

RELEASE DATE: October 17, 2012



Manitoba

THE PROVINCIAL COURT OF MANITOBA

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

AND IN THE MATTER OF: An Inquest into the death of:

WILFRED LESLEY ASHAM
(DATE OF DEATH: September 2, 2007)

**Report on Inquest and Recommendations of
Judge Robert Heinrichs
Issued this 12th day of October, 2012**

APPEARANCES:

MARTIN S. MINUK, Inquest Counsel

KIMBERLY D. CARSWELL, Winnipeg Police Service

LOUIS VOSTERS, representing the family of Wilfred Asham



Manitoba

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

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

WILFRED LESLEY ASHAM

Having held an Inquest respecting the death of Wilfred Lesley Asham on April 2, 3, 4, 5, 10, 11 and 12, 2012, at the City of Winnipeg, in Manitoba,
I report as follows:

The name of the deceased is: **WILFRED LESLEY ASHAM**

Wilfred Lesley Asham came to his death on the September 2, 2007, at the City of Winnipeg, in the Province of Manitoba.

The cause of death was probable cardiac arrhythmia. I hereby make the recommendations as set out in the attached report.

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

Dated at the City of Winnipeg, in Manitoba, this 12th day of October, 2012.

Original signed by:
Judge Robert Heinrichs

DISTRIBUTION LIST:

- 1) Dr. T. Balachandra, 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. Jeffrey Schnoor, Q.C., Deputy Minister of Justice and Deputy Attorney General
- 5) Mr. Michael Mahon, Assistant Deputy Attorney General, Prosecutions Division, Manitoba Justice
- 6) Ms. Jacqueline St. Hill, Director of Specialized Prosecutions
- 7) Ms. Lorraine Prefontaine, Acting Director of Specialized Prosecutions and Appeals
- 8) Mr. Larry Hodgson, Acting Director of Regional Prosecutions
- 9) Ms. Jo-Ann Natuik, Director of Regional Prosecutions & Legal Education
- 10) Ms. Katie Dojack, Provincial Counsel to the Inquest with Ms. Betty Owen, Inquest Coordinator
- 11) Mr. Martin Minuk, Inquest Counsel
- 12) Ms. Kimberly Carswell, Winnipeg Police Service
- 13) Mr. Mark Mason, Counsel for the Royal Canadian Mounted Police
- 14) Dr. C.D. Littman, Medical Examiner and Pathologist
- 15) Ms. Vivian Rachlis, Counsel to the Winnipeg Regional Health Authority
- 16) Dr. R. Grierson, Medical Director, Winnipeg Fire & Paramedic Service
- 17) Mr. Mike Anthony, Exhibit Officer, Provincial Court of Manitoba
- 18) Ms. Aimee Fortier, Executive Assistant and Media Representative, Provincial Court of Manitoba
- 19) Ms. S. McKenzie, in care of Mr. Louis Vosters, representative for the Asham family



Manitoba

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

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

WILFRED LESLEY ASHAM

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I. MANDATE OF THIS INQUEST:

By letter dated November 16, 2009, the Chief Medical Examiner for the Province of Manitoba, Dr. Thambirajah Balachandra, directed that an Inquest be held into the death of Wilfred Lesley Asham for the following reasons:

1. To fulfill requirement for an Inquest as defined in section 19(3) of *The Fatality Inquiries Act*;
2. To determine the circumstances relating to Mr. Asham's death; and
3. To determine what, if anything, can be done to prevent similar deaths from occurring in the future.

The Fatality Inquiries Act mandates that I prepare and provide a written report of this hearing to the Minister.

The Fatality Inquiries Act affords me the discretion to recommend changes in programs, policies or practices of the Government and relevant public agencies or institutions and in the laws of the province that, in my opinion, would help to reduce the likelihood of deaths occurring in similar circumstances. I am not allowed to express any opinion or determine culpability in a manner that identifies anyone as a culpable party. It is not the function of the inquest to assess blame: its function is to recommend change that might help prevent future harm.

II. INTRODUCTION:

A. SUMMARY OF THE EVENTS OF SEPTEMBER 2, 2007:

[1] On the afternoon of September 1, 2007, Wilfred Lesley Asham ("Wilfred") and his brother, William ("B.J.") McKenzie, helped their sister, Leah McKenzie and her common law partner, Adrian Allard, move into a new home on Redwood Avenue, in Winnipeg. (The McKenzie/Asham family referred to Wilfred Asham as "Wilfred" and William McKenzie as "B.J." when they testified or answered questioned at the Inquest. Out of respect to the family, the report will use their first name, Wilfred and the nickname B.J. throughout the report.)

[2] After they finished moving the furniture and belongings into the house, they all sat together outside for a while. Wilfred and some of the others drank some beer and smoked a "joint" (marihuana cigarette) or two. Sometime in the early evening, Wilfred and B.J. returned to their own home, their mother's residence just down Redwood Avenue. After a shower and a change of clothes, the two of them went out for the evening.

[3] After stops at a nightclub and a bar, Wilfred and B.J. proceeded to steal a truck to drive. Wilfred popped the lock on the truck and forced the ignition to start with a butter knife and they drove off in the vehicle; Wilfred was driving and B.J. was in the front passenger seat. It was around midnight and they had been driving around for less than 10 minutes when a police car began to follow them. Wilfred attempted to elude the police, a short chase ensued, and soon he crashed the truck into a chain link fence. The brothers were uninjured and immediately fled on foot, going in different directions.

[4] Constable Gross and Constable Gladu, the officers who were in pursuit, ran after them. Constable Gross chased the closest of the two individuals and soon caught up to Wilfred, who quit running from the officer. He was escorted back to the cruiser car and placed under arrest for theft of the vehicle. Wilfred was searched and placed in the back of the cruiser car. Constable Gross and his partner inspected the stolen truck, spoke to a bystander, a possible witness, and then waited until another police unit attended to wait for the tow truck.

[5] Constable Gross and Constable Gladu then transported Wilfred to the District 2 Police Station, located in the Public Safety Building. Both prior to their departure and during the drive to the station, Wilfred appeared to fall asleep. Both times Constable Gladu asked him to wake up, which he did. When Wilfred heard on the police radio that another unit had his brother in custody, he became agitated and began to verbally challenge and accuse the officers of abuse. Once in the Public Safety Building parking garage, the officers escorted Wilfred to the third floor via an elevator and led him down the hallway to the Sergeant's office and presented him to Sergeant Peltier, who was on duty that night. While before the Sergeant, Wilfred was able to see that his brother,

“B.J.”, was being lodged in one of the Holding Rooms. This upset him and he began yelling at his brother not to say anything to the police.

[6] The officers were directed to lodge Wilfred in Holding Room #8, and so they escorted him into the room. Constable Gross removed the handcuffs and directed Wilfred to remove one of the two shirts he was wearing. While doing this, Wilfred, now sitting on the bench in the room, suddenly slumped over. Constable Gross and Constable Gladu placed him in the recovery position on the floor, as they believed he was at least mildly intoxicated and thought he might vomit. It soon became apparent to the officers that he was not conscious and that he was having difficulty breathing. One of the officers went to have an ambulance called and returned immediately. When they had trouble locating a pulse and saw that Wilfred was not breathing regularly, they requested a rush on the ambulance. Other officers quickly assisted with emergency equipment. While one officer breathed for Wilfred, a second officer began performing C.P.R. They continued this until the ambulance attendants arrived and took over. They determined he had no heart beat and used a defibrillator to shock Wilfred's heart and an intravenous drip was started, drugs were administered and C.P.R. was continued, but only a weak pulse was ever obtained.

[7] Wilfred was taken by ambulance to the Health Sciences Centre and the emergency room staff took over. They were unable to resuscitate Wilfred and at 2:06 a.m. on September 2, 2007, he was pronounced dead.

[8] Dr. Charles Littman performed an autopsy on September 3, 2007. His report concluded that the immediate cause of death was probable cardiac arrhythmia.

[9] The Asham/McKenzie family suffered the loss of a loved family member that night. The Inquest took place 4 ½ years later and the pain of that loss was still clearly evident. It is hoped that having gone through this process and having reviewed the evidence will at least be a further step in their healing process.

B. WITNESSES**LEAH MCKENZIE**

[10] Leah McKenzie is Wilfred and B.J.'s sister. She and her partner, Adrian Allard, were moving into their new residence on Redwood Avenue during the afternoon and evening of September 1, 2007. At the time Wilfred and B.J. lived with their mother, Sheila McKenzie and her common law husband, Louis Vosters, just down the street on Redwood Avenue. Her brothers were helping Adrian Allard with the moving of some furniture and boxes. After they were done unloading, everyone sat around for ½ hour to 45 minutes and had some beer to drink. She believes that Wilfred may have had one or two beers. As well, Wilfred and B.J. smoked a "joint" or two. Pizza was ordered for everyone, but before it was delivered to her residence, her brothers left. Wilfred said as he was leaving, "Don't worry, I'll be right back." They did not come back that night and it was the last time she would ever see her brother alive.

[11] Leah McKenzie testified that Wilfred was in good physical health and did not have any noticeable injuries that day. He was not intoxicated when he left her residence that evening.

ADRIAN ALLARD

[12] Adrian Allard is the partner of Leah McKenzie and had been working directly with Wilfred for most of 2007 at Sears, delivering furniture and appliances. They had also worked together for a number of years prior to that, also in the moving business. On the morning of September 1, 2007 they worked a shift together at Sears. From there they went to the old residence of Adrian Allard and Leah McKenzie and loaded the truck to move belongings to the new home on Redwood Avenue. They then stopped at Subway to get some food and went to the new residence to unload. The unloading took approximately ½ hour and then they sat around for a while. During this time Wilfred had two beers and he and B.J. also smoked two "joints". Wilfred talked about going to his mom's residence to move his own belongings over to Adrian Allard and Leah McKenzie's new place, as he was going to be living with them, but then changed his mind, saying that he would do it the next day. Wilfred and B. J. then left.

[13] Adrian Allard testified that he did not note any injuries on Wilfred that day; he appeared to be as healthy and strong as ever. He also confirmed that in the course of their employment, injuries were treated seriously. If there was ever an injury on the job, it needed to be noted and documented immediately. Wilfred had no such injury or problem that day, or in the days or months leading up to that day.

SHEILA McKENZIE

[14] Sheila McKenzie is the mother of Wilfred, B.J. and Leah McKenzie. Sheila McKenzie testified that she has now worked as a health care aide at the Health Sciences Centre for the past 5 years. She currently works in the emergency department and in September, 2007 was a “floater”. On September 1, 2007, Wilfred was living at her residence on Redwood Avenue She saw him that morning; he appeared as healthy as ever and was not complaining of anything.

[15] She was aware that Wilfred was helping his sister with their move and later that day she went over to the new residence to see how Leah McKenzie was arranging things. She then went back home and a while later B.J. and Wilfred arrived at home. Wilfred had a shower and then he and B.J. left the residence a little while later.

[16] Sheila McKenzie did not hear from or see either of her sons again that night. The following morning she was at work at the Health Sciences Centre for her shift, which started at 7:00 am. At around 7:30 that morning she was directed to the second floor of the hospital where she met with a Constable Black and one other Winnipeg City Police officer. They advised her of son’s death.

