

RELEASE DATE: October 28, 2022



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 David Norbert

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**Report on Inquest and Recommendations of  
Judge Murray Thompson  
Issued this 25<sup>th</sup> day of October, 2022**

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APPEARANCES:

Colin Soul, Inquest Counsel

Kimberly Carswell, Counsel for the Winnipeg Police Service



Manitoba

*THE FATALITY INQUIRIES ACT*  
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: DAVID NORBERT

Having held an Inquest respecting the said death on April 11 and 12, 2022, with final oral submissions heard on May 2, 2022, at the City of Winnipeg in Manitoba, I report as follows:

The name of the deceased is: David Norbert. At the time of his death he was 56 years old, living in Winnipeg, with no fixed address.

The evening of April 16, 2019 Mr. Norbert was arrested by Winnipeg Police Service officers on allegations he assaulted, injured and threatened his ex-roommate earlier that day. He was detained in a holding room at District 3 Police Station pending his release or transport to the Winnipeg Remand Centre. Shortly after he was informed he would be remanded into custody, he was discovered hanging by his shirt from a ventilation grate in the ceiling. Despite EMS attending, attempts at resuscitation were unsuccessful.

Mr. Norbert was pronounced deceased at 11:04 p.m. on the 16th day of April 2019, at Seven Oaks General Hospital in the City of Winnipeg. The autopsy confirmed the cause of death was due to hanging. The manner of death was suicide.

Based on a review of the circumstances I make no recommendations in the attached report.

Dated at the City of Winnipeg, in Manitoba, this 25<sup>th</sup> day of October, 2022.

*“Original signed by:”*

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Judge Murray Thompson  
Provincial Court of Manitoba

**Copies to:**

1. Dr. John Younes, Chief Medical Examiner (2 copies)
2. Chief Judge Margaret Wiebe, Provincial Court of Manitoba
3. Honourable Kelvin Goertzen, Minister Responsible for *The Fatality Inquiries Act*.
4. Mr. David Wright, Deputy Minister of Justice & Deputy Attorney General
5. Michael Conner, Assistant Deputy Attorney General
6. Colin Soul, Counsel to the Inquest
7. Kimberly Carswell, Counsel for the Winnipeg Police Service
8. Exhibit Coordinator, Provincial Court
9. Aimee Fortier, Executive Assistant and Media Relations, Provincial Court



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*THE FATALITY INQUIRIES ACT*  
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RESPECTING THE DEATH OF: DAVID NORBERT

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WITNESS LIST

EXHIBIT LIST

## I. INTRODUCTION

### The Circumstances of David Norbert's Death

[1] The deceased, aged 56 years, was involved in a verbal and physical altercation earlier in the day with his ex-roommate who alleged Mr. Norbert struck him on the head with a frying pan and then left. He returned later and again allegedly assaulted his former roommate, by kicking him and striking him in the face with a broken lightbulb. 911 was called and he fled the scene. The Winnipeg Police Service (WPS) was informed and officers went looking for him. He was located in the evening, crossing Main Street, arrested and transported to District 3 Police Station at 260 Hartford Avenue, Winnipeg.

[2] At the station, he was secured in a holding room and had his boots and jacket removed. Visual checks were performed until 10:10 p.m. At 10:21 p.m., he was found hanging from the ceiling, having used his shirt as a ligature. He was cut down and CPR was initiated. EMS attended and he was transported to Seven Oaks General Hospital, where he was pronounced dead.

### The Ordering of the Inquest

[3] By way of letter dated March 11, 2020, Chief Medical Examiner, Dr. John K. Younes directed an Inquest be held into the death of David Norbert under s. 19(5)(b) of *The Fatality Inquiries Act*.

Presumption of inquest

19(5) Subject to subsections (6) and (7), an inquest into a death must be held if ...

- (b) At the time of death, the deceased person was
  - (i) **In the custody of a peace officer**, (*emphasis added*)
  - (ii) A resident in a custodial facility,
  - (iii) An involuntary resident in a facility under *The Mental Health Act*, or

(iv) A resident in a developmental centre as defined in *The Vulnerable Persons Living with a Mental Disability Act*.

[4] The purpose of the Inquest is to establish the facts necessary to complete a report as required by s. 26.2(1) of *The Fatality Inquiries Act*:

26.2(1) An inquest is a non-adversarial proceeding held for the sole purpose of establishing the facts necessary to enable the presiding provincial judge to prepare a report into the death under section 33.

