took her and the children out of the house and to the Public Safety Building.

Evidence of Constable Randy Dziver

[109] Randy Dziver is a constable with the Winnipeg Police Service. In December, 2005 he was stationed at District 3 in the north end of Winnipeg. He has been a police officer for almost 14 years.

[110] In December, 2005, he was partnered with Constable Daniel Dedieu.

[111] On December 2, 2005, when he heard the message on the police car radio that a unit required assistance at 339 Alfred Avenue, he and Constable Dedieu were driving in their cruiser car. Constable Dziver was the passenger. They volunteered to assist and were dispatched. They knew they were going to assist Constables Barkley and Stockham.

[112] The dispatch information provided was that it was a domestic related call involving a male breaching a no contact order, that he was at the house of his former spouse, that he was intoxicated and was armed with a knife.

[113] It took them just a few minutes to arrive on scene. Already on scene were Patrol Sergeant Rioux, Constable Barkley and Constable Stockham. Constable Barkley advised that they had attended the rear door and knocked, the door was opened by a male holding a knife and that the male had said something to the effect of "Have you ever heard of death by cop, or suicide by cop?" Constable

Barkley told them that they had backed off and called for other units. He told them that the spouse of the male was not in the residence, but that there were children still inside with the male.

[114] Constable Dziver had heard the expression “suicide by cop” before and interpreted it to mean that a person no longer wanted to live, but could not do the act himself and would force the police to do it.

[115] Constable Dedieu went with Constables Stockham and Barkley and Patrol Sergeant Rioux to the back door and Constable Dziver stayed alone in the front of the house, with his firearm unholstered and by his side in the sul position, pointed down by his side.

[116] Other units arrived, namely Constables Tittlemier and Fraser, and he brought them up to speed. Constable Tittlemier stayed in front with Constable Dziver. Constable Fraser went to the back.

[117] At that point he heard loud banging. It sounded like the officers were forcing the door. This was followed by lots of yelling. He could not determine who was doing the yelling or what was being said.

[118] Then Constables Grenkow and McCartney arrived, and also Constables Odietu and Kanaski. Constable Dziver brought them up to speed. All four of them went to the back of the house. He continued to hear constant yelling.

[119] Shortly after, Constable McCartney came down the side of the house to them, coughing and advising they had tried to pepper spray the male. Her conduct was consistent with that of someone exposed to pepper spray. She told him that they had tried to pepper spray the male but that it was not effective and he was still not complying with demands being made.

[120] Constable Dziver is aware, from his training, that pepper spray is sometimes ineffective with people who are severely intoxicated, psychologically dysfunctional, or extremely goal oriented.

[121] Constable McCartney returned to the back of the residence. The yelling was still constant. He could not decipher any of the words.

[122] He then heard what sounded like four gunshots.

[123] From the time Constable McCartney went back around the house until the gunshots, it was no more than ten minutes.

[124] Constable Dziver heard Patrol Sergeant Rioux on his radio calling for an ambulance. Constable McCartney got on the radio and advised it was the suspect that had been shot. Constables Dziver and Tittlemier went to the back. He saw Constable Odietu leading Constable Barkley out of the house and someone he does not recall leading Constable Stockham out of the house.

[125] Constables Barkley and Stockham looked completely drained. Their heads were down, their shoulders were sagged and they looked like they were in shock.

[126] He then heard Patrol Sergeant Rioux again on the radio asking dispatch to put a rush on the ambulance.

[127] He went into the house. He saw Constable Fraser against a door that led to the basement. Constable Fraser told him that there were some children downstairs and he did not want to let them up because he did not want them to see the deceased. He continued into the kitchen and there was a heavy smell of pepper spray in the kitchen area. Patrol Sergeant Rioux was near the stairway and near the deceased's feet. He had his baton fully extended and in the same hand he held a knife with blood on the blade. He saw the male lying on the floor right at the base of the stairs. He noted Patrol Sergeant Rioux had the same drained look that Constables Barkley and Stockham had.

[128] He is not sure what happened with the children in the basement. He saw officers come from the upstairs and each had a child over his or her shoulder, draped in a blanket. They left the residence with the children. Patrol Sergeant Rioux asked him to go upstairs to ensure there were no other children left upstairs, which he did. There were no other children.

[129] Constable Dziver stood with the deceased. Patrol Sergeant Rioux asked Constable Dziver for a cell phone to contact the duty inspector. Constable Dziver left the residence and went to his cruiser to get a cell phone. He met up with the ambulance paramedics that had arrived and he directed them to the back of the residence.

[130] He then returned to the police station and was interviewed by Major Crimes Unit personnel and provided a statement.

Evidence of Constable Goziem Odietu

[131] Constable Odietu has been an officer with the Winnipeg Police Service for over 17 years. In 2005 he was stationed in the north end station, district 3. His partner on December 2, 2005 was Constable Robert Kanaski.

[132] Constable Odietu testified that he and Constable Kanaski were on a fire call when they heard a request for assistance by Constables Barkley and Stockham.

[133] The information they heard on the radio en route to 339 Alfred Avenue was that it was a domestic call. When they got closer to 339 Alfred Avenue, there was a comment made on the radio that the male in the house had a knife. Although Constable Odietu was the passenger, he had no opportunity to look up any information on the computer system in the police car.

[134] It took them only two to three minutes to reach 339 Alfred Avenue. Constable Kanaski got out right away. Constable Odietu said he got out about 30 seconds later because he was hanging up the phone and clicking the buttons in the cruiser to confirm they were on scene.

[135] He saw other cars pulling up, and saw Constable Dziver in front of the house. Constable Dziver advised they were to stand there in case the male came running out the front door. Constable Odietu did not recall if Constable Dziver had his gun drawn. Constable Dziver told him the male inside had a knife. He then heard some high pitched yelling from inside the house, from the back area. He went to the back area to assist.

[136] He went to the back porch area and as he was going into the house, a heavy smell of pepper spray stopped him. He backed up coughing and he could not go in any further. He did not get further than the door frame. Constables McCartney and Grenkow were there. He could hear Constables Barkley and Stockham telling the male to “put down the knife”, “you can do this a different way” “come on, just have a seat” and a lot of swearing. There was no let up in this. The officers were trying to use more relaxed language and encouraging the male to sit down and talk. He said he was amazed they could talk so much with the pepper spray in the air. He heard the male swearing back at the officers. The sound was heightened the whole time. He heard the male say “F you” and “get out of here” but could not hear any more specific words. After 2 or 3 minutes, he heard a hastening of conversation, and then rapid fire. About five or six shots rang out.

[137] He entered the house and looked in to see if an officer had been shot. He saw the person he assumed was the subject male on the bottom of the staircase to his left. He saw Constable Barkley with his gun still out and pointed up the stairway. Someone told him to put his gun in his holster. Constable Odietu said that someone told him to be in charge of Constable Barkley. Constable Barkley seemed dazed and shocked. Constable Odietu held him by the shoulder and guided him out toward the car. Constable Odietu stayed with him for almost half an hour in the car, until he was directed by one of the sergeants to go back to the district 3 station and to remain with Constable Barkley. The only discussion he had with Constable Barkley was that he said to Constable Barkley that “it sounds like you guys had no choice”. After going to the district 3 station, they were directed to the Public Safety Building. A couple of days later Constable Odietu was interviewed and made a statement.

[138] Constable Odietu said while on scene he received information from Constables Grenkow and McCartney that there may still be children and/or the mother in the residence.

[139] Constable Odietu was asked on cross-examination whether he ever suggested that the officers should back off and leave the residence and leave the male with the knife in the residence. Constable Odietu said that the officers who were engaged with the male were not standing by to hear opinions.

[140] Counsel for the Winnipeg Police Service asked him whether in view of his 17 years of experience with police service, it would have been appropriate for officers to leave the residence with children in it and a male with a knife. His answer was “no”.

Evidence of Retired Patrol Sergeant Maurice Edmond Rioux

[141] Maurice Rioux was formerly with the Winnipeg Police Service. When he retired, his rank was Patrol Sergeant. He served 37 years with the Winnipeg Police Department and retired in 2006. He was trained as a hostage negotiator and was part of a negotiating team for the Winnipeg Police Service.

[142] On December 2, 2005, he was the patrol sergeant on duty, supervising about 20 officers in district 3. He would listen to the radio and go to all the calls he deemed to be serious. He heard the call for 339 Alfred Avenue and he chose to attend.

[143] He was in his patrol unit at the time he heard the call. He worked alone. He was close by, so drove to 339 Alfred Avenue and saw Constables Stockham and Barkley park their cruiser car in front of 339 Alfred. He parked behind them. He followed the two officers as they walked on a sidewalk between 339 Alfred and the house to the immediate east.

[144] Constables Barkley and Stockham went to speak to a woman who was standing between the houses. She did not have a coat on. He did not hear what she said.

[145] The back door of the house opened up. A male came out of the veranda. He did not see the male because both Constables Stockham and Barkley backed up into him and he also backed up. The male shouted “suicide by cop”. Patrol Sergeant Rioux stated that he had not heard that term before but he drew the inference that it meant the male wanted to die at the hands of police officers. The male said twice, “shoot me”.

[146] Constable Stockham deployed his pepper spray at the male. Patrol Sergeant Rioux could smell it. Patrol Sergeant Rioux could not see anything in the male’s hand because the other two officers were in front of him. A little later, the two officers told him the male had a knife.

[147] The male went back into the house and slammed the door shut.

[148] Patrol Sergeant Rioux went to the door, tried it and found it was bolted. He then spoke to the woman, now known to him as Ms. Desjarlais. She told him that the male’s name was Howard Fleury. Patrol Sergeant Rioux asked how many children were in the house and she told him there were nine children. He asked if Mr. Fleury had ever been violent toward the children and she said no.

