

## **PART 3—FRANK PAUL’S FINAL DAYS**

### **C. The Events of December 5, 1998**

December 5, 1998, was the last day in Frank Paul’s life—he was found dead early the following morning. In this section, I will describe what happened on Mr. Paul’s last day, including his arrest in the morning, his detention in the Jail, his release from the Jail and walking out, his subsequent arrest and his arrival at the Jail where he was refused entry.

#### **1. Frank Paul’s first arrest at 11:00 a.m.**

James Douglas, a paramedic with the BC Ambulance Service, testified that he and a second attendant responded to a “man down” call at 420 Abbott Street in the Downtown Eastside at about 9:45 a.m. on December 5, 1998. When they arrived, they found Mr. Paul<sup>1</sup> sitting against a building. He waved them away, stating: “I’m okay.” After assessing him and finding nothing of medical significance, Mr. Douglas offered to drive Mr. Paul to the Detox Centre. Mr. Paul refused, and then got up and walked away, using the wall of the building to do so.<sup>2</sup>

Just before 11:00 a.m., VPD Csts. Timothy Houchen and John Butler went to 404 Abbott Street in response to a 911 call. They found Mr. Paul sitting in an alcove. He was on the ground and wasn’t able to stand up.<sup>3</sup> They received information that Mr. Paul had been panhandling and harassing residents of the building. Both officers had no difficulty in determining that Mr. Paul was drunk, from his slurred speech and glassy eyes, and from the fact that he reeked of alcohol. In his testimony, Cst. Houchen described him as belligerent.

Cst. Houchen recalled that Cst. Butler checked Mr. Paul’s name on the Canadian Police Information Centre (CPIC) database, which described him as a “caution violent.” Cst. Butler knew Mr. Paul from past dealings, and knew that on occasion

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<sup>1</sup> Early in our hearings there was some question as to the ambulance attendants’ knowledge of Mr. Paul’s name; see, for instance, Transcript, Nov. 16, 2007, p. 114. It soon became apparent that the man dealt with by the ambulance was the same man who remained in the area and was arrested by police officers about one hour and 15 minutes later.

<sup>2</sup> Transcript, Nov. 16, 2007, pp. 85–86.

<sup>3</sup> Evidence of T. Houchen, Transcript, Nov. 19, 2007, pp. 8–11; evidence of J. Butler, Transcript, Nov. 21, 2007, pp. 140–44, 151–52.

he would try to punch or kick officers.<sup>4</sup> A police wagon was summoned. The officers stood Mr. Paul up, searched him, and helped him get to the wagon. According to Cst. Houchen, the decision was made to detain him for being intoxicated in public and to take him to the Jail rather than the Detox Centre because of his belligerent nature and his criminal past.<sup>5</sup>

Surveillance cameras were in place at the Jail in 1998. Images from these cameras were played during the evidentiary hearings and entered as exhibits. We are fortunate to have them, as they serve as an impartial and inarguable witness to events that occurred in the Jail. The cameras document events in the wagon-bay area, and also on the fifth floor of the Jail—the booking area.<sup>6</sup> I will sometimes refer specifically to what has been referred to in the video, although in other places I may rely on those images to describe things without stating so explicitly.<sup>7</sup>

I was also well served by Commission Counsel's discovery of audio recordings taken from microphones within the video cameras, and also from a microphone located at the Jail booking desk where admissions were processed. Although only partially comprehensible and difficult to make out, these recordings were a valuable check against the evidence of the witnesses and supplemented the objective evidence of the videotape images.

When Mr. Paul arrived at the fifth floor of the Jail, Corrections officers Janet Ross and Tony O'Buck dealt with him. He was not aggressive or belligerent with them.<sup>8</sup> His outer clothing was wet. They removed his wet clothing and shoes. Then they dragged him on his back, with each officer holding one arm, into a cell set aside for intoxicated people.<sup>9</sup>

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<sup>4</sup> Transcript, Nov. 21, 2007, pp. 144, 148–49.

<sup>5</sup> Transcript, Nov. 19, 2007, pp. 12–17.

<sup>6</sup> Exhibit 150; Transcript, Feb. 26, 2008, pp. 4–10.

<sup>7</sup> Technically it is not a “videotape” as it does not show motion the way a movie would, with many frames per second giving a “real-life” fluidity of movement. Instead, these “videotapes” show a series of photographs, each taken every few seconds, so that the movement is jumpy, and some subtleties of physical movement are lost. On this point, see the evidence of Cst. Brett Hallgren of the VPD's Forensic Video Analysis Unit: Transcript, Feb. 26, 2008, especially pp. 4–12.

<sup>8</sup> Transcript, Nov. 20, 2007, p. 23.

<sup>9</sup> Evidence of J. Ross, Transcript, Nov. 19, 2007, pp. 161–75; and Transcript, Nov. 20, 2007, p. 13.