### **Inquest Report**

[5] The report prepared by the Inquest Judge must include the following as required by s. 33(1) of *The Fatality Inquiries Act*:

33(1) After completion of an inquest, the presiding provincial judge must provide the minister with a written report that sets out his or her findings respecting the following:

- (a) the identity of the deceased;
- (b) the date, time and place of death;
- (c) the cause of death;
- (d) the manner of death;
- (e) the circumstances in which the death occurred.

### **Recommendations in Inquest Report**

[6] The report the Inquest Judge completes may contain recommendations that are specific in scope according to s. 33(1.1) of *The Fatality Inquiries Act*:

33(1.1) The report under subsection (1) may contain recommendations on changes to provincial laws or the programs, policies and practices of the provincial government or of public agencies or institutions to prevent deaths in similar circumstances.

[7] In the report, the Inquest Judge is prohibited from expressing an opinion or making findings such that any person could be identified as a culpable party in the death, by s. 33(2)(b) of *The Fatality Inquiries Act*.

[8] The Inquest is a fact finding exercise conducted in the public interest that is non-adversarial in nature. As Justice Steel said in *Hudson Bay Mining & Smelting Co. Ltd. v. Cummings*, 2006 MBCA 98, at paragraph 47:

Thus, an inquest is designed to be an impartial, non-adversarial and procedurally fair, fact-finding inquiry committed to receiving as much relevant evidence about the facts and issues surrounding the death of a community member as is in the public interest, but without making findings of criminal or civil responsibility.

### **Standing Hearing**

[9] Mr. Soul was appointed counsel for the Inquest and at a standing hearing on June 25, 2021, the following parties were granted standing:

- Winnipeg Police Service represented by Kimberly Carswell;

[10] The Inquest hearing began on April 11, 2022, and continued until April 12, 2022. Oral submissions were made from all parties on May 2, 2022.

## **II. EVIDENCE**

[11] Eight witnesses appeared in person. In addition, as part of the record of evidence, a binder of information relevant to the death of Mr. Norbert was reviewed and marked as Exhibit 1.

[12] During the Inquest, counsel for the WPS provided the Court with relevant policies and practices and answered questions relevant to the police agency represented before the Court in order to assist the Court in fulfilling the statutory obligation required under *The Fatality Inquiries Act*. I appreciate the very able and professional contributions and helpful questions and suggestions of counsel in this Inquest.

### **Circumstances of David Norbert's death:**

#### **Summary of Witness Evidence**

[13] Around 4:30 p.m. on April 16, 2019, police received a call that David Norbert had assaulted his ex-roommate with a frying pan, was intoxicated and causing problems.

[14] A second call was received that David Norbert had left on foot with their black Labrador retriever, returned on foot and assaulted his ex-roommate again. Police were dispatched at 5:08 p.m.

[15] Constable Jonathon Mitchell had five years experience with the WPS and was working out of the North District Station at 260 Hartford Avenue. His partner was Constable Janelle Galanowski. Their shift began with a 4:30 p.m. briefing from their Sergeant at the station, before being dispatched.

[16] The officers arrived at the scene and were informed that David Norbert had assaulted his ex-roommate with a frying pan, then with a florescent lightbulb, kicked him with a steel-toed boot and threatened to kill him. The accused was no longer on scene, having left with their black Labrador retriever. An ambulance was called for David Norbert's ex-roommate as he had a one or two inch laceration to his face from being hit with a florescent lightbulb. A broken florescent lightbulb was on the ground in front of their suite. An ambulance attended, taking the injured man to the hospital. Police followed to obtain a statement from him while he waited at the triage area of Seven Oaks Hospital.

[17] His ex-roommate had told police that David Norbert was a former roommate who had been previously evicted for non-payment of rent. Mr. Norbert attended, while intoxicated, caused an argument and assaulted him using a frying pan, lightbulb and steel-toed boots. Police were advised that he hung around the area of three hotels on Main Street and his ex-roommate identified him from a police photo.

[18] Police found him at 7:16 p.m. walking a black Labrador retriever, walking on the median near the New West Hotel at 686 Main Street. The Constable called him by name. He turned to acknowledge and they confirmed his identification. He was arrested. He was cooperative with police; put his hands up on the wall for a search and was handcuffed. He had glossy eyes and an odour of alcohol emanating from



his breath. Police took the dog which was on a leash and another unit returned the dog to its home. The accused was not struggling, was cooperating and answering questions. He had no problems walking.

[19] The Constables arrived at District 3 station at 7:28 p.m. with David Norbert. He was viewed in by Sergeant Small and advised of his arrest charges, which included assault causing bodily harm, assault with a weapon and uttering threats.

[20] He was brought into Holding Room number 1 of 4. These holding rooms are for short-term stays, used to keep witnesses or accused persons temporarily. In this case until a determination was made to release Mr. Norbert or transfer him to the Winnipeg Remand Centre. The accused was still cooperative and his handcuffs were removed in Holding Room #1.