[149] He heard very loud music coming from inside the house. He yelled “Howard, we’re the police, we have to talk to you” and at least twice demanded that Mr. Fleury open the door. He could hear children right behind the door.

[150] Patrol Sergeant Rioux asked Constable Barkley to get some assistance and to notify dispatch that he was present at the scene. Constable Barkley and Constable Stockham had drawn their firearms but at that point Constable Barkley put his firearm away, went outside and called dispatch for backup. Constable Barkley returned and Patrol Sergeant Rioux instructed both officers to have their firearms drawn. He had his baton out because he had told Constables Stockham and

Barkley that he would try to negotiate with Mr. Fleury and if possible he would try to knock the knife out of his hand with the baton.

[151] Patrol Sergeant Rioux had a discussion with Constables Barkley and Stockham about the door being locked. He decided not to kick the door in because of the safety of the children right behind the door. He yelled again to Mr. Fleury to open the door. He heard the loud voice of a male and then the door was unlocked. He opened the door slowly and there were three small children in front of him. He asked them where Mr. Fleury was and they pointed to the stairway. He told the children to come out by him, which they did, and he went inside. Constable Stockham ran toward the staircase and positioned himself at the bottom of the staircase. Constable Stockham had his pepper spray canister and his pistol out. The children went out the back but he does not know who was looking after them.

[152] Constable Barkley was also in front of the staircase, and partly in the adjoining room. The staircase was very narrow and was really just wide enough for one man to stand in front of. He saw Mr. Fleury at the top of the stairs. Mr. Fleury was standing and was in a fighting position. He was holding the knife in his right hand. He observed that Mr. Fleury was about 25 years old, at least six feet tall, and weighed about 230 pounds. Constable Barkley said “drop the knife, Howard, drop the knife” and then Patrol Sergeant Rioux said “we’re here to help you Howard, we’re not here to harm you”. Mr. Fleury said “shoot me, shoot me, suicide by cop”. Mr. Fleury did not put down the knife.

[153] At one point, Mr. Fleury seemed to make a decision and attacked. He came down the staircase as fast as possible, just about running. Constable Stockham pepper sprayed Mr. Fleury and it hit him square in the face, right in the eyes. It blinded Mr. Fleury and he stopped five steps away from the officers. Mr. Fleury’s eyes were closed and he drove the knife into the wall of the staircase about four times. Patrol Sergeant Rioux’s baton was two feet extended and Mr. Fleury was about four feet away from him. He was still in front of Constable Barkley at that time. Mr. Fleury crawled up to the top of the stairs and was on all fours. Mr. Fleury was crying. Pepper spray was thick in the air. Mr. Fleury said that nobody would hire him. Patrol Sergeant Rioux kept talking to him and encouraged Constable Barkley to keep talking to him. Mr. Fleury kept crying and said “shoot me” and made reference again to “suicide by cop”. Patrol Sergeant Rioux said that Mr. Fleury seemed extremely angry at not succeeding in coming all the way down the stairs and getting pepper sprayed. Patrol Sergeant Rioux said he had never seen so much anger. Patrol Sergeant Rioux felt that the officers were getting through to Mr. Fleury because there was some conversation. Constable Dedieu was on Patrol

Sergeant Rioux's right and was talking in a low, calm voice to Mr. Fleury telling him to drop the knife that they were there to help him.

[154] A young girl came out of a room upstairs behind Mr. Fleury. Mr. Fleury put his left arm around her. He still had the knife in his right hand. He was still crying. Patrol Sergeant Rioux realized his baton was not effective and that his standing in front of Constable Barkley was actually impeding Constable Barkley. Constable Stockham told him he was out of pepper spray and Patrol Sergeant Rioux gave him his full can. Constable Barkley told the young girl to go back into the room and she did after he repeated it two or three times. Patrol Sergeant Rioux moved out of the way so that Constable Barkley was in front of the staircase. Both Constables Stockham and Barkley told Mr. Fleury again to drop the knife.

[155] Patrol Sergeant Rioux said that at that point, had there been no children the house, he would have ordered all officers out of the house and left Mr. Fleury alone. But because there were children in the house, that was not an option.

[156] All of a sudden, he heard a quick movement upstairs and Constables Barkley and Stockham said "drop the knife" and their voices were getting louder and louder. Constable Barkley was backed up to the wall. Patrol Sergeant Rioux could he could hear the footsteps getting much closer down the staircase. Patrol Sergeant Rioux said "you'll have to shoot, you'll have to shoot". He does not know if the officers heard him or not, but Constables Barkley and Stockham did shoot. Mr. Fleury was struck by the bullets and fell head first right between Constables Barkley and Stockham. Patrol Sergeant Rioux took the knife out of Mr. Fleury's hand. He then ordered Constables Barkley and Stockham to go outside. He asked an officer to phone an ambulance and request a rush. He called the duty inspector to request homicide to come out. The children were brought downstairs.

[157] Patrol Sergeant Rioux went outside and was escorted to the district 3 station and then to the Public Safety Building. He turned the knife over to detectives.

[158] He said that as a 37 year veteran of the Winnipeg Police force, as a trained and experienced negotiator, he did not see that the matter could have unfolded any way other than the way it did.

[159] In his 37 years of police experience, this was the first and only time he experienced an event like this one.

[160] Patrol Sergeant Rioux was asked if there was a policy of the Winnipeg Police Service with respect to how to deal with an individual with a weapon in a

residence with children or adults in the residence. He replied that he did not believe so. There is a policy in place with respect to use of force, namely that one uses just enough force as is necessary, and if that amount of force is not successful, one has to go to the next level.

[161] Further, there is a police policy that if an officer elects to fire his firearm, it is to be directed to the centre mass, namely the chest, of the intended target, rather than to the intended target's arm or leg.

[162] The information Patrol Sergeant Rioux had shortly after arriving on scene, based on the radioed information and the information he received from Constables Barkley and Stockham was that there was a male inside the residence with a knife, that there were children in the residence, that there was a no contact order between Mr. Fleury and Ms. Desjarlais and there was a previous history of violence. He did not know that Mr. Fleury had been drinking. He had been advised by Ms. Desjarlais that Mr. Fleury had never been violent with the children and he had no information to suggest that Mr. Fleury had threatened to harm her and/or the children and/or himself.

[163] Patrol Sergeant Rioux was asked some questions about negotiation tactics, since he used to be on the Winnipeg Police Service negotiation team. He was asked if he could have called for the negotiation team to come out to the scene once he saw how distraught Mr. Fleury was. Patrol Sergeant Rioux said there was no time to do so because the members of that team have to be assembled. He did agree it is easier to negotiate with someone when the negotiator is not holding a gun; for example, it is preferable to negotiate over the phone. He agreed that he did not ask for a phone at the scene to try to do this.

[164] On cross-examination, Patrol Sergeant Rioux was asked whether, given that Mr. Fleury had not said he would harm the children or himself, and that the situation was different than a situation in which someone is threatening to harm others, it might have been better to leave Mr. Fleury alone for a while to see if he calmed down. Patrol Sergeant Rioux disagreed for the reason that there were children in the home. It was suggested to him that because a child came out to Mr. Fleury and he put an arm around her, that showed he did not intend to do any harm to the children. Patrol Sergeant Rioux said that given Mr. Fleury's extreme anger, Mr. Fleury's next move simply could not be predicted.

[165] Patrol Sergeant Rioux was asked why, when Mr. Fleury was struck with the pepper spray and was crawling up the stairs with his back to the officers, he didn't charge at Mr. Fleury and try to hit him with the baton. Patrol Sergeant Rioux said

it was not an option due to officer safety. Mr. Fleury was in such a violent rage and was driving his knife into the wall, so it would not have been safe to get that close to him.

[166] Patrol Sergeant Rioux said that he would have been in neglect of his responsibilities if he had left the residence, leaving the children behind with an armed individual.

Evidence of Constable Meghan Grenkow

[167] Constable Grenkow has been an officer with the Winnipeg Police Service for about five years. In December of 2005 she was in general patrol in district 3 and was partnered with Constable McGregor (now Constable McCartney).

[168] Constables Grenkow and McCartney were at the district 3 police station at 260 Hartford, in Winnipeg, shortly after midnight on December 3, 2005 when they heard a call for assistance come over the radio. Constable Barkley was on the radio and advised he and his partner were at 339 Alfred Avenue, that they had a male armed with a knife and they needed units to assist. Either he voiced over the radio, or she learned from the laptop, that the incident was domestic related and that there were possibly children involved.

[169] Numerous units volunteered as did Constables Grenkow and McCartney. As Constable Grenkow was the driver, her partner read details on the computer to her.

[170] It took less than ten minutes to reach the 339 Alfred Avenue address.

[171] They arrived on scene at the same time as Constables Odietu and Kanaski. They exited the vehicle, approached the house and she saw Constables Dziver and Tittlemier at the front of the residence. Constable Dziver had his firearm drawn. He briefed them, stated a male had come to the back of the residence and was armed with a knife, said “have you ever heard of death by cop?” and then closed the door. He told them Constables Barkley, Stockham, Dedieu and Fraser were at the back of the residence and possibly inside.

[172] Constables Kanaski, Grenkow and Tittlemeir went to the back porch. The door was open and she could hear movement inside and yelling, although she could not quite make out the voices or the exact words being said. She could then

see the porch door was open and she could start hearing someone yelling “put it down”.

[173] Constables Grenkow and McCartney stayed in the porch and Constable Kanaski went into the kitchen. Constable Grenkow could smell the pepper spray and started coughing. She could hear Constable Stockham and Patrol Sergeant Rioux giving verbal commands to someone inside. She heard “Put it down, stop, let’s talk”. She could not hear anything being said back to the officers, just yelling.