[17] Sheila McKenzie testified that B.J. was 17 years of age at the time and that she had not been notified of his arrest that night. She finally saw him the next morning when he was released to her at approximately 10:00 a.m. at the Public Safety Building.

WILLIAM “B.J.” McKENZIE

[18] On the afternoon of September 1, 2007, B.J. was with his brother Wilfred, sister Leah McKenzie, her partner Adrian Allard, and a friend, Kyle Kirton. Together they loaded and moved furniture and belongings to Adrian Allard and Leah McKenzie’s new residence on Redwood Avenue. After they were finished unloading, the five of them, together with his mother and his step-dad, Louis Vosters, who had now arrived at his sister’s new place, sat around for a while. Some of them had a beer or two to drink and he and Wilfred smoked a couple of “joints”. He testified that Wilfred likely had two beers. A short time later he and Wilfred went home to his mother’s residence down the street. Wilfred had a shower and they changed into some new clothes. They grabbed a couple of beer, put them in a bag and left a short time later.

[19] B.J. and Wilfred left the residence and walked to Centerfolds to see some strippers. They took the beer inside, but did not consume them once they got in. They were there for approximately 20 minutes, during which time each of them had a rum and coke and a Budweiser beer to drink. They then left and

walked through the McDonald's parking lot at Notre Dame Avenue and McPhillips Street to get to the Canadiana Motor Inn. He estimated that it was now close to midnight. At the Canadiana Motor Inn they each had one beer and then left. They were only there for 5 or 10 minutes. B.J. admitted that by now he was "buzzed but not tipsy", and that Wilfred looked fine to him.

[20] After leaving the Canadiana Motor Inn the two brothers stole a truck. Wilfred popped open a door lock on a truck with a butter knife and then started the ignition with the same knife. They got in the truck and drove off, with Wilfred in the driver's seat and B.J. in the passenger seat. Within 10 minutes they were involved in a police chase. They saw the police car with its lights on and so they knew they were being followed. Wilfred drove the truck down a back lane into a chain link fence that bordered a park. The only significant damage to the fence was that it bent a bit. Wilfred jumped out of the truck first, jumped a fence and ran off. B.J., once out of the truck, ran in the opposite direction. Eventually the police caught up to him and so he stopped running and gave himself up to the police. He did not see his brother again during this time.

[21] When he testified at court on April 2, 2012, B.J. admitted that he lied when he told the police in 2007 that when the police chase came to an end "they rolled into the park and kind of didn't crash into anything"; that they had parked neatly.

[22] B.J. testified that the police officers who arrested him took him straight to the Public Safety Building in their cruiser car. Once there he was booked in and taken to a room to be held. He was inside the Holding Room with the door to the room still open and was in the process of removing his clothing, when he saw his brother, Wilfred, walking down the hallway with three male police officers and one female police officer. He only caught a brief glimpse as Wilfred walked by, but during this time he saw one of the officers give Wilfred a shove so that he went flying forward. Wilfred then yelled out, "Don't fucking tell them anything, B.J.". B.J. then testified that the officer gave Wilfred a push with his right hand. Under further questioning, he admitted that what he told the police in September 2007 was that it was a push or a shove and that he wasn't sure if it was with one hand or with two hands.

[23] Once lodged in the Holding Room, B.J. only had a muscle shirt and shorts on. He was asked if he wanted some water, which he was given. B.J. then lay down and slept. At some point in time later on, he heard loud noises through the walls, loud enough to wake him up. Later he asked to go to the bathroom. He was taken to another little room, which was a washroom, and then was taken back to his Holding Room. During his trip to the bathroom, he did not see any paramedics or notice anything unusual.

[24] It was around 7:30 or 8:00 a.m. that a police officer came into his Holding Room and told him that his brother had collapsed and died.

[25] B.J. testified that Wilfred was in good health and did not have any obvious injuries that night. In fact, he looked fine when B.J. briefly saw him in the hallway being escorted to the Sergeant's desk. He testified that he and Wilfred did not consume any alcohol prior to or during the moving that day. The only beer and alcohol they had was the five drinks at Adrian Allard and Leah McKenzie's place, Centerfolds and the Canadiana Motor Inn. They had not consumed the beer they had taken along from their mother's residence that night. The only drugs they had used where the two "joints" they had smoked after the move.

RANDY BAUMERY

[26] In September, 2007, Randy Baumery lived on Elgin Avenue, approximately ½ a block from the Pascoe Park. He was up late, playing a video game on the evening of September 1, when he heard a vehicle passing his house at a high rate of speed. He then heard a crash. He stepped out of his house and saw the crashed vehicle across Jordon Street, in Pascoe Park. He had his cell phone with him and so he called 911 and began walking to the scene. He then noticed that a female police officer was now standing there and a male police officer was in pursuit on foot after a fleeing male in dark clothing, who had jumped a fence and run.

[27] The vehicle which had crashed was a blue truck. It was resting up against a metal post and the engine was still running. It was upright and not on its side. Based on the damage to the truck that he saw, he did not believe the truck had rolled before it crashed. As well, based on the revving of the truck engine which he had heard from inside his home seconds before the crash, he did not believe the truck had slowed down before the accident.

[28] A short time later, Randy Baumery saw the male police officer return with a male wearing an orange or red hoodie. The male was being held in custody and was talking with the officer and appeared to be cooperative. He heard the male ask the officer if he was in trouble and the officer said "yes". He did not notice any cuts, bruises or injuries on the male; everything seemed fine. The officer placed the male into the back of the cruiser car and the female officer approached Randy Baumery and spoke to him for a few minutes, getting his name, address and observations of what he had seen minutes earlier. A short time later another cruiser car arrived and the first two officers on scene departed with the male in custody in the back of their car.

[29] Randy Baumery remained at the scene of the damaged truck and watched as another police officer drove the running truck away from the fence where it had come to rest. Having done that, the officer finally turned the truck engine off.

[30] In his statement to the police, given on September 4, 2007, Randy Baumery confirmed that he had not noticed any injuries on the male with the

orange or red hoodie. He had seen the officer walk this male back to the side of his cruiser car. Randy Baumery stated that he was only a car length away from them at this point in time.

TREVOR MARCHENSKI

[31] Trevor Marchenski was on his way home on September 1, 2007 sometime after 11:00 p.m. It was around midnight that he saw the end of a police vehicle chase. He had just made a left hand turn from Jordon Street onto Elgin Avenue, when he saw a blue truck approaching his vehicle at a high rate of speed; it was being pursued by a police car with its lights on. He observed the truck bounce as it travelled through an intersection. He pulled over into the parking lane of the street and the truck, with two occupants, passed him. He then heard a crash and saw, through his rear view mirror, that the truck hit a curb, rolled three or four times and went through a chain link fence in Pascoe Park, before hitting a tree. The truck was on its side, resting against a tree with the driver's side was up. It appeared as though the truck had gone right through the fence, having attempted to turn right at the intersection at a high rate of speed. He believed that the driver of the truck was not aware of the fact that Elgin Avenue is a dead end at the Jordon Street intersection, as Pascoe Park runs along the east side of Jordon Street

[32] Trevor Marchenski observed that the police vehicle was not following the truck when it crashed, as it had turned south a block or two before passing his parked car. He then saw a male wearing dark clothing climb out of the truck window, fall or slip two times before running toward Pacific Avenue. He gave pursuit in his vehicle and caught up to the male just when a police officer arrived on scene. He pointed this male out as one of the individuals who had fled from the truck which had just crashed.

[33] Trevor Marchenski gave a brief written statement to one of the officers at the scene at 12:45 am on September 2, 2007. In that statement he did not mention that the truck rolled before crashing through a fence. As well, the police officer who took the statement appears to record that Trevor Marchenski's observation of the male getting out of the crashed truck was that he got out of the passenger side of the truck. The discrepancies between his testimony at court on April 2, 2012 and his statement given at the scene of the crash 4 ½ years earlier was not raised at the Inquest. As well, his evidence which contradicted all other witness testimony and police officer's notes, was not called into question.

CONSTABLE BRETT ADAM

[34] Constable Adam did not testify at the Inquest. In his notes, found in Exhibit #2, he writes that he attended to the scene of the crashed truck at 1:01 a.m. on September 2, 2007. He was there to assist by waiting for the tow truck. He was able to observe the truck exterior and noted that it had flat front

passenger and rear driver's side tires and some front end damage. As well, the ignition had been tampered with.

CONSTABLE MIKE SUTHERLAND

[35] Constable Sutherland did not testify at the Inquest but he did observe the damaged truck. He noted, as found in Exhibit #2, that it had a smashed front bumper and a panel in front was ripped. The left front tire rim was off and the right front tire was flat with its rim nearly off.

CONSTABLE CLAUDIO BELFIGLIO

[36] Constable Claudio Belfiglio of the Winnipeg Police Service testified that he was on duty with Constable Jan Pedersen the early morning of September 2, 2007, when a call came in that they responded to. Now in 2012 his recollection of many of the details of that morning are not that good; however, the extensive notes found in his narrative, which he prepared that day have been filed as part of the Inquest evidence and will be referred to in summarizing his testimony.

[37] While Constable Belfiglio and Constable Pederson were on patrol in the Weston/Logan area of Winnipeg that morning, a call came in that a suspicious vehicle had not stopped upon police request. The occupants were now fleeing on foot and other officers were in pursuit. As they patrolled the area, they saw a male matching the description of one of the suspects walking along Pacific Avenue.

[38] The officers stopped the male and saw that he was nervous, breathing heavily, sweating, has leaves on his clothing and a smell of alcohol on him. He identified himself as B.J. and gave his home address to the officers. He explained that he was on his way home from a friend's place, but then couldn't give the name or address of his friend.

[39] Not believing him, the officers told him they were going to hold him for further investigative purposes. Constable Pedersen conducted a quick search of him for safety reasons and quickly located a letter opener hidden in a pocket. Just then a vehicle stopped and the driver pointed to B.J. and told the officers that this male was one of the occupants of the truck that had been followed by the other police officers.

[40] Constable Belfiglio then advised B.J. that he was now being placed under arrest for possession of stolen goods. B.J. claimed to have acted alone. Constable Belfiglio, wanting to be sure there were no other possible injured suspects, asked some more pointed questions. B.J. then admitted that his brother, Wilfred, had been the driver of the truck and had picked him up.

[41] The officers transported B.J. to the District 2 Station at the Public Safety Building, arriving at 1:05 a.m. and presented their prisoner before

Sergeant Peltier at 1:08 a.m. From there they escorted B.J to Holding Room #1, as directed, and searched him again and placed him in the room.

[42] As the officers were doing this, a male being escorted down the hallway to the Sergeant's office yelled, "Don't say nothing, Will. Don't say nothing, just shut up!" It was Wilfred yelling to his brother while being escorted by Constables Gross and Gladu.

[43] Just as B.J. was being placed in Holding Room #1, he requested to use the washroom. It is located across the hallway from the Holding Rooms and so the officers escorted him there. In doing so, the common area to the second row of Holding Rooms could now be seen. As B.J. was in the washroom, Constable Belfiglio saw Wilfred lying on the floor of Holding Room #8 and the Constables Gross and Gladu were with him. Nothing seemed out of the ordinary at that moment. Constable Belfiglio cannot recall what sort of clothing Wilfred had on at the time.