[21] WPS policy was to remove down to one layer of clothing, no belt, shoes or shoestrings were allowed. Any extra layers of clothing were removed. Mr. Norbert's reactions were a little delayed and slow, yet still cooperative. He was asked to sit at a table in the room while the officers completed a Prisoner Log Sheet. His clothes were collected and placed in a bag outside the door.

[22] The purpose of the Prisoner Log Sheet is to log all property and to conduct a risk assessment. Questions include: Were any medications required, whether the person is suicidal and whether they have consumed alcohol or drugs. Constable Galanowski conducted the risk assessment by asking questions on the Prisoner Log Sheet.

[23] David Norbert confirmed that he consumed 11 beer since 2:00 p.m. When asked if he was suicidal or had ideation of suicide, he smirked or laughed and said, "Sometimes yes and sometimes no". Then he said, "No, of course I'm not". Constable Galanowski told him that this was not a laughing matter; that these

questions were being asked for a reason. Constable Galanowski circled “Unknown” as the response to whether Mr. Norbert was suicidal, because he was going back and forth. The form was completed. Sergeant Small came in and spoke to Mr. Norbert and asked him if he had any questions. Sergeant Small asked if the accused had been drinking. Mr. Norbert gave him the same answer. The Sergeant noted very minor injuries on the accused’s left hand and cheek and instructed the officers to complete a Prisoner Injury Report. Constable Mitchell completed the Prisoner Injury Report.

[24] Mr. Norbert was assessed as a medium risk and protocol required face to face visual checks in 15 minute intervals while he was detained in the holding room. The Prisoner Log Sheet documented checks were conducted at 8:00 p.m., 8:15 p.m., 8:30 p.m., 8:45 p.m. and at 10:00 p.m.

[25] The first four checks were done by Constable Mitchell, who entered into the room. At 8:00 p.m. and 8:15 p.m. Mr. Norbert was “normal” and seated according to the Prisoner Log Sheet check times and condition report. At 8:30 p.m. and 8:45 p.m. he noted Mr. Norbert to be sleeping.

[26] Constable Mitchell indicated he did perform the required checks at 9:00 p.m., 9:30 p.m. and 9:45 p.m. but did not note it anywhere.

[27] Sergeant Small advised the constables Mr. Norbert could be released if they could find a sober adult willing to take him. Constable Mitchell testified he made phone calls on behalf of Mr. Norbert to see if there was an adult with a fixed address who was prepared to take him. He was provided the names and phone numbers of a relative and of a friend. Constable Mitchell called and spoke to each of them but neither was able to take him in to stay with them. He was provided a third name of a co-worker but no phone number. He was unable to find a phone number via a computer search. He advised Mr. Norbert of the results of each call and the search for the phone number.

[28] At 10:00 p.m., Constable Galanowski checked the accused by opening the door. She noted in the Prisoner Log Sheet that he was sleeping and she testified she saw him breathing. A decision was made to seize his steel-toed boots because they had been used to kick the victim and were viewed as evidence in the charge of assault with a weapon. The boots were outside the cell already and were placed into an evidence bag.

[29] Constable Mitchell went into the holding cell at 10:10 p.m. which he logged in his notes and statement. At that time he advised Mr. Norbert a decision had been made to transport him to the Winnipeg Remand Centre. He advised Mr. Norbert he could not be released because he had been drinking and he could not provide police with a fixed address. Constable Mitchell explained this to Mr. Norbert and asked him if he needed to use the washroom or needed water. Mr. Norbert told him no. Constable Mitchell left the room and locked the door.

[30] No change was noted in his demeanor, he was still noted to be cooperative. When told that he was going to the Remand Centre he said, "Okay" and he did not need water or the washroom.

[31] Approximately five to ten minutes later, while waiting for his partner to join him in the hallway, a co-worker, Constable Sukhan, looked inside the holding room through the viewing flap and commented, "Your guy looks weird. He's just standing there." Hearing that comment, Constable Mitchell looked inside the door flap and saw the accused apparently standing in the middle of the room with no shirt on. He unlocked the deadbolt, went into the room and found Mr. Norbert hanging by his shirt from a ceiling grate.

[32] He rushed into the room and supported Mr. Norbert's weight while Constable Sukhan cut him down. A sleeve from his shirt was wrapped around his neck. He was placed on the ground and they began CPR. Constable Galanowski yelled quite loudly

to call an ambulance. Three officers traded off doing CPR. A supervisor brought in an AED defibrillator. They utilized it and the AED advised “no shock continue CPR”. This happens if it does not detect a pulse and determines there is no value to a shock. Mr. Norbert was not breathing. They continued to administer CPR.