[174] While in the porch she spoke with a female by the basement door who identified herself as Kim. Kim told her that she had three children upstairs, an 11 year old and two 2 year olds. She went into the kitchen and informed Constable Kanaski of this. She saw Constables Barkley and Stockham at the bottom of the stairs with their firearms drawn, pointed up and Patrol Sergeant Rioux behind Constable Barkley. She could hear Constable Barkley saying “put the knife down” and could hear Patrol Sergeant Rioux saying something about children to Mr. Fleury. She returned to ask Kim where the children were located upstairs. Kim told her the children were in the bedroom at the top of the stairs. She told Kim to go to the basement and keep the other family members down there. The basement door was closed with Kim and some of the children downstairs.

[175] Constable Grenkow went back into the kitchen. She could see Constable Barkley standing partly in the kitchen and partly on the landing in front of the stairway. Constable Stockham was standing partly on the landing and partly in the bathroom, which was just off the landing at the bottom of the stairway. Patrol Sergeant Rioux was behind Constable Barkley. They were all focused on Mr. Fleury at the top of the stairs. Officers Kanaski, Dedieu and Fraser were in the kitchen. She did not have her firearm or other resource out at this time.

[176] She could still hear them trying to talk to Mr. Fleury, telling him to put the knife down. She could not see Mr. Fleury. She could hear Mr. Fleury yelling profanities at the officers and that he did not want to come downstairs because said the police were going to beat him up. Constables Barkley and Stockham told him to just put the knife down and come down the stairs. Nothing made him settle down. He just got more agitated and yelled more. He was swearing at the officers.

[177] Mr. Fleury was yelling. The voices of Constables Stockham and Barkley were loud, but clear and calm.

[178] She heard Constable Barkley say “stop” and then something to the effect of “you will be shot” or “I will shoot you”.

[179] Immediately she heard footsteps coming down the stairs at a fast rate. She heard Constables Barkley and Stockham yell “stop”. Then she heard six to eight shots fired. She could see Constable Barkley’s firearm recoil. Patrol Sergeant Rioux backed out of the way and moved into the kitchen when Mr. Fleury came into her view. He was stumbling down the stairs. That is the first time she had seen him. She told Constable Barkley everything was okay and told him to holster his weapon and he backed out of the way and she directed him to another officer.

[180] After Constable Stockham was removed, she went up the stairs with Constables Kanaski and Dedieu, and found three children in the top bedroom. They were frightened and crying. Each officer took a child. They covered the children with blankets because it was winter outside and also so they would not see Mr. Fleury. The children were placed in Constable Grenkow’s cruiser car. They took the children to the district 3 station where they gave them teddy bears and food. Constables Grenkow and McCartney waited with the children until someone else took over care of them.

[181] She was then brought into the major crimes unit and processed by the identification unit and she made a statement about two days later.

[182] Constable Grenkow was asked if there was anything in her training that would have prepared her for a situation like this. She advised that at the academy they are provided with simulation training and live examples as to how to determine what force to use when weapons are involved, and how to deal with situations appropriately.

Evidence of Constable Kelly Dawn McCartney

[183] Constable McCartney is a constable with the Winnipeg Police Service and has been for 14 years. In December of 2005, she was Constable McGregor, was partnered with Constable Grenkow and was stationed in district 3 in the north end of Winnipeg.

[184] Late in the evening on December 2, 2005 she and Constable Grenkow were in the station doing some reports when the sergeant came in and said they had to leave because there was a priority 2 domestic that they needed to go out on. Just as they were getting into the car, she heard Constables Stockham and Barkley voice over the radio that they were able to take the call and were attending there. She and her partner overheard Constable Barkley ask for backup units and advise that there was a male who was armed with a knife and had barricaded himself inside the

residence. Some further information was voiced that the male was intoxicated and there were possibly children present.

[185] A priority 2 domestic call refers to a domestic violence offence that is in progress. If someone is armed with a weapon, and it is a priority 2, that means everyone is still on the scene, namely the person who is being violent and the victim(s) of violence.

[186] Constable McCartney and her partner arrived at 339 Alfred Avenue at the same time as Constables Odietu and Kanaski. They got out of the car and spoke to Constables Dziver and Tittlemeir, who were in front of the house and they both had their guns drawn. Constable Dziver advised that when Constables Barkley and Stockham had arrived, a male had answered the door armed with a knife and had asked something to the effect of “have you ever heard of death by cop?”, that he slammed the door and went back in the house. Constable Dziver told her that Constables Barkley and Stockham and Patrol Sergeant Rioux were in the house.

[187] She had heard of “death by cop” or “suicide by cop”. It was in the media at the time and is something the police always have to be wary of. It means that somebody is coming armed, toward police officers and not heeding police demands to put his weapons down, and is shot by police.

[188] While she was talking to Constable Dziver, she heard banging from the back of the house. She ran, with the other officers, toward the back of the house and into a porch area. She could hear Constables Barkley and Stockham yelling at someone repeatedly to “put the knife down”. She does not recall if she heard any response. She recalls hearing the yelling and that the smell of pepper spray was overwhelming. She heard someone else say that the pepper spray did not have any effect on the male. She said that if someone does not respond to pepper spray, it most likely means he is intoxicated by drugs or alcohol.

[189] Next she noticed a doorway that led to a kitchen and there was a door off its hinges leaning against the west wall in the porch. She moved the door slightly and looked downstairs, where she saw a lady standing halfway up the stairs. The lady told her that she was down there with five of her children but that her babies were upstairs with her ex husband. Constable McCartney told the lady to stay down there with the children and she replaced to the door to cover the opening.

[190] She went into the kitchen and was going to tell the officers there that there were children downstairs. She leaned around the corner and saw Constables Barkley and Stockham standing at the bottom of the stairway looking upwards.

Both had their guns out. She could not see what was on the other side of the stairway because it was blocked by a wall, but she could hear them. They were yelling “put the knife down, let’s talk about it”. A male was swearing at the officers and saying “the cops always beat me up”. The officers were responding with “no, we won’t, just put your knife down, we’ll talk about it”. As this was happening, Constable Kanaski asked her where the other children were. She stepped back into the porch and moved the door to talk to the lady downstairs. The lady told her that the other children were in a room that was basically right above the kitchen. She put the door back again and stepped outside to see if she could see if there were any windows that were accessible and to determine if there might be some strategy to get access to that area. She was only outside for 30 seconds or so and was going back in to report what she had learned. As she was walking back in she heard someone yell forcefully “don’t, put it down”, almost like a scream. Then she heard about six shots and smelled gunpowder immediately. She also heard the noise of people running up the back stairs that she had covered with the door.

[191] She yelled at the lady and children to stay down in the basement. She voiced for an ambulance and that a male had been shot. Constable Stockham came through the doorway from the kitchen into the porch. She described him as looking “like a zombie” with a pale look and his shoulders slumped. She grabbed him by the arm and walked outside with him. Constable Stockham just got into the back seat of a cruiser that wasn’t his cruiser or Constable McCartney’s cruiser. As they were walking she asked him if his weapon was holstered and the snaps done up and he said “yeah”. Once in the car she asked “did you both shoot?” and he said “I think so”.

[192] A few minutes later, she saw Constables Kanaski, Grenkow and Dedieu, each with a child wrapped in a blanket.

[193] Constable McCartney and Constable Grenkow took the children to the police station and sat with them, gave them some snacks and tried to keep them occupied. She and Constable Grenkow stayed with the children until someone took over care of the children.

[194] She was then processed by major crimes and gave a statement.

[195] Constable McCartney found out from Ms. Desjarlais where the three remaining children were located. When she found out that they were upstairs, she took it on herself to look outside to see if there was access to the upstairs from outside the house and to determine whether there might be a plan that could be

formulated to get the children out of the house. But there was simply no time. She heard the gunshots before she could even tell another officer what she had learned. She said that it would not have made sense for officers to back off the confrontation with the intoxicated Mr. Fleury, who was refusing to be compliant with officer demands and put down the knife, while she developed a plan to get the children out of the house.

Evidence of Sergeant Robert Christopher Kanaski

[196] Sergeant Kanaski has been an officer with the Winnipeg Police department for 17 years.

[197] In December, 2005, he was a constable partnered with Constable Goziem Odietu and was in District 3.

[198] On December 2, 2005 he was on general patrol with his partner when he overheard an assistance request over the radio, from Constables Barkley and Stockham. They were calling for units to assist with a domestic incident. He and his partner were within a couple of blocks so they responded.

[199] At the time of the call, it did not sound urgent. Two other cars had also been assigned so he and Constable Odietu thought they would just go by while they were still on another call, to see if they could help out.

[200] Once they arrived on scene, the matter had become urgent. Constable Dziver was outside the residence with his pistol drawn.

[201] Constable Dziver provided information as to what was happening. He advised that one unit was inside the house along with Patrol Sergeant Rioux, with a male who was armed with a knife and threatening either death by cop or suicide by cop.

[202] He had heard that phrase before and understood it to mean that somebody is distraught enough that he wants the police to kill him.

[203] He ran to the back of the house and entered into the porch area, where he saw three constables also in the porch. He could smell the very strong smell of pepper spray. He was familiar with pepper spray through training and experience.

[204] He could hear lots of yelling. He could tell from the voices that it was Constables Stockham and Barkley. He heard them say words to the effect of “Drop the knife, drop the knife, don’t do this, don’t do this in front of your children”. Later on, as the incident went on, he heard them say “If you don’t drop the knife, we may shoot you”. The male responded “Fuck you, shoot me, shoot me, kill me now”. It appeared to him that things were escalating.