[44] B.J. left the washroom and the two officers escorted him back to Holding Room #1, provided him with a blanket and left him alone in the room. Just as the officers re-entered the Sergeant's office, one of Constables Gross or Gladu came and advised Sergeant Peltier that Wilfred was not breathing. Sergeant Peltier advised the officer to perform C.P.R. immediately and other officers within hearing distance rushed to Holding Room #8 to assist.

[45] Constable Belfiglio and Constable Pedersen did not join the others in assisting, but instead got out of the way by going to the back offices to prepare their reports.

CONSTABLE JAN PEDERSON

[46] Constable Jan Pederson was partnered with Constable Belfiglio the night of September 1, 2007, morning of September 2, 2007. His notebook pages from that morning correspond with Constable Belfiglio's testimony: the narrative concerning a call in the Weston/Logan area asking for assistance, locating B.J., arresting him and taking him to the District 2 Police Station at the Public Safety Building. His observations of B.J.'s appearance and level of intoxication are the same as Constable Belfiglio.

[47] He testified that they brought B.J. before the Sergeant and just as they were in the process of removing his hand cuffs and placing him in Holding Room #1, Wilfred was being led down the hall to be paraded before the Sergeant. In passing by the common area to Holding Room #1, Wilfred yelled, "Don't say nothing Will, just shut up."

[48] Prior to leaving B.J. in Holding Room #1, B.J. requested to use the bathroom. In doing so they had to cross the hall and could now see into the common area to the second set of Holding Rooms. Constable Pedersen observed Wilfred lying on the floor just around the doorway to Holding Room #8.

He was squirming about and Constable Gross and Constable Gladu were with him. Constable Pedersen recalls Wilfred had a shirt on and may still have had his handcuffs on while waiting for B.J. to finish in the bathroom. He and Constable Belfiglio were standing approximately 10 to 15 feet away from where Wilfred was lying on the floor.

[49] The officers returned B.J. to Holding Room #1 and then went back to the Sergeant's office to complete their book in information. After returning to the Sergeant's office, one of the officers with Wilfred came to advise the Sergeant that he was not breathing. Other officers in the area immediately attended to him and performed C.P.R.; however, Constable Pedersen and Constable Belfiglio attended to the typing room to complete their reports.

CONSTABLE KARLA GLADU

[50] Constable Karla Gladu of the Winnipeg Police Service was on duty for the night shift at District 2 Police Station on September 1 to 2, 2007. She was not normally partnered with Constable Gross, but was for this shift. They were in their cruiser car in the Weston area and were completing a traffic stop at Keewatin Street, just after midnight. As they were sending the car on its way, a truck drove through a nearby intersection. It was travelling at a high rate of speed and did not stop for the stop sign. It continued on Elgin Avenue and so the officers followed the truck and activated their cruiser car's lights.

[51] The truck did not stop for them but continued down Elgin Avenue at a high rate of speed. The police officers followed briefly but the vehicle was not stopping for them. Constable Gladu radioed in ("voiced over") their location and direction and that the two tone blue/silver truck had gone through two stop signs without stopping. The officers ended the direct pursuit by turning south on William Street and east on Jordan Avenue, thereby driving parallel to the truck. They came to a dead-end and noticed that the truck, just to the north of them, had struck a chain link fence in a small park located at the end of Elgin Avenue.

[52] There appeared to be no one inside the vehicle, however, two males were standing by the driver's side of the truck. Upon seeing the police, one male ran north and the second male, wearing some red clothing, ran east through the park. Constable Gross chased one of the males on foot and Constable Gladu went to take a peripheral look at the damage to the truck. It was still running, as the lights were on. She then saw the male in black in the distance and voiced over the direction he was going.

[53] Constable Gross soon returned with the male in the red shirt. He was handcuffed and walking under Constable Gross' direction. While Constable Gross searched the male, Constable Gladu asked the male for his name, which he gave as Wilfred. She also asked him who he was with. The reply sounded like "Kyle Harrison" or "Kyle Williamson." He was placed in the back of their cruiser car and Constable Gross went and checked the interior of the truck and

came back to advise them that the truck ignition was punched. As a result, Constable Gladu advised Wilfred of his arrest for theft of the vehicle. She read him his *Charter* rights and gave him the police caution. Wilfred's reply was that he had done nothing wrong; all he had done was to go for a ride with a friend, who was driving him home. He also mentioned a third male being with them, but didn't know his name.

[54] Constable Gladu noted some signs of impairment: Wilfred's speech was slightly slurred; when seated in the cruiser car, she could smell alcohol coming from where Wilfred was seated, and Wilfred admitted to her that he drunk some beer and smoked some marijuana earlier.

[55] Constable Gladu testified that when she observed Wilfred being brought to the vehicle, by Constable Gross, he had been handcuffed and was walking normally and was not abusive or argumentative. He had little difficulty responding to the officer's questions; and appeared to understand what was being asked of him. Wilfred did not complain of any injury or difficulty and Constable Gladu did not see any injuries or note any health or medical concerns.

[56] Constable Gladu was still in the front passenger seat of the police car and was doing some computer checks and listening to the radio reports coming in: other officers now had a second person in custody. She looked back and Wilfred had his head tilted to one side and appeared to be asleep. She told him to wake up. He did and said, "Where am I? Oh, I blacked out" and "Where am I, what's going on?" Constable Gladu asked him if he remembered getting out of the truck and running. When he said "no", she pointed out the truck to him and he again said "no". Constable Gladu was under the impression that Wilfred wasn't being truthful about whom he had been with earlier and that he was "toying" with the officers. As well, she believed that he may have dozed off due to his mild intoxication. While Wilfred was in the back of the car, Constable Gladu went to speak to a passerby who she believed was a possible witness concerning the stolen truck. When she returned to the cruiser car, Constable Gross called for backup so that another police unit would wait for the tow truck while they transported Wilfred to the police station.

[57] The officers then left the scene with Wilfred sitting in the back of their cruiser car. While enroute to the Public Safety Building, Wilfred closed his eyes and it appeared to Constable Gladu that he had again fallen asleep. She said to him, "wake up, wake up". He did and was now alert. Wilfred asked the officers, "What about a body? There's a body? Somebody got hurt?" He became aggressive and started swearing and yelling, "What the fuck? Where's my brother? I heard them talking about my brother on the radio. Do you think I'm fucking stupid?"

[58] Constable Gladu testified that Wilfred continued yelling at the officers all the way to the police station, "I fuckin heard everything on the radio", "you

guys got my fucking brother”, “you guys think you can kick the fuckin shit out of me” and “I’m going to call LERA (Constable Gladu understood Wilfred to be referring to The Law Enforcement Review Agency) when I get to the station”.

[59] Wilfred was still repeating his comments to the officers when they pulled into the police station and entered the parking garage. It was now 1:08 a.m. They escorted him from the cruiser car into the elevator. Wilfred was now saying, “You guys are the scum of the earth. You’re pieces of shit. You guys are the biggest gang in this City. I know what you guys do.”

[60] The three of them arrived on the floor of the District 2 Police Station and after securing their weapons, they took Wilfred before the Sergeant on duty, Sergeant Peltier. While in the area of the Sergeant’s office, Wilfred was able to look into the Holding Room area and he saw his brother. He yelled, “Don’t tell them fucking nothing”. Other than being agitated, Wilfred seemed fine. He was walking normally.

[61] After seeing the Sergeant, she and Constable Gross took Wilfred to Holding Room #8 and once in the room, Wilfred quieted down. While Constable Gross was searching him, Constable Gladu asked Wilfred if he wanted to call a lawyer. He replied that he would wait. He was asked if he would co-operate if his handcuffs were taken off. He said he would and so the cuffs were taken off. He had two shirts on and was asked to remove one. He asked if he could keep his red shirt – the outer one – on and was given permission to do that. He sat down on the bench in the room and removed both shirts. He was just putting the red shirt back on when he leaned back and slumped over to one side. He then slid to the floor. The officers caught him before he hit the floor. It sounded to her like Wilfred was gagging and so they put him in the recovery position on the floor. They asked him to wake up but he did not answer. He was non-responsive. Constable Gross left to speak to the Sergeant while she stayed with Wilfred and then returned almost immediately. It sounded like Wilfred was going to vomit so they rolled Wilfred onto his other side so that he was facing the floor drain. Wilfred was still breathing but not responding to them. They slid off his pants in order to remove his belt and there was still no movement or acknowledgement by Wilfred. Constable Gross placed his fingers on Wilfred’s neck to check for a pulse. Not finding one he told Constable Gladu to tell the Sergeant to put a rush on the ambulance. She did. Wilfred was turning blue and so Constable Gross rushed out to update the Sergeant. He returned and she left to find C.P.R. Aids. Just as she was leaving, officers, including Constable Carvalho, were coming into the area to assist. At this point Constable Gladu stood back while others began to perform C.P.R. She heard them say that Wilfred’s breathing was light and pulse was faint.

CONSTABLE JEFF GROSS

[62] Constable Jeff Gross has been with the Winnipeg Police Service for fifteen (15) years in September 2007. He and Constable Gladu worked on

different platoons at District 2 Police Station and had never before been partnered together. He had been called in to assist her platoon for the night shift of September 1 to September 2 and so they were working together. They were out on patrol just after midnight. He was the driver of their cruiser car and Constable Gladu was the “jumper”, seated in the passenger seat and operating the computer and radio.

[63] They were completing a traffic stop on Keewatin Street near the Westbrook Hotel and their vehicle was facing south. Just as they let the vehicle they had stopped go on its way, he saw a blue or grey S10 Chevrolet truck come into view at a high rate of speed. It appeared to have driven straight through a stop sign. The officers followed the vehicle as it turned east on to Elgin Avenue. The truck was speeding; he estimated 60-70 km and so Constable Gladu turned the cruiser lights on in order to stop the vehicle. The truck did not stop or slow down and so they chose not to directly follow the vehicle. He turned south one block and then turned east on a parallel street to Elgin Avenue in the hope that they would be able to locate and stop the vehicle on Jordon Street. They had temporarily lost sight of the truck but when they arrived at the intersection of William Avenue and Jordan Street, they saw that the truck had crossed Jordon Street and driven up onto the curb and was resting against a chain link fence that bordered a small park area. The truck lights were still on and it appeared to be running.

[64] Constable Gross turned north on Jordon Street and parked the cruiser car so that it was facing the truck. When he had first seen the truck he had noticed two males beside the truck. Now as they approached with the police car, the two males were climbing and jumping the chain link fence into the park. One male was dressed in dark clothing. He jumped the fence and ran off in one direction. The second male, wearing an orange or red shirt, fell to the ground as he jumped this fence. He immediately got back up and took off running in another direction. Constable Gross followed on foot, running after him.

[65] Constable Gross was yelling “stop” and chased the male over a hill, through a ditch and across the railway tracks. Here, Constable Gross tripped and fell. He quickly resumed the chase and when they had run the distance of a city block, or less, the male suddenly stopped running. They were now next to an industrial building. Constable Gross approached the male with his taser in his hand and asked the male to lie down on the ground. The man was hesitant but eventually complied and so Constable Gross put his taser away. It had not been discharged.