[33] Constable Mitchell testified that he was trained in CPR as a requirement of his employment and has to be re-certified every three years. He did not let his certification lapse.

[34] Winnipeg Fire and Paramedic Service arrived with a crew of four and took over CPR and control of the situation. Emergency Services were dispatched to the station at 10:23 p.m. and arrived on scene at 10:26 p.m. and were at the patient’s side, as best we know, at 10:30 p.m.

[35] Mr. Norbert unfortunately did not recover and died as a result of hanging.

[36] He was pronounced dead at Seven Oaks General Hospital E.R.

[37] The Court heard evidence that the District 3 Police Station at 260 Hartford Avenue, where the hanging occurred, is the oldest Winnipeg Police Service building and is in the process of being replaced with a new building. The Court was advised that the new building will have facilities like other more modern Winnipeg Police Service buildings, where all of the cells are monitored by video.

[38] The ventilation grate in the holding room was large enough to run a cloth shirt through, to use as a ligature point. Since this death, all four holding rooms have had the old grates removed and replaced with new ones. The new ventilation grates are a honeycomb style with very small holes. They are shown in photographs #2 and #3 in evidence binder Exhibit 1, at Tab 6.

## **Medical Evidence**

[39] The autopsy report and Medical Examiner's report were filed by consent at Tab 1 and 2 of Exhibit 1. The autopsy report confirmed death by hanging.

[40] The toxicology report at Tab 3 reported 200 mg% of Ethanol in the deceased's urine, 169 mg% in the vitreous humour and detected several other drugs in his system including Diphenhydramine, Diazepam (Valium), Nordiazepam, Temazepam and Oxazepam, which are used for treatment of insomnia and/or anxiety. The forensic specialist in toxicology opined that the combined use of multiple drugs that depress the function of the central nervous system, would result in greater impairment of mental and/or physical processes than would be expected following their individual use.

## **Conclusion**

[41] Three officers dealt with Mr. Norbert upon his attendance to District 3 station: Constable Mitchell, Constable Galanowski and Sergeant Small. All were of the view that he was not a high risk for suicide based on his responses to them and all indicated that if they had held the belief that he was suicidal, they would have maintained a continual observation. We know from the toxicology report that Mr. Norbert was intoxicated with alcohol. He had admitted to the police officers involved that he had consumed 11 beer in the afternoon before his arrest. The toxicology report also revealed he was under the influence of a combination of drugs that would have impaired his mental process.

[42] When he was located hanging, he was immediately cut down and first aid was administered. An AED was attempted to be used but it advised no shock was to be administered as there was no pulse. EMS workers attended promptly and despite their best efforts were unable to revive Mr. Norbert.

[43] The Court heard evidence that the building that this matter took place in is the oldest Winnipeg Police Service building and is in the process of being replaced with a new building.

[44] Court was advised the new building will have video monitoring of holding rooms and cells, similar to other more modern WPS buildings.

[45] In the interim, changes to the ventilation grates have been made. They have been replaced with new grates with very small holes which do not provide a ligature point.

[46] Given that the grates in question have been replaced, and the building is in the process of being replaced, I respectfully make no recommendations.

I respectfully conclude and submit this Report on this 25<sup>th</sup> day of October, 2022, at the City of Winnipeg, in the Province of Manitoba.

*“Original signed by:”*

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Judge Murray Thompson  
Provincial Court of Manitoba



Manitoba

*THE FATALITY INQUIRIES ACT*  
REPORTED BY PROVINCIAL JUDGE ON INQUEST

RESPECTING THE DEATH OF: DAVID NORBERT

WITNESS LIST

1. Constable Jonathon Mitchell
2. Constable Janelle Galanowski
3. Sergeant Leonard Small
4. Constable Anil Sukhan
5. Constable Arek Balcerzak
6. Patrol Sergeant Peter Breuer
7. Raephaul Pilote
8. Bradley White



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*THE FATALITY INQUIRIES ACT*  
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RESPECTING THE DEATH OF: DAVID NORBERT

EXHIBIT LIST

Exhibit No. 1

- Tab 1: Autopsy Report by Dr. C. Littman, dated November 12, 2019
- Tab 2: Report of Medical Examiner by Dr. J. Younes, dated November 29, 2019
- Tab 3: Toxicology Services Report by Gillian Sayer, dated December 11, 2019
- Tab 4: Winnipeg Police Service Prisoner Injury Report
- Tab 5: Winnipeg Police Service Prisoner Log Sheet
- Tab 6: Ident Photos