[205] He had a concern, based on the angle that the officers were holding their weapons, that if they happened to discharge their firearms, they might hit something on the other side of the staircase. So he ran around into the living room area to make sure there was nobody in that room or in the two bedrooms on that floor. There was nobody in any of those rooms.

[206] He was aware that there were people in the basement and may have been aware that there were children upstairs.

[207] He saw Patrol Sergeant Rioux, who did not have his firearm drawn but did have his baton out. Patrol Sergeant Rioux was saying “drop the knife, don’t do this”.

[208] After he checked the front of the house, he walked back into the kitchen area and he could hear either Constable Barkley or Constable Stockham yell “Don’t come down the stairs”. Then he heard a footstep and a yell “Don’t come down the stairs or I’m doing to shoot, drop the knife”. Then he heard one more step and another yell from one of the officers “stop, stop drop the knife”. Then he heard sounds like running down the stairs and then several shots. It was evident to him that both officers were shooting. He then saw Mr. Fleury right at the foot of the stairs.

[209] One of the female constables called for an ambulance.

[210] After he ensured the knife had been recovered and an ambulance was on the way, he and Constable Dedieu and Constable Grenkow went upstairs to get the children. There were three children all under about age 11. They were crying and very upset. Each officer took a child, covered in a blanket. They took them to one of the cruiser cars and Constable Grenkow stayed with the children.

[211] He then went back into the house. He saw Constables Barkley and Stockham near the porch area. They looked emotionally drained and tired. He made sure those officers were separated from each other and taken to cruiser cars.

Some sergeants arrived and seized the firearms of the two officers. He transported Constable Stockham to the police station and gave a statement.

[212] He said that there is nothing the officers could have been trained for that would have changed the outcome of this.

[213] He is a wellness officer for the Winnipeg Police Service, one of a three person team who assists members who suffer in a traumatic incident, to get over the stress involved in such incidents. Officers involved in an incident such as this are required to see a psychologist.

[214] He gave evidence about the automated system in each cruiser car as to the series of buttons officers push to time stamp on the main computer system when they are dispatched to a call, when they are en route to a call and when they arrive at a call. The result is that, assuming the buttons are hit, there is an accurate record of those times.

Evidence of Constable Robert Stockham

[215] Robert Stockham is a constable with the Winnipeg Police Department and has been for six years.

[216] In December, 2005 he was stationed in District 3 and his partner was Constable Matthew Barkley. Both he and Constable Barkley were in uniform. As part of their uniforms, each was wearing a belt which had attached his firearm, an asp baton and a can of pepper spray.

[217] On December 2, 2005 he and Constable Barkley were dispatched to 339 Alfred Avenue late in the evening. At the time they were in their cruiser car. Constable Barkley was driving and Constable Stockham was the passenger.

[218] The dispatch was to a domestic call at 339 Alfred. The caller was Kimberly Desjarlais and was calling regarding her ex common law, Howard Fleury, who was in the house breaching a no contact order. The call also included information that Mr. Fleury was intoxicated, that there were children in the house and she was afraid that he would become violent.

[219] While en route to 339 Alfred Avenue, Constable Stockham ran Mr. Fleury's name on the computer system in the cruiser car, and on CPIC. By that means, he confirmed that there was an order with Ms. Desjarlais as a protected person from

Mr. Fleury. There was a caution on their system for him for violence and family violence. Also he learned that Mr. Fleury was six feet, 240 pounds. He would have scanned the criminal record. Mostly he was looking for verification that the no contact order was in effect. There was also a photograph of Mr. Fleury that he viewed on the computer in his police car.

[220] It took them five to ten minutes to get there. As they arrived, Patrol Sergeant Rioux pulled up at the same time. They were the first officers on scene.

[221] They got out of the car and as they were walking toward the house, to the east side towards the back of the house, they noticed a female. She was waving at them and appeared distraught. They walked toward her and she identified herself as Kimberly Desjarlais. She said that Mr. Fleury had armed himself with a knife. Her children were still in the house and she was afraid for their safety. He does not recall learning how many children were inside.

[222] Ms. Desjarlais told them that Mr. Fleury was acting crazy and she was afraid for her children.

[223] He immediately drew his firearm due to the possible weapon being involved. Constable Barkley also had his firearm drawn. They approached the house and went into the porch at the rear off the landing.

[224] The door off the porch leading into the house was closed and locked. He knocked on the door and announced “Winnipeg Police” and to let them in. Within a couple of seconds, the door swung open to the inside and Mr. Fleury was standing there. He recognized Mr. Fleury from the photograph he had viewed on the computer in the police car. Mr. Fleury had a knife in his right hand, down at his side. Constable Stockham told him “Winnipeg Police, drop the knife”. Constable Stockham noticed a few children inside the home that ranged in ages probably from 10 to 15. They were all crying.

[225] Mr. Fleury started walking toward him and said “have you ever heard of suicide by cop?” He had never had anyone say that to him before. He assumed it meant that Mr. Fleury may have wanted to die by cop.

[226] Constable Stockham backed up so that he was against a wall and made a u-turn toward the door. Mr. Fleury was tracking him across the porch and onto the landing. He kept telling Mr. Fleury to “drop the knife.”

[227] Constable Barkley took out his pepper spray and deployed it. He saw the spray leave the can and saw the pepper spray hit Mr. Fleury right in the eyes. Mr. Fleury took his left hand and wiped his forehead. The pepper spray seemed to have no effect on him.

[228] He went inside and locked the door. This happened very quickly.

[229] They immediately called for backup and advised dispatch the male was armed with a knife. Constable Dedieu and Constable Dziver arrived quickly. The officers decided they had to go inside the house because they had to get the children out of the house. The plan was to gain access through the back door. They were either going to kick it in or knock and hope someone would answer it.

[230] Patrol Sergeant Rioux and Constables Barkley and Dedieu approached the back door with him. Constable Dziver went to the front. Patrol Sergeant Rioux decided they should knock first due to concern they might hit one of the children with the door if they kicked it in.

[231] Patrol Sergeant Rioux knocked and there was no answer. He yelled “Winnipeg Police, open the door”. Constable Stockham was just about to kick the door in when one of the children opened the door.

[232] When the door opened, he saw the same group of children he had seen when he was first at the door. He did not see Mr. Fleury.

[233] He and Constable Barkley entered the residence. He asked the children where Mr. Fleury was. They pointed to his left, said he was upstairs and directed him to the stairs. He said “Okay, get out of the house”. He said he didn’t actually see the children leave but he knew they were out of the house.

[234] He saw Mr. Fleury standing at the top of the stairs still with a knife in his hands and he had a crazy look in his eyes. Mr. Fleury repeatedly said “Have you ever heard of suicide by cop?”

[235] Constable Stockham said “drop the knife, drop the knife. Winnipeg Police, drop the knife”. At one point Mr. Fleury said “Fuck you, you’re going to have to shoot me. You’re not taking me out of here alive”.

[236] When Mr. Fleury was standing at the top of the stairs, Constable Stockham saw two more children poking their heads out of the door of a room at the top of the stairs behind Mr. Fleury. He told the children to get back into the room. But one of the children exited the room and so Constable Stockham said “well come

downstairs” and he said to Mr. Fleury “let the kids come downstairs”. Mr. Fleury physically put his hand on the child and, while still holding the knife, led the child back into the room. The same conversation continued. Mr. Fleury kept saying “suicide by cop” and he started to come down the stairs toward the officers.

[237] Constable Stockham confirmed the stairway in question is very narrow and would only fit one good sized person. It was steep and had about 12 stairs.

[238] The distance between Mr. Fleury and the officers was about 10 to 12 feet when he was at the top of the stairs. Mr. Fleury still had the knife.

[239] Constable Stockham said that in his training as a police officer, the distance one is to keep from somebody before one reacts if that person has a weapon such as a knife, is 21 feet. Even with Mr. Fleury at the top of the stairs and the officers at the bottom, Mr. Fleury was well inside that reactionary distance.

[240] At that distance and with a knife, and because Mr. Fleury was in a position of advantage, being above them, Constable Stockham felt he was in danger.

[241] Mr. Fleury started coming down the stairs. Constable Barkley pepper sprayed him again. He got him right in the face again. It didn't seem to have any effect. He stopped and went back up a step or two. He was still yelling “suicide by cop” and “come on, shoot me”. Constable Stockham was continuously telling him to drop the knife. At one point Mr. Fleury said he couldn't find a job and people wouldn't hire him because he was native.

[242] Mr. Fleury started coming down again and stabbed the knife into the wall of the stairwell, at last six times, with such anger and force that the whole knife was going right into the wall. He was screaming at the officers to shoot him that they weren't going to take him alive. Constable Stockham pepper sprayed him again and got him right in the face. Again it had no effect on him. He stopped and maybe went back a step again.

[243] At that point Constable Stockham said to him “you know Howard, your kids are here, you don't want to do this in front of your kids”. And he said “just put down the knife” but he refused. He started coming down again. Constable Stockham screamed at him “drop the knife, don't take another step.” Mr. Fleury got as close as four feet away from the officers. Constable Stockham felt that his life and his partner's life were in danger. Mr. Fleury just kept on coming, so Constable Stockham discharged his firearm. He does not remember how many times he discharged his firearm.

[244] Constable Barkley discharged his firearm at the same time.

[245] Mr. Fleury fell and landed at Constable Stockham's feet.

[246] Constable Barkley was still covering with his firearm out. Constable Stockham holstered his weapon and got his handcuffs out and was going to handcuff Mr. Fleury. Then someone said "get him out of there". Someone grabbed him and took him outside.