[66] Once the male was on the ground, Constable Gross asked him to lie on his stomach and put his hands behind his back. The officer then pinned him down with his shin so that he could handcuff the male. Constable Gross discovered that he had dropped his handcuffs during the foot chase. He also had been trying to radio his location in during the pursuit and discovered he was unable to transmit a message. As a result, Constable Gross was concerned

about maintaining control of the male so he placed the male against the nearest building and then held the male's hands behind his back with one hand while using his free hand to quickly search him for weapons.

[67] He then told the male that he was under arrest for theft. The male seemed surprised and said, "I didn't do anything. I didn't take that truck". He then led him back toward their cruiser car. Constable Gross maintained control by holding the male's hands behind his back. Along the way Constable Gross located the hand cuffs that he had dropped. He was then able to place them on the male's hands and lead him to the parked police car. During the whole time they were returning, Constable Gross heard no complaints from the male and he appeared to be walking normally and without difficulty. He was not breathing rapidly as a result of the chase, there was no compromised breathing. He appeared to be somewhat intoxicated.

[68] Once the male was locked in the cruiser car, Constable Gross spoke with a bystander and then went to take a closer look at the S10 Chevrolet truck. He looked inside and saw that the steering column had extensive damage to it. There were two knives on the front seats of the vehicle – a butter knife and a steak knife. The truck was still running; he couldn't turn it off, but did put it into park. He noticed that the truck had no broken glass and minimal damage and saw that it had pushed several sections of the chain link fence down. Air bags had not been deployed. Constable Gross, when asked, was not sure if this vehicle even had air bags.

[69] While he was doing this, Constable Gladu was speaking to the male in the police car. They were in the midst of a conversation when Constable Gross returned. He overheard the male mention a "Kyle Harrison" and "B.J." as being others he was with earlier. His speech was somewhat slurred but he was clearly able to communicate. It was obvious to Constable Gross that the officers were not getting straight answers so he went around to the far side of their cruiser car, opened the passenger door and said, "Stop playing games". The male who had identified himself as Wilfred was now telling them that someone else at the party had stolen the truck. During this conversation, they received a radio communication advising that another police unit had a second male in custody, Wilfred's brother.

[70] In his narrative, given to the police on September 2, 2007, Constable Gross noted at this point in time, that Wilfred didn't complain of any injuries and observed that there were no visible signs of any injury to Wilfred. As well, at one point in time during their conversation, Wilfred suddenly stated, "I blacked out. What am I doing here?" Constable Gross thought this to be "ridiculous" after what had just happened. Constable Gross put the spotlight on the truck and stated "You just smashed a stolen truck". After some further conversation with him, the officers left with Wilfred in the back of their car. It was now 1:01 a.m. Enroute to the police station, Wilfred went from being passive to talking in an aggressive manner, saying such things as, "Are you going to beat

me up?" "I'm going to call my lawyer". At one point in time he had slumped down in the back seat and Constable Gladu told him to get up, which he did. Constable Gross' impression was that Wilfred had dozed off due to his state of intoxication.

[71] The officers and Wilfred arrived at the Public Safety Building at 1:08 a.m. As Constable Gross was getting Wilfred out of the back seat of the police car, Wilfred stated, "I've been here before, I know how it's done". On the way to the secure elevator, Wilfred asked, "Where's my brother?" The officer answered "I have no idea". Wilfred replied, "Ya, I heard it on the radio". Now Wilfred was compliant and not confrontational. They arrived on the third floor and while the officers were storing their guns, Wilfred asked about his handcuffs, "Why are they so tight?" As he was grinding his hands into his wrists, he said, "Wait until my lawyer sees this".

[72] As the officers escorted Wilfred into the area of the Holding Rooms and into the Sergeant's office, Wilfred suddenly blurted out, "B.J., don't say anything". He repeated words to this effect several times.

[73] Wilfred remained agitated and so the officers quickly took him to Holding Room #8, which was where the Sergeant had directed them to lodge him. Once there, they asked Wilfred to take his shoes off and he questioned it, but kicked his shoes off. Wilfred was then asked if he would cause any problems if the handcuffs were removed. He said "No". Constable Gross then took the handcuffs off and Wilfred was directed to remove one of his two shirts. Wilfred asked if it was okay to keep the red shirt and was told that was okay. He removed both shirts in order to put the red one back on. He removed both shirts and turned to face the officers, keeping one shirt. He sat down on the bench and then slid off to his right side, appearing to pass out. His eyes closed and his upper body went limp. Constable Gladu was standing right beside him and so he got a hold of Wilfred and they laid him on the floor and put him in the recovery position with his head facing the floor grate. They did this as they thought he might vomit due to his intoxication. As Wilfred had shorts on, Constable Gross removed Wilfred's pants and belt. He shook Wilfred a bit to get a response from him, but there was no reaction from Wilfred. Now Wilfred began to breathe erratically and so he and Constable Gladu moved him onto his back. Constable Gross opened an eyelid and saw that Wilfred was not conscious. He realized that they needed help and so Constable Gladu remained with Wilfred while he went to the Sergeant's office to call for an ambulance. He quickly returned to Holding Room #8 and it now appeared to him that Wilfred was no longer breathing. He told Constable Gladu to go and put a rush on the ambulance. Soon officers began arriving in the Holding Room area and some of the officers had C.P.R. equipment, so he stepped back and let them set up and perform C.P.R. on Wilfred. They continued to perform C.P.R. until ambulance personnel arrived and took over control of caring for Wilfred.

[74] Constable Gross was asked if he or his partner had “straight-armed” or pushed Wilfred while in the third floor hallway. He denied that this happened, saying that the only physical contact was that they had Wilfred by his arms for the purpose of escorting him.

[75] Constable Gross confirmed when testifying that he had not noted any injury on Wilfred at any time. This would have including observing Wilfred at the time of arrest, in the back of the cruiser car, escorting him from the car to the elevator, hallway and Sergeant’s office, and when Wilfred had his shirts and pants off while in Holding Room #8.

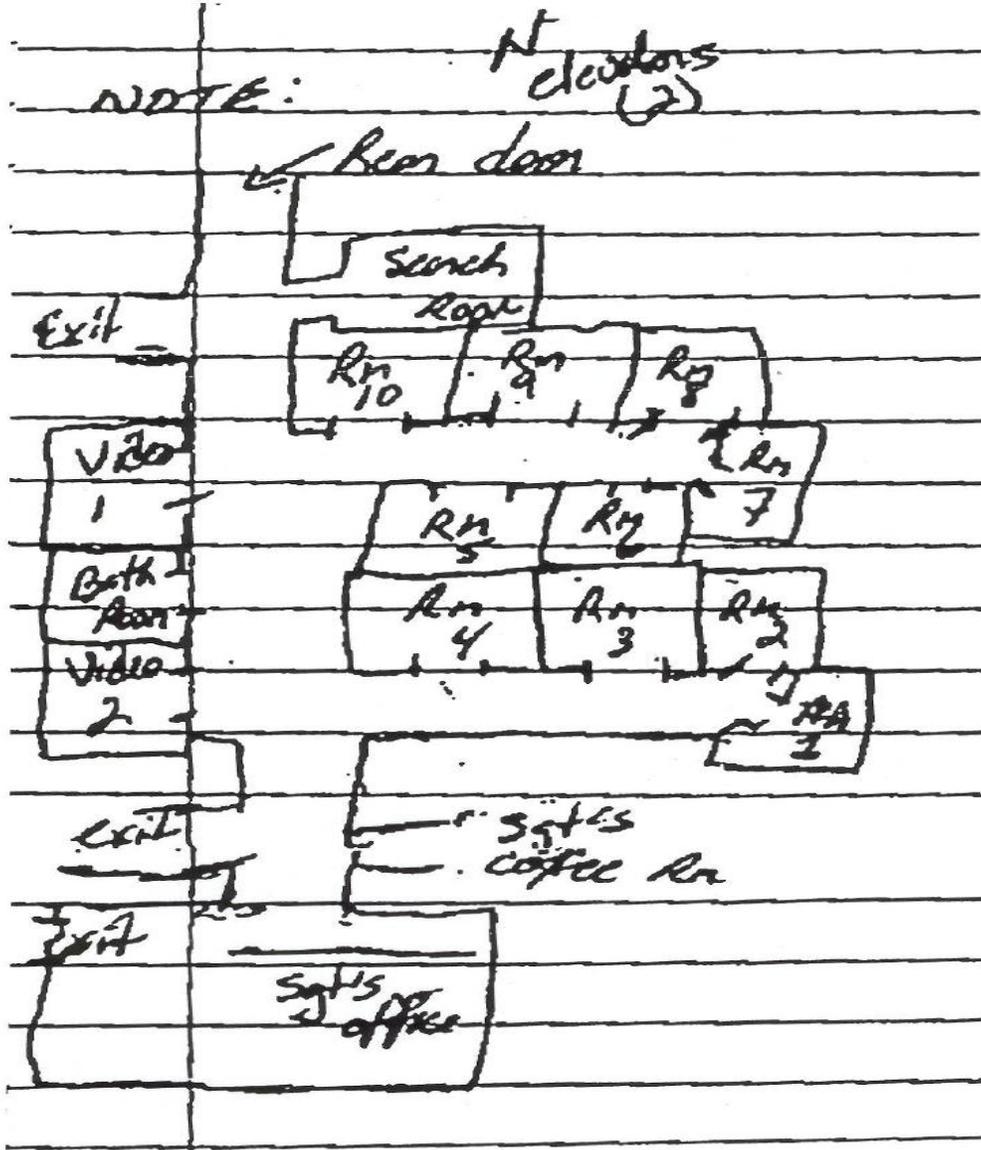
[76] Constable Gross also testified that Wilfred had never complained of dizziness and that he had not seen Wilfred lose his balance at any time except when falling to the ground after jumping the chain link fence at the park, until he slumped over in Holding Room #8.

[77] Constable Gross explained that if someone they came into contact with in the course of their duties was severely intoxicated or if there are any signs of compromise, they would first have that person checked out medically before taking them to a police station. In Wilfred’s situation, he noted that the air bags in the stolen truck (if they even existed) had not deployed; there was no sign that anyone had been thrown from the vehicle. Wilfred had been able to flee and seemed fine when caught. He did not have any complaints about his physical health or well being at the time. As a result, Constable Gross was satisfied that he did not need a medical examination.

SERGEANT BASIL PELTIER

[78] Sergeant Basil Peltier was on duty as the acting Sergeant in charge at District 2 Police Station the evening of September 1 to the morning of September 2, 2007. In this capacity, he would view prisoners as they were brought in for questioning or to be held. He testified that the process of “parading” the prisoner before the Officer in Charge usually takes a minute or so, unless the prisoner has questions or wants to talk. When that has taken place, a Holding Room is assigned and the prisoner log sheet is turned over to be completed after the viewing. There is a master white board in the Sergeant’s office with the ten Holding Rooms numbered on it. Here the Sergeant enters the name and birth date of the prisoner together with the name or numbers of the arresting officers.

