

RELEASE DATE: April 23, 2018



Manitoba

THE PROVINCIAL COURT OF MANITOBA

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

AND IN THE MATTER OF: **An Inquest into the Death of LANCE MUIR**

**Report on Inquest of
Judge Cynthia Devine
Issued this 18th day of April, 2018**

APPEARANCES:

Mr. Jay Funke, Inquest Counsel

Ms. Kimberly Carswell, Counsel for Winnipeg Police Service

Ms. Lora Schultz, representing the Muir family

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The Fatality Inquiries Act C.C.S.M. c. F52

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

Having held an Inquest respecting the said death October 10-12 and 16-18, 2017, I report as follows:

The name of the deceased is Lance Muir.

The deceased came to his death on May 9, 2010 in Winnipeg, Manitoba.

The deceased came to his death by the following means: gunshot wound to the chest.

I make no recommendations for the reasons set out in the attached report.

This report contains my findings after reviewing the evidence and the submissions provided by counsel and the mother of the deceased. I granted Ms. Lora Schultz standing; she attended many days of the hearing and made helpful submissions at various points and I thank her for that. This report contains a list of witnesses who testified and the Exhibits that were admitted into evidence. This Inquest benefitted greatly from having counsel who were extremely well organized, prepared and thorough. I thank Mr. Funke for his diligence in taking over the Inquest from previous counsel and providing comprehensive and complete disclosure of all materials relevant to this death and the ensuing investigations into the death. Counsel

worked diligently to review the materials in advance of the hearing and made agreements to their filing by consent.

Summary of the Circumstances of Mr. Muir's Death

Just before 9:00 a.m. on May 9, 2010, Mr. Muir drove a stolen car and parked it beside 143 Langside Street, in the West Broadway area of Winnipeg. He carefully broke into the house using a crowbar. He knew the occupants were away for the weekend. Neighbours who saw the break-in called police. Police were dispatched with information about the location, a description of the suspect, the crowbar and that the car was matched as a stolen vehicle. Two police officers arrived within minutes of the call, at 8:57:13 a.m. Cst. Macki went around the south side of the house, Cst. Lintick went on the north side of house, between the house and the apartment building next to it, towards the back lane. When Cst. Macki came around the south side of the house Mr. Muir was in the stolen vehicle, beside the house. Cst. Macki yelled commands for him to "Stop!" or "Stop, Police!" The vehicle lunged towards Cst. Macki, running into a porch on the house. Mr. Muir continued to disregard police commands and reversed rapidly into the narrow alley, colliding with the apartment building across the alley. By that time, Cst. Lintick had come around from between the house and the apartment building to the north. Less than 20 feet ahead, he saw the vehicle hit the apartment building. He shouted commands at Mr. Muir to not put the vehicle in drive. He got out of the way as far to the west side of the alley as he could, continuing to give Mr. Muir commands to not drive the car and not put it in gear. He raised his firearm and pointed it at the driver area of the vehicle as he gave these commands. Mr. Muir paused, then turned the wheels of the vehicle directly in line with Cst. Lintick, revved the engine and drove directly at Cst. Lintick, accelerating. Cst. Lintick had nowhere to get out of the way. He fired four shots at Mr. Muir, just before 8:57:41 a.m. when "Shots fired" was voiced on the police radio. The entire incident, from the police officers' position at the front of the house, to the shooting, occurred in less than 28 seconds. One of the shots entered Mr. Muir's chest. Attempts to save his life by police and paramedics at the scene and then in hospital were unsuccessful. Mr. Muir was pronounced dead at 9:42 a.m. He died from a gunshot wound to the left side of his chest which passed through his left lung and left aorta causing massive blood loss. He would have rapidly lost consciousness and become unresponsive.

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

DATED at the City of Winnipeg, in Manitoba, this 18th day of April, 2018.

“Original signed by:”

Cynthia A. Devine, Provincial Judge

Copies to: Dr. John Younes, A/Chief Medical Examiner
Chief Judge Margaret Wiebe, Provincial Court of Manitoba
The Honourable Heather Stefanson, Minister Responsible for *The Fatality Inquiries Act*
The Honourable David Wright, Deputy Minister of Justice & Attorney General
Michael Mahon, Assistant Deputy Attorney General
Jay Funke, Inquest Counsel
Kim Carswell, Counsel to the Winnipeg Police Service
Ms. Lora Schultz, for the Muir Family
Exhibit Coordinator, Provincial Court
Ms. Aimee Fortier, Executive Assistant and Media Relations,
Provincial Court

The Fatality Inquiries Act C.C.S.M. c. F52
**REPORT BY PROVINCIAL JUDGE ON AN INQUEST
INTO THE DEATH OF LANCE MUIR**

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I. MANDATE OF THE INQUEST

[1] Inquest proceedings in Manitoba are governed by the statutory provisions of *The Fatality Inquiries Act, C.C.S.M. c. F52. (FIA)*. This Inquest was held pursuant to the *FIA* as it read before the coming into force of amendments on November 1, 2017. (*The Fatality Inquiries Amendment Act, S.M. 2017, c.15*) I am satisfied that the Inquest would still have been called and the mandate of the Inquest, the nature of the hearing and the report would be unaffected by those amendments.

[2] Because Mr. Muir died as a result of police shooting, the Inquest is mandatory pursuant to section 19(3)(b) of the *FIA*.

[3] On January 15, 2015, Dr. A Thambirajah Balachandra, then Chief Medical Examiner, directed an Inquest be held:

- a) to fulfill the mandatory requirement in section 19(3)(b) of the *FIA*;
- b) to determine the circumstances relating to Lance Muir's death; and,
- c) to determine what, if anything, can be done to prevent similar deaths from occurring in the future.

[4] The Provincial Judge is required to make and send a written report to the Minister of Justice and the Medical Examiner, which includes the circumstances and cause of the person's death. The judge has discretion to make recommendations to programs, policies or practices of government and relevant public agencies if the judge is of the opinion that such changes would reduce the likelihood of similar deaths from occurring in the future.