[247] Constable Stockham was in shock. He remembers going to sit in a police car but does not know whose it was.

[248] He was taken to the police station and processed in the usual protocol.

[249] Constable Stockham testified that he had previously been involved in situations with people armed with weapons in a house with children. On those occasions he was able to talk the persons involved into surrendering to police or effected a surrender by use of pepper spray.

[250] Constable Stockham agreed that Ms. Desjarlais did not say that Mr. Fleury had threatened to hurt the children.

[251] Constable Stockham was asked about whether someone could have accessed the upstairs room where the children were from outside and tried to get the children out of the house that way. He said that did not think about that. He had no idea at the time that Constable McCartney was trying to find a way to do that.

[252] He was asked if he gave any consideration to exiting the residence and trying to approach Mr. Fleury in a different way. He said no. Their main goal was to make sure the children were fine and that they got the children out of the house.

[253] Constable Stockham said that when Mr. Fleury was pepper sprayed on the stairs the second time, it did not appear the pepper spray affected him at all. Mr. Fleury did not fall down. He does not recall Mr. Fleury kneeling, or crawling up the stairs. He does not remember Mr. Fleury crying but said that he may have been.

[254] He said that if Mr. Fleury had let the children upstairs come downstairs and leave the house, the officers would have backed out of the house and dealt with the matter in a different way. This was not a situation in which they could give Mr. Fleury some time to cool down due to the fact that other people were in the house and, given Mr. Fleury's demeanour and the fact he was armed, that those people were in danger.

Evidence of Constable Blaine Fraser

[255] Blaine Fraser has been a constable with the Winnipeg Police Service for six years.

[256] In December, 2005, he was in District 3 and was partnered with Amber Tittlemier.

[257] He and his partner were at the District 3 station late in the evening of December 2, 2005, when their sergeant approached them with a call for assistance by another unit made up of Constables Barkley and Stockham.

[258] While in the station, they knew it was a domestic call and they were requesting additional units for assistance. They had no details other than that.

[259] They proceeded to the call. En route, they were having computer problems so Constable Fraser was not able to bring up any details until just before they arrived. When he did, he read the details out loud so that Constable Tittlemier was aware of the details as well.

[260] Constable Fraser was the passenger and Constable Tittlemier was driving.

[261] The details he learned from the computer were that the complainant had called saying she was having trouble with her intoxicated boyfriend, that he was breaching an order, she was worried he may be violent, and he was armed with a knife.

[262] When they arrived at 339 Alfred Avenue, he voiced that they were on scene. They got out of the cruiser car and attended to the front yard where Constable Dziver was standing.

[263] Constable Dziver advised that, according to the Barkley/Stockham unit, when they arrived, a male had come out armed with a knife and had mentioned something to them about suicide by cop and then retreated back into the house.

[264] He had heard that phrase before. He understood it to mean somebody wished to end his life by the hand of a police officer. He had never heard that in the line of duty.

[265] After speaking to Constable Dziver, he went to the rear of the house, down the east side. On his way there, he could hear yelling. When he got to the rear of

the residence, he saw Constables Stockham and Barkley and Patrol Sergeant Rioux inside the porch at the door to the residence, and they were shouting for the occupants to open the door or they would kick it in.

[266] Once he got to the back, he took a stance at the northeast corner of the house and removed his firearm based on the information there was somebody inside armed with a knife. At that point, he did not know how many people were inside with the male but he assumed the complainant was still in the residence.

[267] There was a window on the northeast corner of the house that he tried to look in but he was unable to see anything. Shortly after that the door was opened and a teenaged male came out of the residence and to the rear steps and Constable Fraser approached him. He could hear the other officers, who were already in the residence, asking whoever was in the residence where “he” (the male with the knife) was. Constable Fraser asked the teenaged male where Mr. Fleury was. The teenaged male said Mr. Fleury was upstairs or at the top of the stairs.

[268] He shouted out what the teenaged male had told him and stepped into the porch. He was positioned just on the other of the entryway door into the kitchen. At that time he observed Constable Dedieu inside the kitchen and he was directing a number of civilians to leave the kitchen and toward the back door.

[269] Constable Fraser shouted for the civilians to leave and directed them into the porch, but they went downstairs. There was an adult female he believed to be the complainant. He asked if that was everybody and she said yes, at which time she also went downstairs. He observed them go downstairs.

[270] After that, he went into the kitchen. He saw Constables Stockham and Barkley and Patrol Sergeant Rioux standing at the landing of the steps that appeared to go upstairs. Constable Dedieu was standing across from him in the kitchen. Constables Barkley and Stockman had their guns drawn and pointed up the stairway and they were shouting for the male to put down the knife. Patrol Sergeant Rioux had his baton extended and was holding it up. Constable Fraser had his own weapon still out.

[271] Constables Stockham and Barkley shouted at Mr. Fleury to put the knife down. There was loud music playing. Constable Fraser went into the dining room/living room area and turned down the volume of the music on the computer speakers.

[272] He went back to the entry to the kitchen. Constables Barkley and Stockham and Patrol Sergeant Rioux were still shouting for the male to put the knife down. They asked him to sit down on the stairs and told him there weren't there to hurt him and were there to help him.

[273] He heard Mr. Fleury saying something about having trouble getting a job. He was yelling back at them. His temper seemed elevated.

[274] The presence of pepper spray in the house was very strong and everybody in the room was coughing. He saw that both Constables Stockham and Barkley had their pepper spray out and had it pointed up the stairway. He did not actually see the pepper spray come out of the container but he saw them both shake the containers which gave him the impression they were empty.

[275] Constable Kanaski entered the home and asked if there was anybody else upstairs. Constable Fraser initially said no based on his earlier discussion with the complainant. But somebody else shouted out "No, there are kids upstairs". Right around that time, the adult female came upstairs from downstairs and was in the porch and she asked to go into the residence and speak to Mr. Fleury. He asked her if there were any kids upstairs and she said there were – a 2 year old and a 3 year old. He passed this information on to Constable Kanaski. Again she asked if she could go and speak to Mr. Fleury. He told her it was not safe and directed her back down to the basement. She went back down to the basement.

[276] At that time he went outside, put his firearm away and got some fresh air. He was only outside for a moment.

[277] Then he heard multiple shots come from inside the residence. He could tell the shots came from two firearms.

[278] He next observed someone walking Constable Barkley out of the residence. He went to the porch area because he saw somebody at the top of the basement stairs, peeking through where the door was. He went there to make sure everybody stayed in the basement. He was guarding the basement stairs.

[279] From where he was, he could see part of the kitchen area. He could not see Mr. Fleury. He could see Patrol Sergeant Rioux standing in the kitchen holding a knife that appeared to have blood on it.

[280] He saw three officers come downstairs from the second floor carrying what he assumed were children. They were wrapped up in blankets so their faces and heads were covered.

[281] He kept guard at the basement door until he was advised by detectives on scene later that they would escort the people from the basement out of the residence.

[282] The adult female came up the stairs and asked where her children were and if they could be brought down to her. He told her the children were okay and that officers had taken them out to cruiser cars to stay warm. She'd also asked where Howard was and said "you didn't have to shoot him". He told her that he was there and that paramedics had been called. Shortly after the fire department had arrived, she came up again and asked where Mr. Fleury was and if he was okay. He told her that the paramedics were with him.

[283] After the people from the basement were out, he was advised by Sergeant Small that he and Constable Tittlemier were to go to the major crimes unit at the Public Safety Building. He did, and was processed by the forensic identification unit. A few days later, he prepared a statement.

[284] He confirmed on cross-examination that although Ms. Desjarlais told him she wanted to come into the house and talk to Mr. Fleury, he did not advise Constable Barkley, Constable Stockham, Patrol Sergeant Rioux, nor anyone that she wanted to do so. The reason he did not was that the male was armed, agitated and was not listening to the officers. It would not have been safe or prudent to send in Ms. Desjarlais and put her in harms way.

Evidence of Constable Matthew Todd Barkley

[285] Matthew Barkley has been a constable with the Winnipeg Police Force for eight years.

[286] On December 2, 2005 he was partnered with Constable Stockham and was stationed in District 3 in the north end of Winnipeg.

[287] He was on patrol with Constable Stockham when they received a dispatch. He was driving. They were dispatched to a domestic incident involving an alleged breach of a no contact communication order. The address was 339 Alfred Avenue. A male was identified in the call history. Constable Stockham, who was the

passenger, pulled up the male's information on the police computer. The male was known to him as Howard. Constable Stockham relayed to him that Howard was cautioned for violence and was six feet, 240 pounds. He also viewed the police photo of Howard that that time. He does not recall having any information about whether or not the male had been consuming alcohol.

[288] The fact the male had a caution for violence meant to Constable Barkley that he had been involved in a prior assault or other violent situation.

[289] It took 10 or 15 minutes to reach 339 Alfred. As they arrived, Patrol Sergeant Rioux also arrived in his police vehicle.

[290] He parked the vehicle near the front of the residence and exited the cruiser car. The three of them approached the front of the residence. At that time, they saw a female at the east side of the residence and she called to them. They attended to her. She identified herself as the resident and stated that Mr. Fleury had lost control, had armed himself with a knife and that he was inside her residence with her children, whose safety she was concerned for. Afterwards he learned that her name was Kim Desjarlais. She did not say how many children there were inside her residence.

[291] Upon receiving that information that Mr. Fleury was armed with a knife, he pulled his firearm from its holster and held it at the low ready position. He and Constable Stockham went to the rear of the residence where there is a landing and a deck area. Off the landing and deck is an enclosed porch. A light was on in the porch. Constable Stockham went into the porch first and he followed. As Constable Stockham reached the door, the door opened and a male who matched the police photo of Howard Fleury appeared. He had a crazy look on his face, like he was staring right through them. In Constable Barkley's opinion, he appeared to be mentally unstable or under the influence of alcohol or a drug.