[79] On the night of September 1 to the morning of September 2, 2007, a number of prisoners had been brought in and immediately after Wilfred was taken away by ambulance that morning, Sergeant Peltier drew a diagram of the District 2 Police Station Holding Room area and noted the names, date of birth, and arresting officers of all the prisoners being held at that time. The following is his diagram, which is in his note book at pages 124 – 125:



[80] Sergeant Peltier then noted that the rooms were occupied as follows:

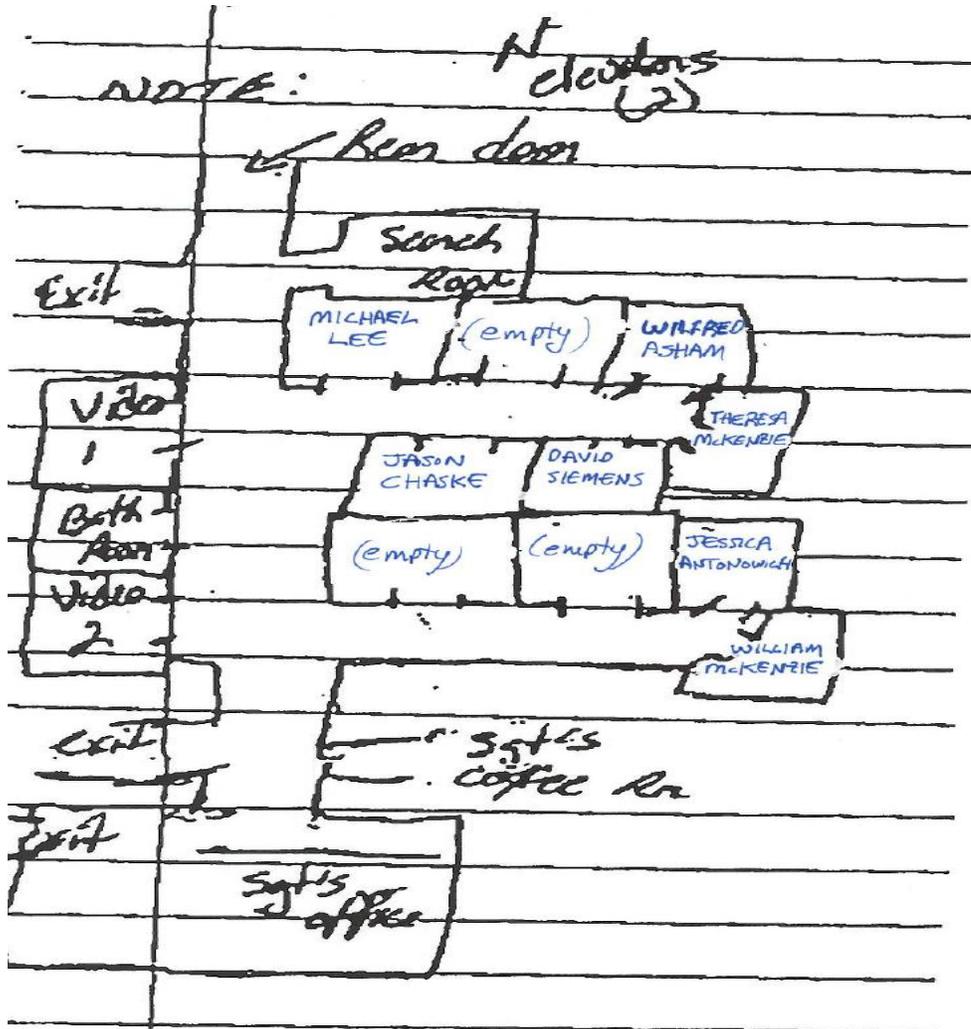
- #10 – Michael Lee
- #9 – Empty
- #8 – Wilfred (not yet logged)
- #7 – Theresa McKenzie
- #6 – David Siemens
- #5 – Jason C. Chaske
- #4 – Empty

#3 – Empty

#2 – Jessica Antonowich

#1 – William McKenzie

[81] Therefore, at the time of Wilfred being lodged in Holding Room #8, the other rooms were occupied as follows:



[82] At 1:12 a.m., according to the clock on the computer at his desk, on September 2, Constable Gross and Constable Gladu came in to “parade” a male before him. The two officers were on either side of him, each holding on to one arm. The male was loud and shouted to his left, “Bro, don’t say nothing. These fucking cops got nothing. Don’t say nothing bro”. This was being yelled to another male person in one of the Holding Rooms, who responded.

[83] The arresting officers advised Sergeant Peltier that their prisoner was Wilfred and what he was being charged with. Wilfred then said, "Fucking cops, don't say anything". A third male was now making noise and so Sergeant Peltier directed the officer's to Holding Room #8. Wilfred had not directed any questions to him and had not made any complaint; all of his comments were directed to the male in one of the Holding Rooms. The officers left Sergeant Peltier's office with Wilfred. Sergeant Peltier did not see any pushing, scuffle or struggle. Sergeant Peltier did not observe any bruises or injuries on Wilfred.

[84] At 1:15 a.m. Constable Gladu came to ask him to call 911, or an ambulance, as she thought their prisoner was having a seizure. She was stressed and anxious. Sergeant Peltier placed the call to 911 at 1:16 a.m. While he was on the phone he saw other officers going to the Holding Room area to assist. Officers came back to him with an update. Sergeant Peltier also went to the Holding Room area to ask some questions. He was told that Wilfred was breathing and the seizure had stopped. Back at his desk a few minutes later he was asked to call 911 a second time as Wilfred had stopped breathing. He did call 911 a second time and asked them to hurry up.

[85] The ambulance attendants arrived at 1:25 a.m. and he directed them to Holding Room #8. At 1:38 a.m. they left with Wilfred. They advised him that Wilfred had a weak pulse and was not breathing on his own. Sergeant Peltier directed Constable Recksiedler to go to the hospital with them. He advised Constables Gross and Gladu to remain, pursuant to Winnipeg Police Service protocol.

[86] Sergeant Peltier testified that he was not aware of a decontamination notice being posted on Holding Room #8. He stated that he would not have placed anyone in that if it was still in effect. He thought that the room had been cleaned and the notice had been left behind for the room to dry.

[87] When Sergeant Peltier testified at the Inquest he had already retired from the Winnipeg Police Service. He stated that some time in 2011, before he left, the Winnipeg Police Service began to have automated electronic defibrillators installed at each station and that the training on how to use them had begun.

JESSICA ANTONOWICH

[88] Jessica Antonowich and her boyfriend, Michael Lee, were brought into the District 2 Police Station around midnight on the night of September 1 and morning of September 2, 2007. She was lodged in Holding Room #2 and was released from custody around 3 a.m. on September 2. She testified that she recalled that there were noises that night. She heard some yelling and believed that it was males doing the yelling. She could not tell whether or not it was Mr. Lee doing the yelling. While that is all she could recall when she testified at

court on April 3, 2012, she did review her statement given to the police on September 2, 2007 and agreed that it was accurate at the time.

[89] In that videotaped statement she stated that there was a curtain in front of the window in the Holding Room, so she could not see what was happening outside the room. She explained that she had heard a scuffle or some fighting. It sounded like someone in custody was causing trouble and was yelling at the police. She later clarified this by stating, "Well, he wasn't really saying anything, he was violently kicking the door and, like um, throwing himself around I guess." In response to this she thought she heard the police say to him "Shut the fuck up". She estimated that this went on for about ten minutes and had happened approximately two hours into her stay, placing the time of the disturbance at approximately 1:30 – 2:00 a.m. She told the police that the noise was coming from the room next to her, to the right. It would appear from Sergeant Peltier's diagram that this would mean one of either Room #3 or #4 (both were empty at the time) or perhaps Room #5 or #6.

MICHAEL LEE

[90] Michael Lee was brought into the District 2 Police Station together with his girlfriend, Jessica Antonowich on the evening of September 1, 2007 and morning of September 2, 2007. Michael Lee was subpoenaed to attend the court to testify at the Inquest, but never attended and was never located. In his videotaped statement to the Police, the afternoon of September 2, 2007 (a transcript of which is part of Exhibit #2), he said that he was placed in Holding Room #10 and was present when Wilfred was brought in that night, and that he was brought into the station between 11:00 p.m. and midnight and was released around 3:00 a.m.

[91] Michael Lee described what he heard and then saw with respect to the male in custody in Holding Room #8. He was able to hear this male talking loudly and swearing at the police just prior to the police leading the male into a Holding Room close to his, one or two doors to his left. After being placed into a Holding Room, the male continued talking and yelling until the officers could be heard expressing concern about the male's physical state. They were talking to the male, trying to rouse him, up until when the paramedics arrived. Up until this point in time, Michael Lee could only see shadows through the curtains, and as well, he had a small narrow view between the end of the curtain and his window. However, when the paramedics moved the male they had just placed onto a stretcher, his curtains were accidentally brushed open and he could see exactly what was happening, as they applied medical treatment and eventually left with the male still on the stretcher. From what he saw at this time and from the police tape that he saw placed across the door of Room #8 later on, he was able to satisfy himself that this male had been placed in Holding Room #8, the corner room on his side of the cell block, and not in Room #9, the Holding Room right next to his own.

[92] Michael Lee described this male as being loud when he came into the District 2 Police Station. He described him as talking tough, using profanities directed at the police, and trying to be loud. He was yelling at another person in custody, it sounded like a girl's name to him, saying, "Don't say anything", and "You better not say nothing". The profanities toward the police continued as the male was being led into Holding Room #8. The police were telling him to keep his voice down while this was going on. Within moments of this male being led into this Holding Room, the conversation changed to the police now asking, "What's up?", "What's up, buddy?" By peeking between the curtain and his window, Michael Lee could see that the male was lying on the floor, half in the Holding Room and half into the hallway. The police remained with the male, checking for a pulse and attending to him, and it was approximately ten minutes later that the paramedics arrived.

[93] Michael Lee confirms that during the time the police were dealing with this male, there was no scuffle or fight going on. It was just the male being loud.

JASON CHASKE

[94] Jason Chaske was in custody at District 2 Police Station during the evening of September 1, 2007 and the morning of September 2, 2007. He was not subpoenaed to testify at the Inquest. He was in Holding Room #5 when Wilfred was brought in to the station that morning. Jason Chaske was still in custody when Detective Brent Black and Constable Reaume spoke with him at around 10:40 a.m. on September 2, 2007. He told Detective Black, as recorded in Exhibit #2, that he saw a police officer go to a room to the right of the room he was in. According to Sergeant Peltier's diagram, this could be any of Rooms #6 through #9 (See paragraphs 79 – 81). He saw a guy lying on the floor and he heard someone saying "something about a pulse or no pulse" and C.P.R. was being performed. Then the paramedics arrived and took over, eventually taking the guy away on a stretcher. Jason Chaske told the officer that there wasn't any yelling or problems in the cell area that he noticed, prior to all of this happening with the guy on the floor. Jason Chaske was not willing to provide a formal statement to the police.

THERESA McKENZIE

[95] Theresa McKenzie was in custody at Division 2 Police Station on the night of September 1, 2007 and September 2, 2007. She was not subpoenaed to testify at the Inquest. According to Sergeant Peltier's notes, she was placed in Holding Room #7 and was there at the time that Wilfred was brought into the division. As recorded in Exhibit #2, Detective Sergeant Sean Black and Constable Kocis contacted her at her residence on September 2, 2007. At this time she stated that while she was in custody, she was sleeping and saw nothing. She was released from custody at approximately 1:50 a.m. on September 2, 2007 and was advised to be careful when walking with the officers to be fingerprinted, just prior to her release. She did agree to come with the

officers to give a statement at the police station. Once there, however, she refused to provide any further information, saying that she did not want to become involved. She was allowed to leave the station and the officers had no further contact with her.