[5] The Inquest proceedings were delayed in this case until criminal investigations into Mr. Muir's death were complete. The Winnipeg Police Service (WPS) Homicide Unit conducted a homicide investigation and the RCMP conducted an independent review of the investigation. As a result of the investigation and independent review, no criminal charges were deemed to be warranted.

[6] Initially, Winnipeg Crown Attorneys were assigned to the Inquest, at which time a standing hearing was held and counsel for the Winnipeg Police Service was granted standing. Ms. Schulz attended the standing hearing and at that time did not seek standing. Initial disclosure of documents was provided to me and initial meetings with counsel were held to determine the witness list and schedule the

Inquest hearing. Initial dates were set. Subsequent to that, Crown Counsel outside of Winnipeg was appointed, pursuant to a new policy of Prosecutions to have outside counsel appointed in cases involving Winnipeg Police. New counsel determined that significantly more disclosure should be provided to the Inquest judge and counsel, such that it was no longer possible to use the first dates set for the hearing. New dates were set for October 10-12 and 16-18, 2017. Additionally, Ms. Schultz sought and received standing as an intervener. The Inquest proceeded on those dates.

II. THE EVIDENCE

[7] I heard evidence from the police officers involved in the call to 143 Langside, the police officers involved in the shooting, and the forensic and identification officers who conducted the post-shooting investigation. I also heard evidence from the WPS Homicide detective who investigated the shooting and determined that no charges should be laid against the officer who shot Mr. Muir, as well as the RCMP detective who was tasked with the independent review of the homicide investigation and determined it was done properly. I also heard evidence from a use of force expert witness. I reviewed binders of reports and the videotaped statements of several civilian witnesses in the area about the break and enter and the arrival of the police. I reviewed books of scene photographs, drawings to scale, and a forensic scene surveys using the Total Station survey equipment.

[8] The computer generated incident history gives a time line for the incident:

- 8:51:30 Call entered
- 8:54:11 Officers dispatched to the break and enter
- 8:56:51 Cst. Macki and Cst. Lintick on scene
- 8:57:13 Cst. Macki and Cst. Lintick voice they are “at front”
- 8:57:41 Cst. Lintick voiced “Shots fired”

[9] The time that elapsed from the officers voicing they were at the front of 143 Langside to the time just after Cst. Lintick discharged his firearm was under 28 seconds.

[10] I have set out the narrative of the two involved police officers, interspersing their evidence with the relevant forensic and other Inquest evidence that I heard and reviewed.

Evidence of Cst. Dave Macki

[11] Cst. Macki was Cst. Lintick's partner that day. They were working day shift, commencing at 7:00 a.m. Cst. Macki had been with WPS for three years.

[12] They received a dispatch at 8:54:11 a.m. about a break and enter in progress at 143 Langside Street when they were driving south on Princess near the Public Safety Building. Ryan Owen, one of the witnesses to the break and enter, said in his witness statement he had called police at 8:53 a.m. Additional information about the situation came over the radio as Cst. Macki and his partner drove to the scene. The suspect had driven up and parked a Cadillac Escalade. The suspect had a crowbar, had just smashed a window and was leaving the house. Cst. Macki testified that they parked on the east side of Langside Street in front of the apartment building next to 143 Langside, as the apartment building would protect them from the view of the suspect. They initially had their emergency lights and sirens on and quit them as they approached the location, for the same reason. He voiced at 8:56:51 a.m. that they were "on scene".

[13] Just as the officers were about to exit the cruiser car, they received an additional dispatch on their screen that the vehicle was actually a black Cadillac CTS sedan and was confirmed stolen. In the mind of Cst. Macki the additional information that a luxury car, confirmed stolen, at the scene of a break and enter, with a crow bar, made the situation more serious.

[14] They got out of the vehicle with their service pistols drawn. Cst. Macki's pistol was "at the ready," or in the "ready" position, which he described and demonstrated. His hands were tucked close to his stomach area, with the barrel of the gun pointing down. In the "ready" position, the finger is not on the trigger; it is along the rail, just above the trigger guard along the barrel.

[15] Cst. Macki testified that he and Cst. Lintick looked across to the back alley between the house and the apartment building. The area being clear, Cst. Lintick headed towards the alley alongside the apartment building to the north of the house, and Cst. Macki moved across the front of the house to the south side of it and looked towards the alley.

[16] As he came around the side of the house, Cst. Macki saw the vehicle directly in front of him parked beside the house. The driver was an adult male wearing a blue bandana on his head, signifying gang colours at the time.

[17] Cst. Macki yelled out commands like “Stop! Police!” He was in full police uniform. The vehicle lurched or moved forward quickly towards him and he slipped in the grass and stumbled, but righted himself. The vehicle struck the corner of the step on the house and stopped. The Traffic Accident Reconstructionist Cst. McCowan testified that a mark found on the front passenger bumper of the vehicle corresponded to a paint transfer mark on the step of the house, which the car hit.

[18] Cst. Macki testified that the suspect stopped and then accelerated backwards. Cst. McCowan testified that darker marks in the driveway show that the rear tires were spinning as it reversed. The car hit the apartment building across the alley with its back passenger bumper. Cst. McCowan testified to a scuff mark on the back bumper of the suspect vehicle and corresponding paint transfer mark on the apartment building. As well, she testified to several pieces of black plastic found in the alley that came from the vehicle’s rear bumper.

[19] Cst. Macki ran towards the vehicle, gun still drawn and still yelling commands. Daryn Bond, a neighbour who lived in the apartment building next door, could see this from his bedroom window. He heard Cst. Macki yelling at the driver “Stop the car!” “Show me your hands!” According to the witness, the tone was serious and, according to him, “If someone spoke to me that way, I would stop.” He saw Cst. Macki running towards the vehicle. Then it went out of his view.

[20] The suspect then put the car in forward again and drove in a west-north direction to turn northwards up the alley. When the vehicle was at about a 45 degree angle in the alley, Cst. Macki ran up to it and smashed his service pistol against the driver’s side window to get the suspect to stop the car. The vehicle righted itself and sped up the alley northward and Cst. Macki could not keep up. He then heard Cst. Lintick yell something, but he does not know what. He froze. He then heard three gunshots, “Bang Bang and then Bang.” He smelled gunpowder. Then he heard his partner yell “Shots Fired!” He did not know where exactly his partner Cst. Lintick was; he just knew he was north of Cst. Lintick. We know from forensic witnesses that there were actually four shots fired.