Because Mr. Paul was not coherent on arriving at the Jail, the officers did not formally book him in. Janet Ross checked on him about four hours later. She found that he still could not stand readily, even though he was awake and responsive, so she chose to leave him there a while longer. At about 5:00 p.m., when he was able to stand, walk and answer questions lucidly, he was formally booked in.<sup>10</sup> Mr. Paul was detained for roughly six hours and, during that time, assuming that normal protocols were followed, the Jail staff would have checked on him every 15 minutes and a nurse would have checked on him hourly.<sup>11</sup>

**2. Frank Paul's release at about 5:00 p.m.**

Sgt. Richard Mulder made the decision to release Mr. Paul. He knew Mr. Paul from previous occasions when he had been arrested for intoxication in a public place. He testified that it was easy to tell whether Mr. Paul was intoxicated, from his inability to walk and his incoherence. At around 5:00 p.m., Sgt. Mulder roused Mr. Paul and had a conversation with him, which led him to conclude that Mr. Paul was “able to fend for himself” and so could be released.<sup>12</sup>

During his testimony, Sgt. Mulder was asked what he would look for in determining whether a person arrested for intoxication was capable of looking after himself and therefore appropriate to release:

Q What's involved in that assessment, who does it?

A The nurse and/or the jail sergeant.

Q And what do they do?

A They basically see if the individual is coherent, able to look after himself fundamentally, and it's kind of a requirement for release.

Q Okay. Who makes the decision as to release?

A That would be the jail sergeant's call....

Q What do you mean by coherent?

A Able to understand the requests being made of them. Able to have some motor skills....

Q In terms of their motor skills, again what sort of things are you looking for there in terms of a person's motor skills?

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<sup>10</sup> Transcript, Nov. 19, 2007, p. 179; and Exhibit 9.

<sup>11</sup> Evidence of J. Ross, Transcript, Nov. 19, 2007, pp. 174–76.

<sup>12</sup> Transcript, Nov. 20, 2007, pp. 93–95.

- A Ability to move on your own. You know, that's basically the biggest, I guess.
- Q Okay. And why are you paying attention to their ability to move on their own?
- A Well, a lot of time the reason for them being there is their inability to function and to walk or to, you know, convey their body from one point to another. So for them to be able to like, you know, function on their own once they're free of the jail is critical.<sup>13</sup>

### **3. Frank Paul's departure from the Jail sometime after 6:30 p.m.**

After Mr. Paul was released from the Jail, he took the elevator down to the ground floor. A Jail surveillance camera captured him as he walked out of the elevator into the loading bay area. He initially stood, as he put on his outer clothing (which the Corrections officers had returned to him). He then sat down to put on his shoes, a difficult task for him.

Linnett McKenna (Linnett Johnson in 1998), a relief police custodial guard in the Jail, saw Mr. Paul sitting in the wagon bay, and she asked him how he was. He asked her for a cup of coffee. She went upstairs, got changed for the start of her shift and, at about 5:30 p.m., brought him a coffee from the kitchen.<sup>14</sup>

When Sgt. Mulder left the Jail, which he believed was at about 6:30 p.m. at the end of his shift, he saw Mr. Paul leaning against the wall in the loading bay (at street level by the back alley), eating chips and drinking a coffee.<sup>15</sup>

Cst. Elizabeth Prince saw Mr. Paul, just before he got up and left the wagon bay. She recalled Mr. Paul asking for some change and she gave him a two-dollar coin. She saw him edge along the wall as he left the loading bay area.<sup>16</sup> In her written statement, prepared several weeks later, Cst. Prince described Mr. Paul as being "in bad shape" with "a gnarled hand and unable to fully function." His shoes "were pushed down at the heel like a pair of slippers and no socks."<sup>17</sup> The videotape also shows him using the wall to stand, and relying on the wall for

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<sup>13</sup> Transcript, Nov. 20, 2007, pp. 85–87.

<sup>14</sup> Transcript, Nov. 29, 2007, pp. 168–73.

<sup>15</sup> Transcript, Nov. 20, 2007, p. 107.

<sup>16</sup> Transcript, Nov. 19, 2007, pp. 190–91.

<sup>17</sup> Exhibit 11. The videotape and autopsy photographs confirm that he had two or more pairs of socks on his feet.

balance.<sup>18</sup> There is some discrepancy as to the precise time when Mr. Paul left the wagon bay area. This is understandable, as witnesses relied on their recollection of when they left or arrived at the building that day. While I cannot be precise, I have concluded that it was shortly after 6:30 p.m. that Mr. Paul departed, based on the timing of his release by Janet Ross and the length of time he is shown on the Jail video in the wagon bay area.