DAVID SIEMENS

[96] David Siemens was in Holding Room #6 when Wilfred was brought into the District 2 Police Station that night. He was not subpoenaed to testify at the Inquest. He also spoke with Detective Brent Black and Constable Reaume the morning of September 2, 2007, while still in custody, as recorded in Exhibit #2. He explained that he was asleep most of the time and heard no problems while there. He did recall ambulance members being there at one point in time, but did not know who they were dealing with. David Siemens was not prepared to provide a formal statement to the police that morning.

CONSTABLE MIGUEL CARVALHO

[97] Constable Miguel Carvalho was on duty with the Winnipeg Police Service the night of September 1, 2007 and morning of September 2, 2007. Just after midnight on September 2, 2007, he was on the third floor of the Public Safety Building booking in a prisoner he had arrested, Jason Chaske. He had taken Jason Chaske before the Sergeant and then placed him into Holding Room #5. Constable Carvalho then went into the typing room to complete his report.

[98] Constable Carvalho testified that the typing area is behind the Sergeant's office and that the Holding Rooms cannot be seen from this area. To get back to the Holding Room area and hallway, one must either go through a secure solid door via a swipe card or go through the Sergeant's office.

[99] At 1:08 a.m., according to his watch, on September 2, 2007, Constable Carvalho was passing through the Sergeant's office when he saw that Constable Gross was bringing a male prisoner before the Sergeant. This male was unknown to him at the time but he later learned his name was Wilfred. Wilfred was loud and belligerent; he was clearly upset about something. Constable Carvalho saw this but to him it was not that unusual to see upset prisoners being paraded before the Sergeant.

[100] Constable Carvalho returned to the typing room to complete his report. A short time later, at 1:15 a.m., he was again passing through the Sergeant's office when he heard Constable Gross saying to the Sergeant that his prisoner was not breathing and that he needed an ambulance. At that moment, Constable Wytinck was also in the area. Constable Carvalho knew that Constable Wytinck had previously been a paramedic. The two of them immediately attended to Holding Room #8 to assist.

[101] Wilfred was lying on the floor of the Holding Room in the recovery position. Constable Carvalho's observations were as follows: Wilfred's face was pale and cold to the touch, his eyes were open and fixed, his skin was an ashen colour and he was not breathing. There were no signs of any bruising or trauma on him. He and Constable Wytinck laid Wilfred on his back and started to perform C.P.R.

[102] Constable Wytinck placed a breathing mask over Wilfred's face and began breathing for him, while Constable Carvalho did chest compressions. Wilfred responded to their efforts: colour was returning to his face, a pulse returned and he breathed two or three times. However, the pulse and breathing faded as soon as they stopped performing the C.P.R.

[103] The ambulance attendants arrived and began to set up their equipment. Under their direction, Constable Carvalho continued the chest compressions. By now he was exhausted and he agreed that they may have told him to ease up on the compressions. At some point in time, Constable Wytinck took over the chest compressions. Once the ambulance attendants were set up, they took control of looking after Wilfred.

[104] Constable Carvalho testified that he had C.P.R. training and that it is upgraded every two years. At the District 2 Police Station, the C.P.R. and Emergency First Aid supplies were prominently displayed and more equipment and supplies were available in the supply room. When he stepped in to assist that morning, he had no difficulty immediately locating and accessing the necessary equipment. He did not believe that he could have done anything different or quicker than he did that morning.

CONSTABLE ERIC WYTINCK

[105] Constable Eric Wytinck was a paramedic and a firefighter before he became a Winnipeg Police Officer. As part of his training, he had completed the E.M.S. Technicians Course at the Brandon College in 2004.

[106] Constable Wytinck was on shift with Constable Wahl the evening of September 1, 2007 to the morning of September 2, 2007. They were in the typing room of the District 2 Police Station on the third floor of the Public Safety Building. Sometime just after 1:00 a.m. on September 2, 2007, he heard a lot of commotion and a male yelling and screaming in the hallway of the Holding Room area by the Sergeant's office. He later assumed it had been Wilfred making the noise but he cannot say for certain, as he did not actually see the commotion.

[107] At 1:15 a.m. he heard an officer say that his prisoner had stopped breathing and that an ambulance was needed. Constable Wytinck went to help. Constable Carvalho was ahead of him as they entered the Holding Room area. They saw a male, later identified to them as Wilfred, lying in the recovery

position on the floor of Holding Room #8. The two of them entered the room and took over control from Constable Gross who had been with Wilfred. They rolled Wilfred onto his back and Constable Wytinck observed that: Wilfred's face was blue, ashen and cold to the touch; his body was warm; his eyes were wide open and his pupils dilated 5 mm. Wilfred had underwear and socks on, but no shirt on. There were no signs of bruising, cuts or trauma. He tried to check the neck area and both wrists but could not find a pulse; he was not breathing. They started C.P.R.

[108] Constable Wytinck used a one way valve and gave Wilfred rescue breathing while Constable Carvalho did chest compressions. Wilfred did start breathing two or three times and had a pulse two or three times. They continued to perform C.P.R. until the ambulance attendants took over. Constable Wytinck helped by taking over the chest compressions for Constable Carvalho and then by assisting in placing Wilfred on their stretcher.

DONALD FOTTI

[109] Donald Fotti was working for Winnipeg Fire Paramedic Service and partnered with Terence Skrypnyk on the morning of September 2, 2007. They were dispatched to the Public Safety Building early that morning for what was first described as a "post seizure episode", however, before they arrived at the scene it was upgraded to an "unknown situation".

[110] Upon arrival at the Public Safety Building and attending to the third floor, they were taken to a male lying on the floor of a Holding Room. Donald Fotti took charge of the medical treatment. The police officer, who was performing C.P.R. on the male lying on the floor in one of the small Holding Rooms, was quite excited and was doing the compressions a little too deep and too fast. He and his partner gave instructions on how to do the C.P.R. properly and allowed the officer to continue with the C.P.R. while he powered on the Defibrillator machine and used it to confirm that there was no heart beat. He then shocked the patient's heart, to try and "jump start" it. C.P.R was continued, the patient was intubated and an intravenous drip was started. Eventually a pulse - a "junctional" rhythm, not a normal heart beat - was obtained. The patient was taken to the elevators and then to the ambulance. During this time drugs were administered as well, in an effort to get the heart going, as they were now getting no pulse.

[111] They left the Public Safety Building at 1:55 a.m. and arrived at the Health Sciences Centre at 1:59 a.m., at which time the patient was turned over to the emergency room staff.

[112] Donald Fotti testified that although he could not specifically recall this now, he would have made observations of the outside of Wilfred's body at the time of their arrival. This would have been part of their initial assessment when

starting treatment; his notes made at the time indicate “no evidence of trauma”, and he believes that he would have noted it if he had seen anything.

[113] At court on April 10, 2012, Donald Fotti reviewed Exhibit #4. He confirmed that he was the author of the two page report as well as the two pages of progress notes. He reviewed these pages in Court and confirmed that they were made at the time of the incident or immediately after and that the times noted on those pages are exact. They would have been the actual times noted on the machines they used and would have been on the printouts they were able to get from those machines. A “P.S.” on his notes explained that the monitor time was 3 minutes faster than real time and so there would be some discrepancy between the code summary he got from the machine and the dispatch times.

[114] Those pages indicate that the Defibrillator was turned on at 1:34 a.m. and used at 1:35 a.m. and 1:39 a.m. As well, intubation was first started at 1:37 a.m. and redone at 1:39 a.m. Pulse checks were done at 1:42 a.m. (a pulse was noted) and at 1:44 a.m. (a pulse was noted). At 1:46 a.m. the patient was moved to the elevator and at 1:48 a.m. a further pulse check was completed. At this time no pulse was noted. Epinephrine was administered by IV at 1:50 a.m., 1:54 a.m. and at 1:58 a.m. and Atropine was administered by IV at 1:52 a.m. and 1:56 a.m.

[115] Donald Fotti also recorded in his progress notes that while they were busy providing emergency medical care to the patient, there were some moments when he was able to converse with the police officers who were present. During this time he learned that the patient he was caring for had been arrested for stealing a vehicle and that he had crashed this vehicle into a chain link fence prior to his arrest. When asked, the one police officer stated that this was a “minor” crash and that it had only been into a chain link fence. Donald Fotti followed up on this as they were taking the patient to the elevator, asking if the air bag had deployed. He was told the vehicle had no air bag. He then recorded a further “P.S.” to note the fact that he and his partner were not told about this accident when they first arrived at the scene and began treating the patient, they were only told about the male in custody who just collapsed in the Holding Room. This appears to be a concern in his notes, but he recorded that as a result of the description by the officers that this was a “minor accident”, and the fact that no trauma to the body was observed, they proceeded with the treatment as “medical”.

TERENCE SKRYPNYK

[116] Terence Skrypnyk was employed with Winnipeg Fire Paramedic Service in September 2007. On the morning of September 2, 2007, he was partnered with Donald Fotti when they received a dispatch at around 1:18 a.m. They were sent to the Public Safety Building and upon arrival were directed to the third floor holding area. There they came across police officers giving

emergency medical care to a male lying on the floor of a Holding Room. He was moved into the hallway so they had more room to work on their patient. He and his partner immediately took charge of the medical treatment being given. They directed the officers to continue with C.P.R. while they checked the patient's airway and got the defibrillator ready. Terence Skrypnyk testified that he was not entirely happy with the officer's chest compressions on the patient, and told him to they were too deep and too fast. The officer complied with his directions.

[117] Terence Skrypnyk started intravenous and gave the patient some drugs, Epinephrine and Atropine, to get his heart to start beating again. They were able to get a pulse, but the patient was never breathing on his own accord. They took him down to the ambulance and during the transport down, the patient's pulse again stopped. They were not able to recover the pulse on the way to the hospital. They arrived at the Health Sciences Centre before 2:00 a.m. and the emergency room medical staff took over care of the patient.

[118] At the time of this call, Terence Skrypnyk was the emergency vehicle driver and Donald Fotti was the note taker and in charge of the treatment given at the scene. Terence Skrypnyk testified that he had reviewed their call records prior to testifying and noted that defibrillator attempts were made by him at 1:35 a.m. and by Donald Fotti at 1:39 a.m.

[119] Terence Skrypnyk also testified that he had made observations of Wilfred's body when they first arrived and when they were giving him medical treatment. There were no signs of trauma, injury, cuts or bruises. There were definitely no signs of injury to the head area.

SERGEANT MICHELLE GALLOWAY

[120] Sergeant Galloway did not testify at the Inquest. In her note book, recorded in Exhibit #2, she wrote the she attended to the Health Sciences Centre the morning of September 2, 2007. She was in the emergency room when Dr. Weldon pronounced Wilfred deceased at 2:06 a.m. During her time at Health Sciences Centre she was able to observe Wilfred's body. She noted no visible signs of any injuries, welts or scrapes. She did not fully see Wilfred's right side.