[21] Daryn Bond, one of the civilian witnesses, said the vehicle began to drive off. Then it was out of his view. Just as the tail end was leaving his field of vision he heard four shots. “Bang. Bang. Bang. Bang, like sixteenth notes, in that rhythm.” He heard “Shots fired” and then Cst. Macki left his field of vision.

[22] Bich Truong was outside sweeping her sidewalk, directly across the street from 143 Langside, when Cst. Macki and Cst. Lintick arrived. She observed the officers gesture to each other and then one went on the north side and the other went on the south side of the house. She heard a crash noise and then the officers went running to the back, one of the officers patting at his side where his gun would be. She could see Cst. Lintick as far as the garbage bin and go southwards around the bin. She could not see the officers after that, but heard a male voice yell, “Stop! Stop!” She saw a black car go by the garbage bin really quickly. Then she saw a gun, then a hand, then a police officer and then heard two shots. Next she heard a crashing sound, like the car had crashed into something else. I take this evidence to be consistent with what I heard from Csts. Macki and Lintick and from the forensic evidence I heard and the reports filed. The first crash she heard may have been the vehicle backing into the apartment building in the alley, although it is out of sequence with what I have understood from all the other evidence in this case. She saw the vehicle speeding up the alley seconds later. She heard shots, even though she was mistaken about the number of shots. I also find that she was mistaken about the shots being fired after the vehicle had passed the garbage bin. The second crash she heard would have been the vehicle crashing into the hydro pole at the end of the alley.

[23] Cst. Macki immediately heard the emergency beep or tone on dispatch and then dispatch saying “Shots fired.”

[24] The vehicle was still driving north up the alley. It missed a right turn to get out of the alley and crashed into the hydro pole at the north end of the alley. Both officers ran up to the vehicle to take the suspect into custody. Cst. Lintick approached the driver’s side. Cst. Macki approached the passenger side, clearing from back to front and then moved over to the driver’s side.

[25] At this point he still did not know who had fired the shots. He did not see Cst. Lintick fire the gun.

[26] He saw that the driver's eyes were open but glazed over and he wondered if it was from the collision. The driver was leaned back with his arms down at his sides. Cst. Lintick was yelling at him then reached into the vehicle and touched the driver's chest and then voiced that a male was hit.

[27] Cst. Macki then saw Sgt. Bergen arriving, to the north. Sgt. Bergen was their Use of Force Officer and was senior to them. He took over. Cst. Macki testified that he was in shock and did not know what was going on. He was escorted off the scene by a supervisor and had his service revolver turned over.

Evidence of Cst. Tyler Lintick

[28] Cst. Lintick was in his third year with the WPS at the time of the shooting. He was the driver that day. His evidence is essentially the same as Cst. Macki's up to the point when the two officers separated to go around 143 Langside.

[29] He testified that on the way to the location he was thinking about the dangers involved in stolen vehicles. He was aware of several things as a result of officer safety bulletins the police receive, through WPS-ALL informational emails, intelligence information, shift sergeant briefings and more formal bulletins from the Officer Safety Unit at training division. He knew the area was B-Side Gang territory and the B-Side Gang was well known for its use of stolen vehicles. The police had received bulletins informing them that the B-Side Gang was encouraging its members to hurt, maim or kill police officers to improve their standing or ranking in the gang hierarchy. They had also received a bulletin with respect to the Mirror Drug Crew that offered a \$20,000 reward for hurting or maiming a police officer. Cst. Lintick was also thinking about a call he attended only the day before where a police officer tried to stop a stolen vehicle and the driver hit the officer with the vehicle, injuring him.

[30] Cst. Lintick said they were the first unit to arrive at 8:57 a.m. He parked the cruiser on Langside in front of the apartment building next to the 143 Langside. He and Cst. Macki exited the cruiser car, Cst. Macki voicing their location.

[31] He went between the apartment building and the house towards the alley, and Cst. Macki went across to the front of the house at which time Cst. Lintick lost sight of him.

[32] Their intention was to cover the front and rear of the home to provide a perimeter, keeping a visual on both sides of the house while waiting for more police officers.

[33] Sometime between the street and the rear lane he drew his service pistol. He said there are various ways a police officer can safely move with their service pistol. He believes he was in the position referred to as “sul”, “which is essentially the centre line of your body pointed directly at the ground in front of you, maintaining the best muzzle discipline that you can.” He explained that the term “best muzzle discipline” is used to describe safely carrying the weapon so that it does not create a safety concern for the officer or anyone else.

[34] As he reached the threshold of the back lane, Cst. Lintick edged himself past the end of the house (143 Langside) behind a fence that extended partway along the back yard. He was able to see over the fence to get a visual of what was happening in the back yard. He saw the rear of the black Cadillac CTS sedan parked in the yard behind but on the far side of the house. When he saw the car, he assumed the suspect was still inside the house. He did not hear or see him or Cst. Macki. He tried to voice additional radio transmissions to Cst. Macki and other officers, but he was unable to, because there was so much police activity on the radio. He was what the police refer to as “bonged out.” As he explained it, “we try to use our push to talk radio and essentially just get a beep or a bong and you can't speak.”

[35] Then he heard Cst. Macki yell, “Stop! Police!” loudly and clearly. He heard a loud thud, like the sound of a door or a car door slamming. He assumed that his partner had located and was engaged with the suspect. He immediately started towards Cst. Macki’s voice to help him.

I thought that Dave was, like I said, engaging with this person. I didn't know if he was struggling with him and trying to take him into custody. I don't know if he was being harmed or other, otherwise in danger. And my thought process is just that I needed to get to Constable Macki as quick as I could.

Q And what, if anything, did that signify in terms of what you understood the suspect to be doing at that point?

A With the sound of “Stop, police,” I would assume that that person was doing something, either moving away or toward, I have no idea. And then with the sound of the loud thud, it was sounds that I would take as not being compliant. It would be some level of resistance in some way that Dave was having to engage with this person.