**4. Frank Paul's second arrest at 8:00 p.m.**

Csts. Robert Turner and Derek Peterson were working together the evening of December 5. At about 8:00 p.m., they observed a man on the sidewalk at the corner of East Hastings and Dunlevy Streets, in the Downtown Eastside, about two blocks east of the Jail. They identified the man as Oscar Angel. He was very heavily intoxicated.<sup>19</sup> Cst. Peterson dealt with Mr. Angel. He described him as unable to walk on his own and hard to understand because of his level of intoxication, although he was non-violent and responsive. They called for a police wagon, to take him to the Detox Centre.<sup>20</sup>

Meanwhile, Cst. Turner noticed Frank Paul:

... I noticed another male on Dunlevy Street at Hastings on the west side of 400 Dunlevy. He was lying on the vegetable stand outside a closed store with an awning over top.... That male appeared to be sleeping on the vegetable stand.<sup>21</sup>

Cst. Turner approached him, shook his shoulder and asked him for his name. He said the man was incoherent, his speech was slurred and unintelligible, but he did give his name as Frank Paul. When Cst. Turner asked, "Have you had too much to drink tonight? Where are you sleeping? How long have you been here?" he was unresponsive. Cst. Turner smelled rice wine on Mr. Paul's breath and described him as "clearly intoxicated."<sup>22</sup> He testified that he was "100 percent convinced he

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<sup>18</sup> This description is consistent with the evidence of parathesia, which is caused by Wernicke-Korsakoff Syndrome.

<sup>19</sup> Transcript, Nov. 26, 2007, pp. 145–46 (R. Turner).

<sup>20</sup> Transcript, Nov. 27, 2007, pp. 130–34.

<sup>21</sup> Transcript, Nov. 26, 2007, p. 146.

<sup>22</sup> To similar effect, Cst. Peterson testified that it was obvious Mr. Paul was intoxicated: "there was absolutely no doubt": Transcript, Nov. 27, 2007, p. 138.

was intoxicated.” Cst. Turner described the weather that evening as a mixture of rain and snow.<sup>23</sup>

A police wagon, driven by Cst. David Instant, arrived at the scene. Cst. Instant was a probationary constable who had been a member of the department for just five months. Cst. Turner told Cst. Instant that Mr. Paul was to go to the Jail and that Mr. Angel was to go to the Detox Centre.<sup>24</sup>

Cst. Turner testified that, given his previous dealings with Mr. Paul, he was aware that Mr. Paul could be belligerent and could present “a bit of a problem when he’s been drinking.” He believed that CPIC showed that Mr. Paul could be violent. However, he agreed that on this evening Mr. Paul was neither belligerent nor violent. Cst. Turner’s understanding was that if someone had been considered violent at one time, they should not go to the Detox Centre.<sup>25</sup>

Csts. Turner, Peterson and Instant all helped lift Mr. Paul into the rear compartment of the police wagon. According to Cst. Turner, Mr. Paul was “not able to walk that night”; he could not move on his own and had to be carried to the police wagon.<sup>26</sup>

Cst. Instant testified that Mr. Paul was a dead weight, and did not engage in any conversation. Once loaded into the wagon, Cst. Instant queried Mr. Paul’s name on CPIC, and saw that he had a criminal record and there was a caution that he could be violent. He drove directly to the Jail. On arrival, he collected his gear and donned rubber gloves before opening the rear compartment door. He said, “Frank, we’re here. Time to get out.” Mr. Paul did not move; he was lying on his back with his head towards the door. He made a bit of a mumble sound but did not do anything more. Cst. Instant grabbed him by his shoulders and pulled him out of the wagon. He dragged him to the elevator in the wagon bay.<sup>27</sup>

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<sup>23</sup> Transcript, Nov. 26, 2007, pp. 146–55 (quotation p. 155).

<sup>24</sup> Transcript, Jan. 9, 2008, pp. 173–74.

<sup>25</sup> Transcript, Nov. 26, 2007, pp. 159–65; see also evidence of Cst. Peterson, Transcript, Nov. 27, 2007, p. 135; and evidence of Cst. Instant, Transcript, Jan. 9, 2008, pp. 174–75.

<sup>26</sup> Transcript, Nov. 26, 2007, pp. 157–59; see also evidence of D. Peterson, Transcript, Nov. 27, 2007, p. 134.

<sup>27</sup> Transcript, Jan. 9, 2008, pp. 175, 178–81.