CONSTABLE AUDY RECKSIEDLER

[121] Constable Recksiedler was asked to accompany the ambulance to Health Sciences Centre when they transported Wilfred. Constable Recksiedler did not testify at the Inquest but in his notes, found in Exhibit #2, he records that he assisted in removing Wilfred's clothing after he died. He was able to observe all of Wilfred's body and he did not see any marks or injuries.

CONSTABLE JIMM ANIS

[122] Constable Jimm Anis was with the identification unit of the Winnipeg Police Service in September 2007. His assignment was to examine and photograph:

1. The third floor of the Public Safety Building, in the area where Wilfred was taken to;
2. The stolen truck that Wilfred was driving prior to his arrest;
3. The police cruiser car that Wilfred was transported in; and,
4. The uniforms, utility belts and equipment that officers Gross and Gladu wore that night.

[123] Constable Anis did not take the autopsy photographs but had reviewed them.

[124] Constable Anis was able to describe the layout of the District 2 Police Station holding area, hallway and Sergeant's office on the third floor of the Public Safety Building.

[125] From the underground garage of the Public Safety Building, there is a secure elevator to take prisoners to the third floor holding area. Once on the third floor, the restricted access area is accessible via a secure door. Once inside, a hallway leads directly to the Sergeant's office prior to arriving at the Sergeant's desk. There are two Holding Room areas to pass which are on your left hand side as you walk to the Sergeant's office. Once inside the Sergeant's office, the arresting officers "parade" the person they have in custody before the Sergeant on duty. The prisoner is then searched and placed into one of the Holding Rooms as directed by the Sergeant.

[126] This whole area, the elevator from the garage, the hallway, the Sergeant's office and the Holding Rooms do not have video surveillance. In the Holding Rooms there is nothing detachable or able to be damaged (except perhaps the sprinkler heads).

[127] Constable Anis commented on his observations and the photographs taken as follows:

1. In Holding Room #8, where Wilfred was taken, there was no visible blood on the walls, bench or floor. This room had a concrete bench, concrete walls and floor, with a floor drain in it.
2. On the floor, just outside of Holding Room #8, were some droplets of blood, a bloody piece of gauze and some other paramedical materials.

As well, there were some clothing items and a pair of Nike runners on the floor. No blood was found on the clothing or the runners.

3. In examining the stolen truck, Constable Anis did not note any extensive damage to it. His observation was that the truck had not been involved in a rollover accident.
4. No blood was found on or in the police cruiser car that Wilfred was transported in that night.
5. In examining Constable Gross and Constable Gladu's uniforms, utility belts and equipment, Constable Anis found no traces of blood or signs of dirt from a possible scuffle.
6. Although he did not take the autopsy photographs, Constable Anis viewed them and did not note any visible injuries to Wilfred's face.

DR. CHARLES DAVID LITTMAN

[128] Dr. Charles David Littman conducted the autopsy on Wilfred on September 3, 2007. He then prepared the autopsy report, filed as Exhibit #8 at the Inquest. Dr. Littman was qualified as an expert on medicine and pathology and testified as to his report and findings.

[129] Dr. Littman's autopsy findings were summarized as follows:

1. Minor contusions and abrasions to trunk and extremities.
2. No evidence of head or neck injuries.
3. Bilateral pulmonary congestion and edema.
4. Mildly enlarged heart.

[130] Dr. Littman's external examination of Wilfred's body revealed a number of bruises on his back, thighs, calves and forearms. Some of the bruises were more than a day old and all were minor bruises and not life threatening. There was a linear bruise around his waist; which could have come from using a moving strap at his employment, some of the other bruises, as well, appeared to have come from his job as a mover. There were no bruises on Wilfred's head, neck or spine. There was no evidence of any injury to the brain. Dr. Littman subsequently received a report from a neuropathology consultation which confirmed no abnormalities.

[131] Dr. Littman did note that there was a red area at the bridge of Wilfred's nose in some of the photographs. This had not been noticeable at the time of the autopsy. Dr. Littman attributed this to a possible bruise as a result of the resuscitation efforts of the police or the paramedics, or the peeling back of

the facial area for the purpose of the autopsy examination, or even due to lividity (the settling of the blood in a body some hours after death).

[132] Dr. Littman's examination of the internal organs of Wilfred's body showed that the oesophagus, stomach, intestines, liver, kidney, and spleen were normal. The respiratory system was unremarkable except for the lungs, as there was some pulmonary congestion and edema. His cardiovascular system was normal except that his heart was mildly enlarged, weighing 410-415 grams. Given Wilfred's height and weight, the normal range would be 350-390 grams. This difference was enough to be notable, but Dr. Littman testified that it could simply be accounted for by Wilfred working out regularly or getting a lot of exercise.

[133] Dr. Littman concluded that Wilfred was at ideal body weight and in excellent shape.

[134] Dr. Littman later received the toxicology report. It showed that Wilfred has some cannabis marihuana in his system and that his blood alcohol was at 118 milligrams (and of a higher concentrate in his urine). Dr. Littman concluded that neither the marihuana or the alcohol, nor the combination of the two, would account for Wilfred's death.

[135] Dr. Littman confirmed the cause of death as probable cardiac arrhythmia, but stated that it was not a conclusive finding. When asked if it could have been as a result of "commotio cordis", a blow to the heart at a critical millisecond, Dr. Littman pointed out that there was no sign of a physical blow to the heart area that would suggest this.

[136] Dr. Littman noted the circumstances leading up to Wilfred's death: being pursued by the police, arrested, seeing his brother in custody and getting upset and yelling. He was emotionally charged and with the release of adrenalin – "the perfect storm" for someone with a precondition – the heart can shut down very quickly. Dr. Littman believes that this is what may have happened with Wilfred.

[137] When Dr. Littman was asked what could be done to prevent a similar death in the future, he had only one specific recommendation: have a Defibrillator at all police stations and have the police trained to know how to use one in an emergency.

GREGG GILLIS

[138] Gregg Gillis testified as a "Use of Force" expert at the Inquest. His *curriculum vitae* was filed as Exhibit #11 (and is also contained in his report filed as Exhibit #10). He has worked as a corrections officer, a sheriff's officer and as a member of the Royal Canadian Mounted Police. He has extensive training and qualifications in what appropriate use of force is within the environment of policing and has taught, trained and testified as an expert in this field.

[139] Gregg Gillis was asked to conduct a review of the investigative material available relating to the death of Wilfred and to prepare a report on his findings. That report was filed as Exhibit #10 at the Inquest.

[140] In preparing his report Gregg Gillis reviewed police reports and notes, paramedical reports and statements, the autopsy report and medical reports, witness statements and photographs. Gregg Gillis conclusion is that from the time of initially coming into contact with the police the morning of September 2, 2007, to the time when the hospital staff at the Health Sciences Centre took over care of Wilfred, the actions of the police officers who had contact with Wilfred, were appropriate and consistent with accepted prisoner handling protocols across Canada.

[141] In coming to this conclusion, Gregg Gillis noted that there had been a minor collision with a chain link fence at the start of the police involvement with Wilfred. However, Wilfred had fled the scene of this accident on foot and Constable Gross had given chase. Once caught, Wilfred walked back to the police cruiser on his own accord. As Wilfred was obviously ambulatory and responsive to the officers, as well as showing no sign of any cuts or bruising, Gregg Gillis found that the officer did not need any Fire/Paramedical assessment of Wilfred at this time.

[142] Gregg Gillis noted that Constable Gross had removed his taser when arresting Wilfred but did not use it. As well, handcuffs were placed on Wilfred to escort him back to the cruiser car. He found that both of these actions by the officer were appropriate in the situation he had found himself in. There were no signs of any struggle or shuffle; Wilfred had been cooperative as soon as Constable Gross has been able to catch up to him.

[143] Gregg Gillis found nothing out of the ordinary in the officers escorting of Wilfred to the police station, or in presenting Wilfred to the Sergeant. Mr. Gillis acknowledges that there is some evidence that one of the officers gave Wilfred a push in the hallway of the Holding Room area. He speculated that if it in fact happened, the officer may have acted out of frustration; Wilfred has been loud and profane when coming before the Sergeant. Gregg Gillis agrees that if one of the officers has pushed Wilfred at that time, it would not have been necessary.

[144] Once Wilfred was placed in Holding Room #8 and collapsed on the floor, Gregg Gillis found that all of the officers and paramedics involved did all they could with the equipment and supplies available, as quickly as possible. He notes that in 2007, an automated electronic defibrillator was not available at the District 2 Police Station, but that now five years later, it may well be in place.

[145] Gregg Gillis reviewed all of the autopsy, medical and paramedic reports and viewed all of the photographs taken. He found no evidence of any

injury, cuts, bleeding, bruises or trauma on Wilfred, from the collision, police handling or paramedic interventions.

[146] All of this supports his conclusion that there was no struggle or physical altercation before Wilfred collapsed onto the floor of Holding Room #8 that morning, or that there was any application of force by the police toward Wilfred that led to or caused his death.

CONSTABLE GUY LEVEILLE

[147] Constable Leveille attended the autopsy performed by Dr. Littman on September 3, 2007. He did not testify at the Inquest but did record in his notes, found in Exhibit #2, that he did not observe any significant injuries on Wilfred's body.

III. TIMELINE:

September 1, 2007

Afternoon	Wilfred and his brother help their sister move.
Late afternoon, early evening	Wilfred goes home to shower and change. Wilfred and his brother attend a nightclub and bar.

September 2, 2007

Around midnight or just after	Wilfred and his brother break into and steal a Chevrolet S10 truck.
12:24 a.m.	Constables Gross and Gladu, in Cruiser Car N203, catch sight of the stolen truck going through an intersection on Keewatin Street.
12:26 a.m.	The officers arrive at Pascoe Park and observe that the truck has hit and lodged itself in a chain link fence.
12:28 a.m.	Constable Cross has Wilfred under apprehension and is walking him back to the cruiser car.
1:01 a.m.	Cruiser car N203, with Constables Gross and Gladu, and Wilfred in the back seat, leave for the Public Safety Building.
1:08 a.m.	They arrive at the underground garage at the Public Safety Building.
1:08 – 1:12 a.m.	The officers take Wilfred from the car, up the elevator and to the third floor lock up.
1:12 a.m.	The officers bring Wilfred before Sergeant Peltier.

1:12 – 1:15 a.m.	The officers take Wilfred to Holding Room #8 and begin the process of lodging him in the room.
1:15 a.m.	One of the two arresting officers goes to the Sergeant's office to ask for an ambulance to be called.
1:16 a.m.	Sergeant Peltier calls 911.
1:19 – 1:21 a.m.	One of the arresting officers requests that 911 be called a second time to "hurry up"
1:25 a.m.	The Winnipeg Fire and Paramedic Service ambulance personnel arrive on the third floor of the Public Safety Building.

The following times, from the Winnipeg Fire and Paramedic Service records are adjusted according to their field notes which state that the monitor time was 3 minutes faster than actual time.