[292] When they saw the knife in his hand, he and Constable Stockham backed up out of the porch area onto the landing, and ordered Mr. Fleury to drop the knife. As this was happening, Mr. Fleury asked "Have you guys ever heard of suicide by cop?"

[293] He had heard that phrase. He thought that meant that Mr. Fleury was going to do whatever it took for the officers to provide his suicide.

[294] In response to Mr. Fleury saying "suicide by cop", he and his partner said "drop the knife". Mr. Fleury did not drop the knife. Instead, he just postured,

facing them, still holding the knife. They were approximately 10 feet away from him. Since he did not drop the knife, Constable Barkley reached for his pepper spray on his belt with his left hand, while holding his firearm in his right hand. From not more than 10 feet away, he aimed for and hit Mr. Fleury directly in his face with the spray, and emptied about half a can of pepper spray.

[295] In response to the pepper spray, Mr. Fleury tilted his head back a bit and covered his face with his non weapon hand, and he went right back into the residence and closed the door, all without saying anything.

[296] He, Constable Stockham and Patrol Sergeant Rioux were all on the porch. Constable Barkley testified that he immediately called dispatch for additional units as they knew there were children inside. They had to get inside the house because Mr. Fleury could be harming the children. Additional units arrived almost right away. Constable Dziver and Constable Dedieu arrived on scene. Constable Dziver took up a position in front of the residence in case Mr Fleury were to come out at the front of the house. Constable Dedieu went to the back of the house.

[297] There was a discussion about the closed door. Present were Constables Barkley, Stockham, Dedieu and Patrol Sergeant Rioux. Constable Barkley asked Ms. Desjarlais if she had a key and she said it was inside. They started trying to communicate through the door with Mr. Fleury, saying “come to the door, drop the knife, we need to talk about his”. There was no response from Mr. Fleury. Constable Barkley could hear voices of children coming from within the residence.

[298] There was a discussion about how to get access into the house. There was some concern about kicking in the door so that they could check on the safety of the children. As they were going to kick in the door, the door was opened by a small child. That child told them that Mr. Fleury was upstairs, which was to their left as they entered.

[299] Constable Stockham entered the residence first and made his way to the left. Constable Barkley followed. They told the children in the kitchen area that they needed to get out of the residence. As they moved to the left, they peered around the kitchen wall, up into the stairway and saw Mr. Fleury standing at the top of the stairs. The light was on at the top of the stairs.

[300] It was a very narrow and steep stairway. Two officers would not have been able to stand side by side within the stairway. On the landing area at the base of the stairway, Constable Stockham had to take a position halfway in the bathroom and half in the hallway and he (Constable Barkley) had to take a position halfway

in the hallway and half in the kitchen, just so they could both have an adequate view of Mr. Fleury.

[301] Mr. Fleury, at the top of the stairs, was about 10 feet from the officers at the bottom of the stairs.

[302] Constable Barkley was asked about police training and use of force training, and in particular a “threat radius”. There is a reactionary gap of 21 feet. So even with Mr. Fleury at the top of the stairs, the gap between Mr. Fleury and the officers was much less than the reactionary gap they had been trained to have and was safe. This was aggravated by the fact Mr. Fleury was above them and was armed with a knife.

[303] The knife had a blade of at least four inches.

[304] Constable Barkley said he was concerned at that point, about unpredictable behaviour of Mr. Fleury. He was concerned for his own welfare, that of his partner, the other officers on scene and the children.

[305] When they saw Mr. Fleury at the top of the stairs, they ordered him to drop the knife, repeatedly. All of Constable Stockham, Constable Barkley and Patrol Sergeant Rioux were telling him to drop the knife. At one point Mr. Fleury made a comment about not having a job or losing a job. Constable Barkley asked him to put the knife down on the ground and sit on the stairs and they would talk about what was bothering him. But he did not drop the knife.

[306] Mr. Fleury turned to the side as he made a stabbing motion into the wall at the top of the stairs. When he was still at the top of the stairs, Constable Barkley pepper sprayed Mr. Fleury again. He had about half a can left and he emptied the entire contents of the can into Mr. Fleury’s face.

[307] The pepper spray didn’t seem to have any effect on Mr. Fleury because he stayed in eye contact with the officers, refused to drop the knife and seemed very determined.

[308] There is a small percentage of people on which pepper spray has no effect. Where people are under the effects of drugs or are very determined, pepper spray may not affect them.

[309] Both officers had their firearms out. Patrol Sergeant Rioux was to the right of Constable Barkley and had his baton in his hand.

[310] Then a door behind Mr. Fleury opened. Two small children came out of the room. One of them came and hugged Mr. Fleury. At that time, Constable Barkley pleaded with Mr. Fleury to let the children come downstairs but he would not allow that. He told the children to go back into the room and close the door. They did.

[311] Mr. Fleury advanced down the stairs. He got a quarter of the way down, which would be about seven feet away from them. The officers continually told him to drop the knife. As he came down Mr. Fleury said “You’re going to have to kill me” and “I’m not coming with you.” Constable Stockham used his pepper spray and pepper sprayed Mr. Fleury in the face for the third time.

[312] The effect was that Mr. Fleury went back up to the top of the stairs. He still had the knife in his hand and refused to drop it.

[313] Mr. Fleury retreated to the top of the stairs. They continued to tell him to drop the knife. He responded by telling him to shoot him.

[314] Mr. Fleury advanced down the stairs again, yelling at the officers to shoot him. The officers told him to drop the knife with loud verbal commands. At about five feet away from them, Mr. Fleury had the knife in his right hand, with the blade facing down and he started stabbing at the wall numerous times. Each time he stabbed at the wall, there was enough force that he actually stabbed through the plaster or drywall. The officers kept telling him to drop the knife. He made stabbing motions at them. Though he was five feet away, he was extending his arm with the knife in his right hand toward the officers. Constable Barkley told him repeatedly if he didn’t drop the knife, he would be forced to shoot him and he did not want to do that. Mr. Fleury came down another few steps and was about three feet away from them, with his right arm extended, holding the knife and making stabbing motions toward the officers. They kept telling him to drop the knife and that they didn’t want to have to shoot him. He refused, saying “shoot me”. Mr. Fleury then had the knife held up in his right hand and made a motion to take another step forward. Three feet was far too close for the officers’ safety. Constable Barkley feared Mr. Fleury could cause grievous bodily harm or death to himself or to Constable Stockham, or even to the children upstairs, and Mr. Fleury forced them to shoot him.

[315] Constable Barkley discharged his firearm. He remembered shooting once and looking at Mr. Fleury and seeing that he was still standing. Since Mr. Fleury was still standing, he was still a threat and Constable Barkley fired once more. He recalls discharging his firearm twice.

[316] He heard Constable Stockham's gun go off at least two times.

[317] He identified the knife marked as an exhibit as possibly being the knife that Mr. Fleury had been holding.

[318] He confirmed he felt threatened by Mr. Fleury at the time he discharged his firearm.

[319] He was at a distance of about three feet when he fired, with Mr. Fleury being up a couple of stairs up, and with his arm extended in a stabbing motion.

[320] After he and Constable Stockham fired, Mr. Fleury fell. His head curled down to his feet and he rolled down the remaining few steps and he fell at their feet.

[321] As Mr. Fleury fell, he still had his firearm pointed at him. He observed a pool of blood coming from Mr. Fleury's body and felt someone's arm on his upper right arm. He heard Constable Grenkow's voice telling him to holster his firearm. He did so.

[322] He was escorted out of the residence and turned over to Constable Odietu who took him to a cruiser car where a district 4 patrol sergeant had seized his entire gun belt. He described the feeling as surreal. He was taken to the police station and processed under the usual protocol and interviewed by major crimes and gave a statement.

[323] He confirmed that Ms. Desjarlais had not told him that Mr. Fleury had threatened to do anything physical to her or to any of the children in the residence.

[324] He acknowledged on cross-examination that Mr. Fleury was not harming any child while standing at the top of the stairs and he knew that the child had moved into a bedroom so that there were no children close to Mr. Fleury at the time he was standing at the top of the stairs.

[325] He does not recall Patrol Sergeant Rioux saying to him words to the effect of "if he gets any closer, you'll have to shoot him".

[326] He had no idea that Constable McCartney was outside the residence trying to see if she could secure some access to the room the children upstairs were in.

[327] It was never brought to his attention that Ms. Desjarlais was interested in talking to Mr. Fleury.

[328] Mr. Fleury never dropped, or let go of the knife, throughout the entire incident.

[329] Even when the child was hugging him at the top of the stairs, Mr. Fleury was holding the knife.

[330] He said he would not have fulfilled his responsibility if he had left the residence without confirming there was no one upstairs.

[331] He said it is his job to ensure the safety of citizens of Winnipeg and if he had left the residence with children being inside, he probably wouldn't have been able to live with himself. Based on the way Mr. Fleury was behaving, it was not an option to leave the residence with the two children he knew were inside.

[332] He confirmed that when he discharged his firearm toward Mr. Fleury he was aiming for Mr. Fleury's centre mass, or torso area. He did so based on the use of force training he had received with the Winnipeg Police Service. Mr. Fleury was three feet away and holding a knife. When asked why he would not have aimed for Mr. Fleury's arm that was holding the knife, he answered that in training, officers are trained to aim for centre mass. In a stressful situation, it is hard to aim for a small target and is easier to aim for and hit center mass. In adrenaline filled situations, an officer's field of vision narrows and becomes tunnel vision. A hand that is holding a knife or gun will almost certainly be moving. For all of these reasons, if Constable Barkley had aimed for Mr. Fleury's arm, he might have missed. If he missed the target, then the threat posed by Mr. Fleury would continue advancing and risk the safety of the officers and everyone else in the house. Further, had the officer fired, and missed the target, the shot could have gone into the room at the top of the stairs where the children were.