[36] He thought Cst. Macki was close to him, because his voice was very loud and clear, coming from the backyard area of the house. Cst. Lintick testified he ran very fast, trying to ascertain what was going on and to come to his partner's aid.

[37] He ran towards the alley, past a fence across the back yard, past a shopping cart, a large garbage dumpster (BFI bin), a baby stroller and then he ran southbound into the alley. All these items remained untouched and were visible in scene photographs. They were measured and distances between the various items were taken and surveyed and referred to in the evidence and reports of various forensic witnesses. Cst. Lintick was trying to look for his partner and the suspect. As he ran around the edge of the dumpster and southwards along the fence at the back of the 143 Langside yard, he saw the vehicle lunge forward, then immediately, without pause, back up to the south, as if it was going to drive north up the alley. It backed up rapidly and banged into the apartment building on the other side of the alley.

[38] The alley was very narrow, measured by Identification Officers and the Total Station scene survey equipment as 4.6 metres wide. At that point, Cst. Lintick was beside the fence and there was a mattress leaning up against it. He was now beside the mattress. He testified that he was between 20 and 30 feet from the car.

[39] After the car hit the building it was sitting diagonally across the alley, pointing northwest. Forensic evidence established that the car was 4.83 meters long.

[40] Cst. Lintick came to a dead stop because it looked like the car would come north to where he was.

[41] He testified that the car would have had room to turn its wheel and drive straight north up the alley. Cst. Lintick was asked what was going through his mind at that point. He answered that he did not know exactly what was happening with the vehicle. He assumed someone was driving it. He had heard his partner yell "Stop! Police!", a car door slam, saw the vehicle lunge forward and then back up rapidly and hit the building and then quickly point northwest towards him. He could not see his partner:

I'm running as fast as I can to get to Dave and I seen this vehicle lunge. And I don't exactly know what is happening with this vehicle. I'm assuming that likely someone is in it, and then this lunge. And right in that moment I was kind of just processing this as I'm trying to get to Dave. I'm trying to find out where he is and if he is okay.

. . . with the thud that I referred to as maybe a car door slamming, I'm then assuming, okay, potentially this person is now in the vehicle or there's some struggling happening near it which is why it's lunged in a funny way.

...

Q So it's your evidence then that at that point you assumed that the person or the suspect or a person is now in the vehicle and operating it?

A Or trying to. I didn't know --

. . . I didn't know if the person was, like, half in the vehicle and then Dave might be trying to, you know, take him into custody but that the vehicle was being operated in some fashion or another.

[42] When he saw the vehicle lunge forward, before it reversed and hit the building, he thought maybe it was trying to escape by driving through the space between the houses, if it had room.

[43] Cst. Lintick agreed in his evidence that the driver had several options available to them at that point:

- he could have driven northwards towards the officer
- he could have turned back into the parking spot, or
- he could have moved forward slightly and backed in the other direction then headed south down the alley, away from the police officers

[44] Cst. Lintick testified that he felt trapped. The dumpster was behind him, with debris around it, such as the baby carriage. The fence was beside him, at least five feet high. He did not think he could push it over. We know from the Total Station drawing that the fence was 1.21 meters high at its lowest point and 1.68 meters high at its highest point. In feet, this is 3 feet, 11 inches at its lowest point and 5 feet, 6 inches at its highest point.

[45] The fence had a mattress against the portion of it where Cst. Lintick was positioned. The scene photos show that the mattress is covering half the fence, the portion of the fence that is southernmost down the alley. The mattress was higher than the fence, that is, it is protruding above the fence. Cst. Lintick did not think he could negotiate all those obstacles.

[46] Cst. Lintick was as far west in the alley as possible, allowing ample room for the vehicle to move past him to the east, northwards up the alley,

There was ample room if this person wanted to, to drive simply by me. If they were going to try and escape, I am giving them as much room as I possibly can.

. . . I wasn't trying to stop him from leaving in any way. I -- when it came to that particular situation, that wasn't in my mindset whatsoever. I was just trying to stay out of the way and just deal with it as it's being presented.

[47] The car was longer (4.83 meters) than the alley was wide (4.6 meters). Cst. Lintick had not been provided with those measurements until he was asked at the Inquest. But he believed that if the driver had turned the wheels as far to the right as possible, he would have easily been able to safely drive past the officer and proceed straight up the alley. And, in fact, the vehicle did make the turn and drive up the alley, with significant distance between the tire track and the edge of the lane.

[48] At that moment, Cst. Lintick had stopped. The vehicle was pointed at him. He was oriented in the centre of the vehicle. He could not move to his right, because he was against the fence. Going left would have meant he would move into the centre of the alley. If it was the intent of the driver to get away, Cst. Lintick would be giving him less an opportunity to do so,

And I'm not trying to stop a car with my body or anything.

I'm trying to give this person as much opportunity as they can to make a good decision. I'm trying to give them an avenue for them to just leave and I'm just, I'm essentially stuck like I said. I have this vehicle right at me, it's very close and for me to go into, more into the lane and limiting that, you know, avenue for them to drive it just it's, it's not good sense. It would put me in greater danger.

[49] Cst. Lintick, satisfied he had no avenue of escape or retreat to a position of safety, put the vehicle at gunpoint. He yelled at the driver, very loud and very clear, not to put the vehicle in gear.

[50] He testified that he raised his service pistol to protect himself, using what police call in their use of force training, "lethal force coercion."

I was trying to protect myself. I was trying to give what we refer to as lethal force coercion. I was trying to give this person directions to listen to me, to be cooperative, to be safe, myself as well. My intention when I put this car at gunpoint was to show this person operating the vehicle that I have adopted this particular level of control that I have, that they are being faced with it, and that I'm giving them directions to essentially not hurt me, to not comply with me, or lethal force could potentially be used. That was my intention.

[51] Cst. Lintick testified that if the vehicle had not moved, he would have continued to give the driver directions, like, “Turn the car off! Just turn it off! Put your hands out the window. Do not move in any way. Just listen.” If he heard the car turn off, he could have moved, located his partner, whom he had not yet seen, and they would have worked together to take the person into custody.