1:31 a.m.	Defibrillator power is turned on.
1:32 a.m.	Defibrillator is used.
1:34 a.m.	Intubation is started.
1:36 a.m.	Defibrillator is used a second time and intubation is redone.
1:39 a.m.	A pulse is detected.
1:41 a.m.	A pulse is detected.
1:43 – 1:44 a.m.	Wilfred is moved to the elevator by the ambulance attendants.*

**Sergeant Peltier testified that this occurred at 1:38 a.m., however, his notes made on September 2, 2007, state that the W.F.P.S. were preparing to move Wilfred at this time and that they only left the third floor at 1:46 a.m.*

1:45 a.m.	Pulse taken; no pulse noted.
1:47 a.m.	Epinephrine given
1:49 a.m.	Atropine given.
1:51 a.m.	Epinephrine given.
1:52 a.m.	W.F.P.S. leaves for Health Sciences Centre with Wilfred
1:53 a.m.	Atropine given.
1:53 a.m.	Epinephrine given.
1:57 a.m.	Health Sciences Centre emergency staff take over care and control of Wilfred. C.P.R. continues to be preformed.
1:59 a.m.	Epinephrine given.
2:00 a.m.	Atropine given.
2:02 a.m.	Epinephrine given.
2:03 a.m.	Pulse taken; no pulse noted.
2:06 a.m.	C.P.R. stopped Wilfred is pronounced deceased.

IV. SUMMARY:

[148] The evidence given at the Inquest and the Exhibits filed clearly show that the death of Wilfred Lesley Asham was an unexpected and unforeseen tragedy.

[149] There are some inconsistencies and contradictions in the evidence. These can be explained by:

- (a) The passage of time from Wilfred's death in September 2007 until when witnesses testified at the Inquest in April 2012;
- (b) The police officers at the District 2 station suddenly became involved in a medical emergency and were focussed on saving Wilfred's life. The differences in their recollection of who first called for help or in what order certain things happened is understandable under those circumstances.

[150] There was a suggestion at the Inquest, by Wilfred's family, that he had been physically beaten or abused by police officers that night. All of the witnesses, including police officers, prisoners, paramedics and doctors observed no injuries, cuts or bruises on Wilfred which would suggest that this had happened. All that may have happened is that an officer gave Wilfred a push or a shove, perhaps out of frustration, as they escorted an agitated Wilfred down the hallway to the Sergeant's office. If this did happen, it should not have, as Greg Gillis pointed out in his testimony.

[151] Louis Vosters, on behalf of Wilfred's family, also questioned why there were no surveillance cameras, at the police station, in the areas where someone taken into custody is transported, walked and lodged. The evidence at the Inquest was that only some of the police interview rooms at the District 2 station had cameras in place. There were no cameras in the parking garage, elevators, hallways or holding room areas.

[152] If cameras had been in place on September 2, 2007, they would not have prevented Wilfred's death. However, the footage from those cameras may well have answered the questions Wilfred's family had, and still has, about how he was handled by the police officers that morning. As well, the camera footage may have provided a clear picture of how Wilfred's medical emergency was handled.

[153] As it is not likely that having surveillance cameras in place at a police station would prevent another death similar to Wilfred's death, it is outside of the mandate of this Inquest to make such a recommendation. However, subject to respecting the privacy rights of someone in custody, having cameras in all prisoner areas of police stations would afford an objective record of all interactions between police officers and those in their custody.

[154] There are two recommendations that come as a result of my review of the evidence and from the suggestions of the Inquest witnesses, which follow.

V. RECOMMENDATIONS:

A. Recommendation #1: It is recommended that all police forces develop, maintain and distribute to all of their officers a clear policy which sets out when and in what circumstances someone taken into police custody should be medically cleared by a paramedic or emergency room personnel before being taken to a police station or lockup.

[155] It is not evident from the testimony of the officers at the Inquest that the Winnipeg Police Service has a clear policy outlining the steps of what an officer is to check for and do when apprehending a suspect who has been involved in a minor accident or collision.

[156] Wilfred, on September 2, 2007, had led the police on a brief pursuit before crashing a stolen truck into a chain link fence. Constable Gross testified to the following:

- (a) Wilfred had crashed the truck into a chain link fence, but the truck did not appear to have any significant damage.
- (b) The truck's air bags had not been deployed; however, the officer was not certain if the truck even was equipped with air bags.
- (c) It appeared to the officer that no one had been thrown from the vehicle.
- (d) Wilfred fell when jumping the chain link fence, but was able to get up and run from the officer.
- (e) After a brief chase, Wilfred suddenly gave up and stopped running.
- (f) Wilfred almost immediately complied with the officer's demands.
- (g) Wilfred walked to the police cruiser on his own accord, without difficulty. There was no compromised breathing.
- (h) The officer believed that Wilfred was mildly intoxicated but could understand what was being asked of him.
- (i) The officer did not note any visible injuries on Wilfred.
- (j) The officer believed that Wilfred was okay to be taken straight to the police station.

- (k) The officer was aware that Wilfred fell asleep or passed out in the back of the police car as he overheard Constable Gladu's conversations with Wilfred.

[157] Constable Gladu testified that:

- (a) Wilfred appeared to be intoxicated but clearly comprehended the questions being put to him.
- (b) When Wilfred was in the back of the cruiser car, and before the officers began to transport him, Wilfred appeared to fall asleep. He woke up when the officer called out to him. His verbal response was "Where am I. Oh, I blacked out." The officer did not believe him, thinking it was Wilfred not being entirely truthful again, as well being due to his level of intoxication.
- (c) Wilfred again dozed off on the way to the police station, and again she woke him up.

[158] Donald Fotti, in his testimony, and in his notes and charts, found it significant that he and his partner, as paramedics arriving for an emergency, were not immediately told that the patient they were assisting had just been in an accident, even if only 'minor' in the officer's assessment.

[159] The autopsy did not find any injuries related to the collision with the chain link fence or Wilfred's fall over it and he may have simply passed out in the police car due to his level of intoxication. However, Dr. Littman, in his testimony, talked about "the perfect storm"; how a number of events leading to Wilfred's heart failure in Holding Room #8 came together to cause the probable cardiac arrhythmia. It is possible - not likely, but possible - that a paramedic or emergency room personnel medical examination would have revealed something.

[160] I am not suggesting that if such a policy had been in place that morning, that it would have mandated a medical exam prior to the officers taking Wilfred to the police station. That is for the policy makers, in consultation with medical doctors, to decide. However, a clear policy, with guidelines for officers to follow, is called for.

B. Recommendation #2: It is recommended that Automated External Defibrillators (“A.E.Ds”) be installed at every police station and at every location where someone is taken into police custody, is held or lodged, even temporarily.

[161] Wilfred died on September 2, 2007. At that time the Winnipeg Police Service District 2 Station, located on the third floor of the Public Safety Building, did not have a defibrillator as part of its first aid equipment.

[162] A defibrillator is a device, or machine, that is able to deliver a therapeutic dose of electrical energy to the heart. The intent is to restore a normal heart rhythm to someone who is experiencing an arrhythmia or irregular heart beat. An automated external defibrillator (A.E.D.) is a unit that uses computer technology to quickly assess whether a heart in distress needs a shock from the machine. It is designed for lay people, with easy to use instructions on it. For example, many A.E.D.’s are now in place at community centres, hockey arenas and swimming pools.

[163] Wilfred began to have difficulty breathing when he slumped to the floor in Holding Room #8. This happened at 1:14 a.m. and 1:15 a.m. The officers began performing C.P.R. within a couple of minutes and continued to do so until the arrival of the ambulance personnel, who arrived at 1:25 a.m., and immediately set up their defibrillator to use on Wilfred’s heart. However, they were not successful in restoring a regular heart beat. This delay of approximately 10 minutes may have been enough time to prevent a defibrillator from successfully resuscitating Wilfred’s heart. A ready to use defibrillator at the District 2 Station that morning may have made the difference.

[164] When Dr. Littman testified, he was asked what could be done to prevent a similar death in the future. He had one recommendation: have a defibrillator at all police stations and make sure that the officers are trained in how to use one.

[165] When Sergeant Peltier testified at the Inquest in April 2012, he was already retired. He noted that prior to his retirement in 2011, the Winnipeg Police Service had begun installing defibrillators at the District Stations and training on them was underway.

[166] The recommendation is that A.E.D.’s be installed, not only at police stations, but at every location where someone taken into police custody is held or lodged. This would include rescue facilities where people are lodged under *The Intoxicated Persons Detention Act*, Correctional Centres where police hold or lodge arrestees, and all temporary holding facilities in rural and northern communities. This would include any buildings or locations where Band Constables hold someone while waiting for the R.C.M.P. to arrive.

[167] All police officers and those employed by police detachments to guard someone taken into custody need to have adequate training in the use of an A.E.D. in the event of an emergency.

Dated at the City of Winnipeg, in Manitoba, this 12th day of October, 2012.

Original signed by:

Judge Robert Heinrichs



Manitoba

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

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

WILFRED LESLEY ASHAM

(DATE OF DEATH: September 2, 2007)

VI. EXHIBIT LIST

Description

1. Letter, dated November 16, 2009, from the Chief Medical Officer to the Chief Judge of the Provincial Court of Manitoba, directing that an Inquest take place with respect to the death of Wilfred Asham.
2. C.D. containing the super text file of disclosure from the Winnipeg Police Service.
3. A Google Map printout showing the Weston area of the City of Winnipeg.
4. Health Sciences Centre and Winnipeg Fire and Paramedic Service notes and charts for Wilfred, from September 2, 2007.
5. A MapQuest printout showing the Weston area of the City of Winnipeg.
6. A photocopy of Sergeant Peltier's police notebooks, pages 124-125, showing his diagram of the third floor Holding Rooms and hallway area at the District 2 Station, located in the Public Safety Building.
7. 4" x 6" colour photograph of Wilfred, together with female friend.

8. Autopsy report, neuropathology consultation report, toxicology report and report of Medical Examiner.
9. Computer printout, in colour, of two photographs of Wilfred, deceased.
10. Gregg Gillis "Use of Force" report.
11. Gregg Gillis *curriculum vitae* overview.
12. C.D. of Winnipeg Police Service and R.C.M.P. photographs.

VII. LEGISLATIVE AUTHORITY:

Sections 19, 25 and 26 of *The Fatality Inquiries Act* are the authority for a Provincial Court Judge to hold an Inquest:

CME review of investigation report

- 19(1) Subject to subsection (3), upon receipt of an investigation report, the chief medical examiner shall review the report and determine whether an inquest ought to be held.

CME to direct holding of an inquest

- 19(2) Where the chief medical examiner determines under subsection (1) that an inquest ought to be held, the chief medical examiner shall direct a provincial judge to hold an inquest.

Inquest mandatory

- 19(3) Where, as a result of an investigation, there are reasonable grounds to believe
- (a) that a person while a resident in a correctional institution, jail or prison or while an involuntary resident in a psychiatric facility as defined in *The Mental Health Act*, or while a resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*, died as a result of a violent act, undue means or negligence or in an unexpected or unexplained manner or suddenly of unknown cause; or
 - (b) that a person died as a result of an act or omission of a peace officer in the course of duty;

the chief medical examiner shall direct a provincial 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 the *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.

PURSUANT TO SECTION 33(1),

It is the requirement of the Provincial Judge to complete a report after the hearing of the witnesses 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 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.