SCHEDULE 4

FINDINGS OF THE PATHOLOGIST

[333] The autopsy on Howard Fleury was done by pathologist and Chief Medical Examiner for the Province of Manitoba, Dr. T. Balachandra.

[334] It was agreed between counsel that it was not necessary for Dr. Balachandra to be called as a witness at the inquest, and that his Final Autopsy Report would be admitted into evidence at the inquest.

[335] Accordingly, the Final Autopsy Report done February 5, 2005 at the Health Sciences Centre, is included as part of Exhibit 1, being Documents Provided by the Office of the Chief Medical Examiner.

[336] The immediate cause of death is indicated on the Autopsy Report Form to be gunshot wounds.

[337] Seven pellets were recovered from the body of Howard Fleury. Mr. Fleury sustained gunshot wounds to the right side of his face, right forearm, chest and left thigh. His left lung, heart, liver, stomach and intestines were lacerated as a result.

[338] There were toxicology analyses conducted on the blood and urine of Mr. Fleury, to check for the presence of alcohol and drugs that may have been present in his body. These toxicology reports were included as part of Exhibit 1.

[339] The drug analysis showed the presence of cocaine, coca ethylene and methylecgonine in Mr. Fleury's blood and urine at the time of his death.

[340] The report states the following:

Cocaine is a potent central nervous stimulant commonly used for its euphoric effects. Coca ethylene, an active breakdown product of cocaine, is found only when a combination of alcohol and cocaine has been ingested. Methylecgonine is an inactive body breakdown product of cocaine.

The stimulant effects of cocaine (i.e.: euphoria, enhanced sense of well being, increased energy and self confidence) are short lived. Depending on the route of administration, these effects are felt immediately, peak within 20 minutes and last up to 90 minutes.

The stimulant phase is followed by a "crash" or dysphoric phase which is characterized by agitation, irritability and anxiety. Other signs/symptoms noted in

the cocaine user include talkativeness, restlessness, body tremors, exaggerated reflexes, dilated pupils and elevated body temperature (i.e. sweating).

When the use of cocaine is combined with alcohol consumption, the result is an increased state of intoxication relative to either alone.

(Forensic Lab Report done by Jennifer Findlay, M.Sc. (Pharm.), Toxicology Services, page 3)

[341] An analysis was done to determine the alcohol level in Mr. Fleury's blood and urine at the time of his death. The level of ethyl alcohol in his blood was 219 milligrams of alcohol in one hundred millilitres of blood. The level of ethyl alcohol in his urine was 238 milligrams of alcohol in one hundred millilitres of urine.

(Forensic Lab Report done by James D. Mitchell, Alcohol Analytical Officer, Toxicology Services, page 2)

SCHEDULE 5**CONCLUSION**

[342] The 911 call made by Kimberly Desjarlais at 11:41 p.m. on December 2, 2005 was designated a domestic matter and was responded to immediately by members of the Winnipeg Police Service. Constables Barkley and Stockham and Patrol Sergeant Rioux arrived on scene within 15 minutes of the 911 call being made.

[343] 17 minutes after police arrived at 339 Alfred Avenue, Mr. Fleury had been shot, and an ambulance was called.

[344] When Constables Barkley and Stockham and Patrol Sergeant Rioux arrived on scene, they knew that Mr. Fleury had some criminal record and that there was a caution on the police system for Mr. Fleury for violence. They knew he was at 339 Alfred Avenue in violation of a no contact order, that he was intoxicated and that there were children in the house with him.

[345] Once they arrived on scene and spoke with Ms. Desjarlais outside, they became aware that Mr. Fleury had armed himself with a knife inside the house, and that Ms. Desjarlais was fearful for the safety of her children inside.

[346] Constables Barkley and Stockham and Patrol Sergeant Rioux had their first contact with Mr. Fleury at the back door of the residence. Mr. Fleury came outside holding a knife and asking the officers if they had heard of suicide by cop. He refused to put the knife down, despite demands by the officers to do so. Pepper spray was deployed at Mr. Fleury which had little, if any, effect on him. Mr. Fleury went back inside the house and locked the door.

[347] The officers called for backup and 4 sets of backup units from the Winnipeg Police Service arrived.

[348] After police demands, the back door was opened and Constables Barkley, Stockham and Dedieu and Patrol Sergeant Rioux went in. The children by the back door were sent into the basement with Ms. Desjarlais.

[349] Constables Stockham and Barkley were directed by the children to Mr. Fleury, who was standing at the top of a narrow stairway that went from the first floor of the residence to the second floor and had 14 steps. It was about 28 inches

wide with solid walls on either side. Mr. Fleury took up virtually the entire width of the stairway.

[350] What ensued was the confrontation which, despite the officers' efforts, could simply not be de-escalated. Mr. Fleury was, by the accounts of all witnesses, acting intoxicated or under the influence of drugs, was enraged and was fixated on his goal of having police shoot him.

[351] Even though Constables Barkley and Stockham were far less than the safe distance they are trained to stay from someone with a weapon such as a knife, they tried talking to Mr. Fleury to persuade him to drop the knife. Mr. Fleury refused to drop the knife, and repeatedly yelled at them "suicide by cop" and related comments inviting the police to shoot him.

[352] Events may have unfolded differently at this point had a young child not emerged from a room at the top of the stairs behind where Mr. Fleury was standing with the knife. At that point, Constables Barkley and Stockham and Patrol Sergeant Rioux realized that there was at least one child upstairs. Other officers at this point knew there were several children upstairs but this is the first time the officers directly involved in dealing with Mr. Fleury were made aware of this.

[353] Those officers all testified the fact there were children in the house meant that leaving Mr. Fleury, armed with a knife as he was, in the house, was not an option.

[354] The final phase of the encounter between Mr. Fleury and police then took place. Mr. Fleury came down the stairs toward the officers with a knife. Constable Barkley pepper sprayed him. Mr. Fleury retreated a step or two but kept yelling "Suicide by cop. Shoot me". He began down the stairs again, this time stabbing the knife into the walls beside the stairway and yelling at officers to shoot him. Constable Stockham pepper sprayed him a final time. Mr. Fleury then made a rapid descent down the stairs, coming at the officers with the knife outstretched and making stabbing motions with it toward them. The officers yelled at him to stop, and that they would have to shoot if he didn't. Mr. Fleury did not stop. When he was about 3 or 4 feet from them, Constables Barkley and Stockham both discharged their firearms toward Mr. Fleury and Mr. Fleury fell.

[355] The report of Sergeant Weiss (one of the identification officers) that is part of Exhibit 1, confirms that the puncture holes in the wall of the staircase were located above the fifth step from the bottom. The Winnipeg Police Service Forensic Identification Report prepared by Constable W. Ralph (also part of

Exhibit 1) confirmed that there was an area of blood concentration as close to the landing as on the second step from the bottom of the stairway. These findings confirm just how close Mr. Fleury was to the officers.

[356] There were some differences in the evidence as between Patrol Sergeant Rioux, Constable Barkley and Stockham as to some of the details of the encounter with Mr. Fleury on the stairway. These differences were as to Mr. Fleury's behaviour after he was pepper sprayed for the first time on the stairway, whether he was pepper sprayed once or twice on the stairway and at what point the child came out of the room at the top of the stairs relative to Mr. Fleury being pepper sprayed.

[357] In the result, these differences in recollections are not material to conclusions in this matter. That is because, regardless of which officer's recollection of some of the details is accurate, there were realistically no options available to Constables Barkley and Stockham, given the dynamics of the situation, other than to try to talk Mr. Fleury into dropping the knife, and, when he refused and came so close to them with the knife on his final descent, to discharge their firearms at Mr. Fleury to stop the threat he posed.

[358] A total of 7 shots were fired at, and hit, Mr. Fleury.

[359] An ambulance was called. Mr. Fleury was taken to Health Sciences Centre, and unfortunately, did not survive.

[360] Constables Barkley, Stockham, Dedieu and Patrol Sergeant Rioux were the officers that actually saw the incident on the stairway. Other officers were present outside and in the house. All of them testified they could hear yelling. Those officers in the house all testified they heard Mr. Fleury repeatedly yelling words to the effect of "suicide by cop" and "shoot me", and that they heard Constables Barkley and Stockham in particular talking to Mr. Fleury trying to persuade him to drop the knife and talk to them, and then, as things escalated, yelling at Mr. Fleury to drop the knife and that they didn't want to shoot, but if he didn't drop the knife they would have to shoot him.

[361] Questions were asked of officers by counsel, by Ms. Desjarlais and by the court relative to options that the officers on scene might have considered as an alternative to dealing with Mr. Fleury as they did.

[362] These options posed, and my conclusions about their viability as realistic alternatives as to how the officers handled the situation, may be summarized as follows:

- Why did the officers not use a resource other than a firearm to subdue Mr. Fleury or to get him to drop the knife?

This incident occurred in December of 2005. The Winnipeg Police Service had not yet issued taser guns to its officers. Accordingly using a taser was not an option available to these officers in this situation. The only resources the officers had other than their firearms were asp batons and pepper spray. Constables Barkley and Stockham did pepper spray Mr. Fleury a total of 3 times over the course of their dealings with him. The spray had no apparent effect on Mr. Fleury and did not make him drop the knife or curb his behaviour. The officers used all the pepper spray they had, as well as some of Patrol Sergeant Rioux's. They did use pepper spray on Mr. Fleury's second last descent toward them, and when he was very close to them. Once he was on his final descent, and was 4 feet away from them, and stabbing the knife toward them, he was simply too close for officer safety, to simply try pepper spray again. Their batons extended two feet. That was simply too close a distance for officer safety, to risk reliance on the batons. The only resources then available to the officers to stop the threat posed by Mr. Fleury with the knife were their firearms.