[52] His initial intention was not to shoot. He was aware of the WPS policy which disallows discharge of a firearm to prevent a suspect from fleeing or to stop a fleeing vehicle.

[53] He was yelling at the driver to “Stop! Don’t come at me! Just stop!”

[54] Cst. Lintick testified that the vehicle did not pause or hesitate. It jolted as if it had been put in drive.

[55] It started to roll slowly towards him, as if the driver has taken his foot off the brake. There was a pause. The driver had obviously seen him.

I'm standing right there. I'm giving them direction. They have not listened and now they've orientated the vehicle at me.

What is happening now is they're straightening the wheels out and I can see this. I can hear this. And they're straightening the vehicle, the wheels out. Now when it started to roll slowly forward, the wheels didn't turn all the way to the right as if they were trying to get around me. The wheels essentially stopped as if it was just going to continue forward and carry on.

Now in that moment, I'm telling this car, “Stop. Don't come toward me,” words to that effect. And again, this is happening within a time span of seconds. In that moment where they put the car in gear and now it has started to roll forward and they have now located me and the vehicle, the vehicle wheels are directly pointed toward me, the person rapidly accelerated directly at me.

[56] The car came at him “as fast as they could.” He heard the engine rev. Cst. McCowan was able to analyze the tire marks which demonstrated spinning tires and acceleration marks consistent with rapid acceleration. She examined the scene, scene photographs and the Total Station survey drawings and concluded the vehicle reversed from its parking spot at 143 Langside, hit the apartment block on the opposite side of the alley then accelerated toward the fence area of 143 Langside (where we know Cst. Lintick was standing), then turned up the alley where it travelled approximately 65 meters before hitting the hydro pole at the end of the alley, at a speed of between 50 and 100 kilometers per hour.

[57] Cst. Lintick knew he could be hit by the car, go under it, or be crushed between the vehicle and the dumpster behind him. In that moment, with the driver essentially armed with a vehicle, he absolutely believed the driver was trying to run him over.

They were trying to come directly toward me. They weren't trying to escape. They had targeted me now and they are trying to run me over.

[58] Cst. Lintick testified that he was absolutely terrified. He thought he was about to be killed or very badly injured.

[59] He could see Cst. Macki in his peripheral vision, leaving the yard and coming toward the lane. He was not concerned his shots would strike his partner; his location was safe, outside the line of fire.

[60] Cst. Lintick fired his service pistol three to five times in quick succession while at the same time doing whatever he could to move over to the right even further. He ran into the fence. The vehicle veered to the right and headed straight northwards up the alley.

[61] Kara Tomyn's evidence (RCMP Forensic Firearms Specialist) about the trajectories of the bullets was consistent with this. There were four trajectories. One of the bullets was shot from directly in front of the vehicle through the windshield, through the dash and into Mr. Muir's chest, where the core of the bullet was located. This is consistent with Cst. Lintick's evidence that he fired when the car drove at him. Then the car turned, which is consistent with the trajectories of the remaining three bullets.

[62] Ryan Owen, the neighbour who had called 911, was sitting on a bench in front of his apartment building on Young Street waiting for police to arrive. He heard the yelling, a car revving, shots and then a collision.

[63] Cst. Lintick pointed the gun at the place where the driver would be sitting. He could not see the driver, because there was too much reflection off the windshield.

[64] The car came within inches of hitting him. He could feel the wind as it passed him. He believes his shots altered the driver's course and direction of travel.

[65] He testified that he believes he was 10 to 20 feet at the very most, if not closer from the vehicle when he started firing, then maybe 3 to 4 feet away by the

last shot. Cst. Lintick testified that these were very rough estimates; the vehicle was driving at him and he was firing while trying to get out of the way.

Do you have any recollection of where the vehicle was relative to your, your location at the time the last shot was fired?

A Almost running into me. Like, it was, like -- like, it was still coming and then, like, saw the -- it was very, very close. Like, I was almost being hit at the time as I'm just trying to get out of the way at the last moment. I was, like, almost right beside it as I, as I recall.

[66] Cst. Bullee with the Identification Unit confirmed that there were three bullet holes through the windshield and one through the driver's side mirror that then went into the driver's side of the vehicle.

[67] Ms. Tomynt conducted firearms testing on Cst. Lintick's service pistol as well as examined the site and vehicle as well as the autopsy to examine the trajectory and analysis of the four bullets that were fired. One of the bullets, likely the last bullet fired, which went through the side mirror, had a muzzle to target distance of between two and four feet.

[68] Cst. Lintick went on to describe Cst. Macki running towards him, checking in to see he was okay, him voicing "Shots fired" and he and Cst. Macki running after the car. He testified that the vehicle ran into the hydro pole or debris and the garbage can; he was not sure which. Cst. Sylvia Schroeder's evidence and Forensic Identification Report confirmed that the vehicle had smashed into the hydro pole and BFI bin.

[69] He testified that he knew the vehicle was going very fast because when it crashed, the rear end of it came off the ground a foot or two and landed at an angle. This is confirmed by the photograph of the vehicle taken at the scene. Cst. Schroeder's report noted that there was a bulge in the front windshield protruding outward on the driver's side, possibly caused by the driver's head hitting the windshield. We know from the report of Cst. McCowan that at the time of the collision, the vehicle was going somewhere between 50 and 100 kilometers per hour.

[70] Cst. Lintick did not know that he had shot the driver. He was chasing the vehicle to give the last visual direction to other officers over the radio. He and Cst. Macki ran up to the vehicle, guns in the low ready position, he to the driver's side and Cst. Macki to the passenger side. They were shouting directions, "Show me your

hands.” The driver did not respond, his hands were in his lap. He was breathing but appeared to be unconscious. Cst. Lintick thought he had maybe hit his head in the collision. The window was broken, so Cst. Lintick reached in and unlocked the door and opened it. He shook Mr. Muir’s shoulder and asked him if he was okay. He pulled down his shirt collar, because he was concerned then he may have shot him. He saw a bullet hole in the left side of his chest. He immediately called EMS on “rush.”

[71] Cst. Bergen and other officers were arriving on scene at that point and police immediately went into lifesaving measures. First aid was immediately started, checking Mr. Muir for a pulse and signs of breathing. Cst. Lintick testified that he was very upset that he could not find a pulse on Mr. Muir, but Sgt. Bergen said he did. Once identifying himself as having shot his gun, Cst. Lintick was removed from the scene.

. . . I was very, very upset. Like, I was almost in tears and I told him (Mr. Muir) that, you know, like, help is on the way, stay alive, kind of thing. I was just trying to give him words of encouragement. And then I was removed from the scene.

[72] Cst. Lintick was asked about his training in use of force and his understanding of it. He was able to describe that a threat consists of three parts: weapon, intent and delivery system. A “weapon” is anything that can cause grievous bodily harm or death. “Intent” is the intention of the person to shoot the gun or swing the sword. The “delivery system” is that which allows the person to shoot the gun or swing the sword. In this case, Cst. Lintick testified that the vehicle was both the weapon and the delivery system.

[73] Cst. Lintick testified that the person driving the vehicle had options:

- they could have stopped
- they could have listened
- they could have driven around him
- they could have veered away

[74] Cst. Lintick was told that we now know that only 28 seconds passed from the time he arrived to the point he fired his gun. He was asked whether, given that very short time, he had an adequate opportunity to conduct his threat assessment and respond to the situation consistent with the training he had received.

[75] He answered that he had, “In the moment where I discharged my firearm, yes, I was presented with very clear facts and I made that conscious decision.”

[76] I found the evidence of Csts. Macki and Lintick to be credible and truthful. They were both candid and provided as much detail as they could recall. They had the benefit of providing statements right after the event and were able to refresh their memories with their earlier statements. Any discrepancies in their evidence I accept to be as a result of the events occurring in a period of mere seconds.

[77] The evidence of Cst. Lintick and Cst. Macki is consistent with the forensic evidence which I heard and examined at the Inquest: scene drawings, photographs, measurements, surveys, tire marks, bullet holes and trajectories of the bullets and the autopsy report.

[78] Cst. Lintick agreed that police officers have a duty to investigate crime and apprehend people who are involved in the commission of crime. He was investigating a break and enter in progress. He had a duty to try to apprehend the person committing that crime, to investigate the stolen vehicle and to ensure the safety of his partner. Cst. Lintick agreed it was necessary that he go into the back lane and towards 143 Langside.

[79] Cst. Lintick was asked if he could explain self-imposed jeopardy and whether he put himself in jeopardy. He testified that “It's putting myself into a position where I would be left with no other option than to potentially use lethal force,” something that officers are trained never to do and something that he has never done. He did not believe he put himself in jeopardy that day.

III. THE HOMICIDE INVESTIGATION AND INDEPENDENT REVIEW

[80] The shooting was subject to a homicide investigation pursuant to WPS policy. It was investigated by the Homicide Unit, headed up by Sgt. James Jewell. Sgt. Jewell is now the Dean of Students and an instructor at the NorthWest Police Training Academy. He determined that Cst. Lintick did not unnecessarily place himself in jeopardy and that he was justified in the use of lethal force. His determination was based on all the witness accounts and physical evidence gathered. He asked and answered three key questions: 1). Did Cst. Lintick create self-imposed jeopardy? 2). Was he justified in using lethal force and 3). Were Cst. Lintick's actions consistent with WPS Firearms Discharge Policy.

[81] Cst. Jewell found that Cst. Lintick did not create self-imposed jeopardy. The events occurred very rapidly, 28 seconds from their arrival at 143 Langside to “Shots Fired.” He testified that Cst. Lintick had a duty to protect life and property, and as such he was appropriately discharging his duty when he entered the rear lane at 143 Langside. Once in the lane, he was faced with an immediate, lethal threat. He had no options other than to respond to the threat with deadly force in order to protect himself from suffering death or grievous bodily harm because his escape options were extremely limited: the high mattress and fence to his right (the west); the garbage dumpster behind him (the north), and running south or east would place him directly in the advancing vehicle’s path. The physical evidence showed that the vehicle drove directly at him, that both officers were shouting loud, verbal commands to stop the vehicle, and Mr. Muir ignored those commands.

[82] He testified that Cst. Lintick was justified in using lethal force, according to standard threat assessment protocol. Mr. Muir was in possession of a weapon (a stolen vehicle), a delivery system (operating the vehicle) and had the intent (he demonstrated his initial intent to drive at Cst. Macki and then his intent to drive at Cst. Lintick). He presented a lethal threat to the officer.

[83] Finally, Sgt. Jewell found that Cst. Lintick acted in accordance with the WPS Firearms Discharge Policy. He found that the relevant sections of the policy to be A, B and F as follows:

1. Guidelines

A. The Winnipeg Police Service recognizes and respects the value of each human life. One of the primary objectives of the Service is the safety of lives. The use of deadly force may be necessary to defend life against an imminent threat of death or grievous bodily harm. Careful balancing of all human interests is required when using force to protect the public welfare.

B. Firearms will not be used for the following.

- 1) To stop a fleeing vehicle
- 2) Immobilize a fleeing vehicle
- 3) For warning shots

F. Members may draw their firearms and hold them at the ready position under the following conditions.

- 1) Approaching a location where there may be armed persons
- 2) The member's life is endangered
- 3) The life of another person is endangered
- 4) The member is in danger of grievous bodily harm
- 5) Another person is in danger of grievous bodily harm
- 6) In other dangerous situations where firearms may be required

[84] Sgt. Jewell determined that Cst. Lintick did not fire his gun to immobilize the vehicle or stop Mr. Muir. He fired to save his life.

[85] A report by WPS Staff Sergeant Rhyse Hanson was filed in evidence by consent. Staff Sgt. Hanson reviewed the incident and was satisfied that there was no requirement to adjust WPS Use of Force Policy or training.

[86] The WPS homicide investigation was subject to an independent review by Cpl. Sean Farrell of the RCMP. Cpl. Farrell was also asked to examine and review the applicable WPS policies and training in light of the shooting. He determined that the investigation by Sgt. Jewell was well documented, thoroughly investigated, and professional. He could make no recommendations with the respect to the Use of Force Doctrine and the Justified Force Doctrine as well as the Firearms Discharge policy of the WPS which he found to be thorough and detailed.