- Why didn't one or more of the officers tackle Mr. Fleury in the stairway?

Officers testified that they are trained not to tackle someone who is holding a knife, as an officer could be stabbed. In this particular case, due to the narrowness of the stairway, only one officer at a time would have been able to ascend the stairs, leaving that officer totally vulnerable to being stabbed by Mr. Fleury. Even if Patrol Sergeant Rioux's recollection is accurate that at one point Mr. Fleury turned and crawled back up the stairs, given the narrowness of the stairway and that Mr. Fleury was higher up on the stairway than the officers and in a position of advantage over them, officer safety precluded the prospect of an officer charging at Mr. Fleury and trying to grab him as a viable option.

- Why didn't officers leave the residence to give Mr. Fleury an opportunity to calm down, and so that they could formulate a plan to deal with Mr. Fleury and to get the children upstairs out of the residence safely?

This was suggested by counsel for Barbara Fleury, in view of the fact that Mr. Fleury had in fact made no threats to harm his children. Further, officers had seen him safely take one child back to a room at the top of the stairs during this otherwise very volatile and dangerous encounter. Also, the information the officers had at the time was that Mr. Fleury had never been violent toward his children (we know now that this was not the case, but that is the information the officers had received from Ms. Desjarlais at the scene).

All of the officers asked about this possibility dismissed it on the basis that they simply could not leave children in the house with Mr. Fleury because he was armed with a knife. Mr. Fleury was intoxicated and so angry that he was stabbing the knife into the walls and screaming at officers to shoot him. His behaviour was volatile and unpredictable.

This was not a realistic option. Had officers in fact left the house as suggested by counsel for Ms. Fleury, we simply do not know what Mr. Fleury would have done, given his behaviour and demeanour. It was the officers' responsibility to protect the children in that house. Had they left, we could be dealing with an even more extensive tragedy than in fact occurred.

- Why didn't officers pursue the possibility of having the children taken out of the house from the outside?

This was something that Constable McCartney was considering at the time she heard the gunshots. But there was simply not time to follow up on this. Given Mr. Fleury's volatile behaviour, the officers could not put dealing with him "on hold" without risking officer safety and the safety of the children upstairs.

- Why didn't officers permit Ms. Desjarlais to go upstairs from the basement to speak to Mr. Fleury and to try to "talk him down"?

Ms. Desjarlais and Constable Fraser both testified that she did ask, several times, to be allowed to speak to Mr. Fleury. Safety of Ms. Desjarlais made this an unrealistic option. Ms. Desjarlais was (and this was known to the

officers) a victim of domestic violence at the hands of Mr. Fleury. Mr. Fleury was intoxicated, enraged and armed with a knife. Officers could not compromise Ms. Desjarlais' safety by putting her in contact with Mr. Fleury.

- Why didn't the officers call for the Winnipeg Police Service tactical response unit or negotiation team?

There was simply not time to do this. Patrol Sergeant Rioux (who had served on the Winnipeg Police Service negotiation team in the past) testified that members of these teams had to be assembled and then disbursed to the scene. A volatile situation was in progress. To request the team would have amounted to leaving Mr. Fleury in the home for a period of time. Safety of the children meant this was not an option.

[363] None of the options outlined above were used by the officers, because to do so would have risked either officer safety or the safety of the children in the house.

[364] Further, it is easy, with the benefit of hindsight, to dissect what happened on the stairway as between Mr. Fleury and the officers. However, it is important to bear in mind that the officers involved, Constables Barkley and Stockham, as well as Patrol Sergeant Rioux and Constable Dedieu were focused only on the direct interactions with Mr. Fleury. Those interactions were continuous, threatening to the officers' physical safety, intense and the whole incident happened within minutes. There was no break in time to consider the formulation of plans or to call in other negotiators.

[365] Indeed this was not a situation where Mr. Fleury was threatening other civilians. However, he was still a danger to those in the house, and was an immediate threat to the safety of the officers at the bottom of the stairs.

[366] One can only imagine the public outcry if the officers had left Mr. Fleury in the house, in his intoxicated and volatile condition, armed with a knife, and injury or worse had come to Ms. Desjarlais and/or any of the children. For the officers to leave the residence would have been to risk the safety of those people.

[367] Police officers are trained to protect citizens. It is not their job to risk their own lives at all costs.

[368] The officers in this case let Mr. Fleury get dangerously close to them. To let him get any closer could have cost their own lives.

[369] The officers tried to de-escalate the situation with the resources they had, and to get Mr. Fleury to put down the knife. They gave him every opportunity to do so. Had he done so, or if he had at least let the children upstairs go out of the house, he would no doubt be alive today.

[370] I am very sympathetic to the members of Mr. Fleury's family. They all wish things had ended differently. Indeed the officers involved in this situation also wish things had ended differently. Police officers are trained to protect citizens and to avoid placing their own lives in danger. In this most unfortunate situation, Mr. Fleury refused to drop his weapon after being repeatedly told to do so. If he had complied with officer demands to drop the knife, he would be alive today. But he did not comply and advanced toward officers with his knife held up and stabbing toward them. The officers let him get far closer to them than their training tells them is safe. When they did discharge their firearms at Mr. Fleury, doing so was the only resource they had to stop the threat he posed to them. Constables Barkley and Stockham made every effort to deal with Mr. Fleury so that everyone would be safe. They, and the other officers involved, were professional and did what they were trained to do. None of the officers, including Constables Barkley and Stockham, did anything improper.

[371] Mr. Fleury was very intoxicated and had consumed cocaine at the time this incident occurred. But why it was that Mr. Fleury acted the way he did on December 2, 2005 and was so fixated on having police shoot him, we will never know. That answer died with Mr. Fleury.

[372] There is another important point to be made. During Ms. Desjarlais' evidence, she made the comment that when she heard the gunshots, she knew that "she had done something wrong." This comment suggests that in retrospect, she may think that she ought not to have called 911 as she did.

[373] Ms. Desjarlais had a long history with Mr. Fleury that had involved significant and repeated incidents of domestic violence toward her. On December 2, 2005 Mr. Fleury was at her house, was intoxicated, was not responding to her, was "acting crazy" according to her, and had armed himself with a number of knives. She and her daughter took away, and hid, most of the knives, but she knew that he still had one. All of her children were in the house, and she was scared for the safety of her children. Ms. Desjarlais testified that she just wanted the police to come to her home and remove Mr. Fleury from her home, as they had done in the past. The fact that the situation escalated and ended with the tragic result it did is not her fault. Ms. Desjarlais, in calling 911, was doing what was necessary to

protect herself and her children. Had she not made that call, there may have been tragic results involving her and/or her children.

SCHEDULE 6

RECOMMENDATIONS

[374] Section 33(1) of the *Act* provides discretion to a provincial court judge hearing an inquest to make recommendations as to any changes that he or she thinks would “serve to reduce the likelihood of deaths in circumstances similar to those that resulted in the death that is the subject of the inquest.”

[375] As stated in my conclusions above, Mr. Fleury refused to comply with officers’ repeated demands to drop the knife. Had he complied, he would be alive today.

[376] However, Mr. Fleury did not drop the knife, and came at the officers with a knife, making stabbing motions at them with the knife. When he was only several feet away from the officers, the officers used the only resource they had available to them that could effectively stop the threat to their safety. They discharged their firearms at Mr. Fleury. They did so in accordance with the Firearms Discharge Guidelines of the Winnipeg Police Service and in accordance with their use of force training. Despite prompt medical attention, Mr. Fleury’s death did occur.

[377] The officers acted in accordance with their professional responsibilities to protect the lives of others and preserve their own safety.

[378] Mr. Fleury’s non compliance with officers’ demands to drop the knife resulted in his death, which is of course a very tragic consequence, particularly for his family members.

[379] I am unable to make any recommendations as to changes that I think would reduce the likelihood of deaths in circumstances similar to the ones that resulted in Mr. Fleury’s most unfortunate death.

SCHEDULE 7

WITNESS LIST

1. Daniel Dedieu – Winnipeg Police Service
2. Jimmy Anis – Winnipeg Police Service
3. Kimberly Desjarlais – former common law spouse of Howard Glenn Fleury
4. Randall Dean Dziver – Winnipeg Police Service
5. Goziem Odietu – Winnipeg Police Service
6. Maurice Edmond Rioux – Winnipeg Police Service (retired)
7. Meghan Grenkow – Winnipeg Police Service
8. Kelly Dawn McCartney – Winnipeg Police Service
9. Robert Christopher Kanaski – Winnipeg Police Service
10. Robert Stockham – Winnipeg Police Service
11. Blaine Fraser – Winnipeg Police Service
12. Matthew Todd Barkley – Winnipeg Police Service

SCHEDULE 8**EXHIBIT LIST**

| <u>Exhibit No.</u> | <u>Description</u> |
|---------------------------|---|
| 1. | 2 Binders of Inquest Documents titled “Documents received by the Inquest Office” Section 1: Documents Provided by the Office of the Chief Medical Examiner Section 2: Documents Provided by the Winnipeg Police Service |
| 2. | 911 Call Disk |
| 3 | Poster board depicting main floor of residence at 339 Alfred Avenue |
| 4. | Poster board depicting second floor of residence at 339 Alfred Avenue |
| 5. | Winnipeg Police Service photograph booklet |
| 6. | Knife |