IV. THREAT ASSESSMENT AND USE OF LETHAL FORCE

[87] Sgt. Colin Anderson was qualified as an expert to testify about police use of force, defensive tactics and officer safety training. He was asked to provide an opinion about whether the involved officers acted in accordance with their training and policies and whether those training and policies were adequate. He has been previously qualified as an expert to testify in police use of force and training. He works in the WPS training division as an instructor and teaches use of force in other jurisdictions. He sat in on the testimony of the involved police officers and Sgt. Jewell at the Inquest. He testified that he reviewed the training standards that were in place for WPS officers in 2010. He also reviewed Cst. Macki and Cst. Lintick's

use of force training records and confirmed that the training for both officers was up to date at the time of this incident.

[88] At the time of the incident, WPS officers received use of force training in the academy, including officer safety and the use of force policy. They were trained in the *Criminal Code* and internal protocol with respect to use of force. Training included simulated real-life training scenarios in addition to classroom training. In 2010, the concept of self-imposed jeopardy was part of the overall use of force training. Police were and are still taught that every situation starts with a threat assessment: weapon, intent and delivery system. Cst. Anderson explained that the threat assessment is part of everything that police officers do.

[89] The threat assessment framework is used to determine the existence of a physical threat. For a threat to be complete, officers must believe on reasonable grounds that the following three criteria exist:

1. *Weapon*: a person must have a weapon. The weapon may be a knife, firearm or even a part of a person's body (ie feet, hands, teeth, etc). It is important to consider that a weapon is what the officer reasonably perceived at the time force was used.
2. *Intent*: a person's behaviour must indicated their intention to use a weapon against the police or another person. This is based on a reasonable belief made by the officer regarding the subject's body language, verbal statements and any other relevant information.
3. *Delivery System*: This is how a weapon relates to its capabilities in relation to existing circumstances (such as distance or mechanism). This is the threshold where, if the officer does not take action, they will not reasonably be able to prevent force from being applied to themselves or others (this may at times include preemptive actions).

[90] Self-imposed jeopardy occurs anytime a police officer creates a missing element of a complete threat assessment without a good tactical reason.

[91] The threat assessment framework and self-imposed jeopardy concept are taught during recruit training as well as the Use of Force Re-certification as part of the policy lectures. As with all use of force topics, threat assessment and self-imposed jeopardy are then incorporated into all aspects of use of force training.

Police must recertify in use of force training every two years and in use of their service pistol annually.

[92] Cst. Anderson provided detailed evidence analyzing the emerging threat to Csts. Macki and Lintick that day and their assessment of that threat as shown by their actions. He reviewed the several facts and influences emerging and informing Cst. Lintick's threat assessment as he moved between the buildings towards the alley and then as he entered the alley:

- There was a break and enter in progress
- The suspect had a crowbar
- He was driving a stolen vehicle
- The address was in an area frequented by B-Side Gang activity
- That B-Side Gang was known for its stolen vehicle activity
- Officer safety bulletins advising of gang promotion of driving at police officers to harm them, for bounties and/or higher status in the gangs
- The dispatch he had the day before where a suspect had intentionally hit a police officer with a stolen vehicle and injured him
- He had heard Cst. Macki's alpha commands to stop
- He heard a loud thud like a door on a house or a car door slamming
- The commands and thud were possibly indicating passive resistance by the suspect, that is, not complying with a police officer's verbal direction
- As he came around the corner of the dumpster he could see the vehicle, which was the stolen vehicle involved in the break and enter
- The vehicle lunged forward in the direction he thought his partner was
- He believed that the suspect from the break and enter was in the vehicle
- He thought the driver might be trying to injure Cst. Macki or escape by driving alongside the house
- The very rapid backwards acceleration of the vehicle such that it hit the apartment building behind it on the other side of the alley; not something a reasonably prudent person would do at that point

- That the wheels of the car turned to point at him
- He had his gun pointed at where the driver would be
- For about three seconds there was a pause (in Cst. Lintick's mind, noting the phenomenon of witnesses describing that in very stressful circumstances time seems to slow down or "stand still") and then he heard the engine rev
- The vehicle lurched as it was put in drive and then it accelerated rapidly at him (aggravated active aggression in his police use of force training)
- Despite his loud commands to not put the car in drive, "Do not put that car in gear; do not move forward!" (initially more passive resistance and psychological intimidation, but transitioning into the above)
- He was facing grievous bodily harm or death because of the orientation of the wheels towards him and the rapid acceleration and speed
- He had no avenue of escape

[93] Cst. Anderson testified that in his opinion, these factors would have contributed to Cst. Lintick's assessment of the threat, specifically contributing to his assessment that the vehicle was a weapon and the intent was to cause him serious bodily harm or death, and the delivery system was complete, given that the car was being driven and was moving.

[94] Cst. Anderson testified that Cst. Lintick's actions and testimony, along with all the evidence heard, demonstrated that he correctly assessed a complete threat when the vehicle drove towards him in the alley:

1. The weapon was the stolen vehicle
2. The delivery system was the vehicle being put in motion and Cst. Lintick's proximity to the vehicle
3. The intent was to harm or kill him, as he observed the wheels of the vehicle turn to aim at him and put the vehicle in drive, despite numerous commands for him to stop and not put the vehicle in drive

[95] Moreover, Cst. Anderson testified that Cst. Lintick did not inappropriately place himself at that point in the alley, creating a situation of self-imposed jeopardy. He testified that Cst. Lintick did not move around the end of the garbage dumpster

into the alley because of inexperience; Cst. Anderson testified that he would have done the same thing.

[96] Cst. Anderson testified that Cst. Lintick made a tactical decision to come to the aid of his partner, which he was duty-bound to do. He observed that Cst. Lintick reassessed the situation when he saw the vehicle rapidly back up and he immediately saw a potential threat and moved to the best location that he had, to avoid being a target of the car. He concurred with Cst. Lintick who thought being as far over to the west by the fence gave the entire lane for the car to move up the alley past him. Cst. Anderson testified that these assessments being made by Cst. Lintick were accurate and consistent with standard police training in threat assessment.

[97] Cst. Anderson testified that all use of force incidents are driven by the person that the police officer is dealing with. If Mr. Muir had stopped when Cst. Macki was issuing commands, this would have ended the incident. There would not likely have been use of force beyond handcuffing him during an arrest. If, when the car hit the wall of the apartment building, Mr. Muir had put the car in park instead of putting it in drive, again that would have changed the actions the police had to take to arrest Mr. Muir.

[98] At the end of the analysis, Cst. Anderson felt that the actions of Cst. Lintick throughout the emerging scenario were consistent with police training in threat assessment and use of force and his actions, including the discharge of his service pistol, were reasonable, and appropriate and justified.

[99] He found that Cst. Lintick acted in accordance with the training he had received. Cst. Anderson did not identify any deficiencies in the training received by WPS officers in 2010. That being said, he testified that training has advanced since then, to include even more reality-based instruments including the purchase of a simulator in 2016 which allows officers to participate in close to 1,000 scenarios with simulated weapons and real actors. In addition, today there is more collaboration between academic and on the ground trainers. Cst. Anderson did not identify any recommendations for any changes to current training and use of force policies.

[100] Cst. Anderson concluded that the tactical decisions made by the officers were sound. Cst. Lintick's evidence and all the evidence demonstrated that he was appropriately reassessing his risk as the scenario unfolded and he attempted to de-

escalate the situation by verbal commands, pointing his firearm, and moving aside so the car could pass by him, before discharging his firearm. His conclusion with respect to the lethal force used by Cst. Lintick was that it was reasonable and necessary in the situation.

V. CONCLUSIONS

[101] My conclusion is that Cst. Lintick was properly executing his duties as a police officer when he arrived on Langside Street that morning to investigate a break and enter in progress. I find that he continued to properly execute his duties as he moved down along the side of the house towards the back lane, picking up speed and having his service pistol at the ready. I find that he was in proper execution of his duties when he ran around the side of the garbage bin in the alley, in response to a possible threat to his partner. And finally, I believe he was in execution of his duties when, faced with the vehicle which had rapidly backed up, stopped.

[102] Self-imposed jeopardy was not a factor in this shooting. I am satisfied that Cst. Lintick was constantly alert and reassessing the threat and his jeopardy. I am satisfied that his action in raising his service pistol, shouting out commands for the driver to stop the car, getting as far out of the way of the car as possible to allow the car to pass him and escape and finally, using lethal force to stop the car from killing or injuring him, were appropriate, consistent with his training and the use of force protocols, and justified.

[103] In the final analysis, Cst. Lintick's discharge of his firearm was justified and appropriate, and entirely in line with police policy and training. I also find that there were no deficiencies in the training and policies which contributed to this death.

[104] There is nothing that the Cst. Lintick or Cst. Macki could have done to change the outcome of this matter.

[105] Given my findings and conclusion, there are no recommendations I can make to prevent a similar death from occurring in the future.

“Original signed by:”

Cynthia Devine, Provincial Judge

WITNESS LIST

1. Cst. Colin Anderson, WPS Use of Force Expert
2. Sgt. Jimmy Anis, WPS
3. Sgt. Hank Bergen, WPS
4. Cst. A. Bettens, WPS, created Total Station forensic scene survey and drawings
5. Cst. Donald Bullee, Identification Officer, WPS
6. Cpl. Sean Farrell, RCMP, conducted independent review of WPS homicide investigation
7. Sgt. James Jewell (retired), WPS Homicide Unit, conducted homicide investigation of shooting death
8. Cst. Adam Kosarych, WPS
9. Cst. Tyler Lintick, WPS
10. Cst. David Macki, WPS
11. Cst. Karen McCowan, WPS Collision Reconstructionist
12. Kara Tomy, RCMP Forensic Firearms and Toolmark Identification Section
13. Cst. Sylvia Schroeder, Exhibits Officer, WPS

EXHIBIT LIST**Exhibit No. Description**

1. WPS - Forensic Identification Report - of the scene - Cst. D. Bullee
2. Photo Book of the scene (95 photos)
3. WPS - Forensic Identification Report - Cst. S. Schroeder
4. (a) Diagram of scene survey - Rear of 143 Langside Street - Cst. A. Bettens
4. (b) Diagram of scene survey - Rear of 143 Langside Street - Indicates exhibit location - Cst. A. Bettens
4. (c) Diagram of scene survey - Rear of 143 Langside Street - Closer image also indicates exhibit location - Cst. A. Bettens
5. DVD Interview - Dax Davies together with transcript
6. DVD - 3 statements of Daryn Bond (a), Ryan Owen (b) and Bich Truong (c) together with transcripts
7. Letter from Chief Medical Examiner, dated January 21, 2015
8. Preliminary Report of Death, Dr. Hamilton, completed May 9, 2010
9. Medical Certificate of Death
10. Preliminary Autopsy Report, Dr. C. Littman, dated May 11, 2010
11. Final Autopsy Report, Dr. C. Littman, dated July 13, 2010
12. Report of Medical Examiner, Dr. J. Younes, dated July 29, 2010

13. HSC Adult Emergency Records, May 9, 2010
14. 4 page report by Winnipeg Fire Paramedic Service, May 9, 2010
15. Forensic Science and Identification Services Laboratory Report - Toxicology results, Angela Chung
16. DPIN Dispensing history
17. Forensic Science and Identification Services Laboratory Report, Kimberly Snider
18. WPS - Forensic Identification Report on gunshot residue, Sgt. J. Anis
19. Collision Reconstruction Report - Cst. K. McCowan
20. Curriculum Vitae - Kara Tomyne
21. Forensic Science and Identification Services Laboratory Report from Kara Hind (now Tomyne)
22. Occurrence Report regarding the stolen Cadillac
23. Police involving Shooting Report prepared by Sgt. James Jewell
24. Report prepared by Sgt. Rhyse Hanson, October 15, 2010
25. Report prepared by Cpl. Sean Farrell, September 5, 2010