Cst. Instant noticed that Mr. Paul was wet in the crotch area and on his thighs, but he did not notice wetness on his upper clothing. He thought Mr. Paul might have become wet when he pulled him out of the wagon and onto the ground.<sup>28</sup>

Counsel for the United Native Nations Society introduced into evidence photographs of the asphalt surface behind the Jail, which showed that water did puddle outside the wagon bay doors and that, accordingly, it is probable that the wet trail seen on the videotape being left behind by Frank Paul occurred, in part, because he had just been dragged through standing water before entering the wagon bay.<sup>29</sup>

Cst. Instant testified that he believed Mr. Paul was drunk and unable to care for himself.<sup>30</sup>

## **5. Frank Paul’s arrival at the Jail**

In this section, I will discuss the evidence given by three important witnesses, Cst. Instant, Sgt. Sanderson, and Corrections Officer Greg Firlotte. Each of them gave written statements soon after the discovery of Frank Paul’s body, and they also testified during the evidentiary hearings. I will set out their written statements verbatim,<sup>31</sup> and then summarize their testimony.

### **a. Written statements**

#### **Cst. David Instant**

98-12-05 @ 20:19 hrs., PC 1855 INSTANT attended E. Hastings at Dunlevy to transport a male to VPD Jail for state of intoxication in a public place. Arrest for SIPP<sup>32</sup> conducted by PC 1703 PETERSON i/c PC 1694 TURNER. PC’s placed male, known to PC 1703 i/c<sup>33</sup> PC 1694 as Frank PAUL into police wagon.

98-12-05 @ 20:21 hrs., PC 1855 attended VPD Jail, 5<sup>th</sup> floor, elevator door opened and discussion with Jail N.C.O. SANDERSON occurred. N.C.O.

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<sup>28</sup> Transcript, Jan. 9, 2008, pp. 182–84, 188; Transcript, Jan. 11, 2008, p. 65.

<sup>29</sup> Exhibit 77.

<sup>30</sup> Transcript, Jan. 9, 2008, p. 185, and Transcript, Jan. 11, 2008, pp. 65–66.

<sup>31</sup> Their verbatim statements represent the first recording of information by each of these men. In Cst. Instant’s case, it was soon supplemented by a longer “duty report” prepared with counsel. They have additional relevance in that they illustrate the nature and extent of the information provided by way of the written reports, which in the case of these three men was not explored by way of an interview or otherwise.

<sup>32</sup> Hold/State of Intoxication in a Public Place.

<sup>33</sup> In the company of; together with.

advised that PAUL had just been released from Jail at 18:30 hrs. on 98-12-05. PAUL suffers from condition where he acts in a manner similar to that as being intoxicated. PAUL is a person of NFA<sup>34</sup> and resides on the street. PAUL indicated he has not had a drink for 3 days and was not intoxicated. Jail N.C.O. authorized a transport out of area on a breach. PC advised Ch 2 to change SIPP to a breach. PC 1855 transported PAUL to south lane of 300 blk. E. 1<sup>st</sup> where PAUL was released from custody (98-12-05 @ 20:51 hrs.).<sup>35</sup>

**Sgt. Russell Sanderson**

At approx. 17:30 hours on 98DEC05 the u/s<sup>36</sup> attended to the VPD Gaol to start shift. On arrival in the wagon bay the u/s found a recently released prisoner, PAUL, Frank Joseph sitting on the concrete across from the elevator. PAUL was sitting against the wall eating what appeared to be some sort of potato chips. PAUL is well known to the gaol staff as being a chronic alcoholic who has a great deal of difficulty even standing when sober. At approx. 18:15 hrs PCG 9502 Johnson gave a large cup of coffee to PAUL. Who was still sitting in the wagon bay. PAUL was conscious and said thanks for the coffee.

Approx. 20:00 to 21:00 hours PAUL was again brought into the gaol by wagon 2E62 driven by PC 1855 Instant. The u/s met the wagon driver in the elevator and stated that there was no way that PAUL was intoxicated but that he was debilitated to the extent that he was slow moving and passive when sober. PAUL was communicative and stated that he lived in the area of West Broadway and Maple Street. The u/s could not confirm this fact as PAUL was booked in as NFA. PAUL's condition did not appear any different to his usual state of post gaol stay sobriety. The u/s requested that the wagon driver take PAUL and drop him off in the area of West Broadway and Maple (his stated home). Corrections member 20401 Firlotte assisted the wagon driver in placing PAUL into the wagon.

PAUL was originally arrested on 98DEC05 @11:20 hours at 404 Abbott Street (see incident number: 98-285166). He was released from custody at 17:05 hours by Corrections member 01736 Ross.<sup>37</sup>

**Corrections Officer Greg Firlotte**

At approx. 17:30, I entered the loading bay at VPD, to take the elevator, to the 5<sup>th</sup> floor to begin my shift, at the jail. It was in the loading bay, I noticed Frank PAUL, sitting off to the side, drinking a coffee and eating

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<sup>34</sup> No Fixed Address.

<sup>35</sup> Exhibit 74.

<sup>36</sup> The undersigned, i.e., Sgt. Sanderson.

<sup>37</sup> Exhibit 59.

some chips. Frank PAUL, was known to myself, from my two months of relief duty, at city cells. Mr. PAUL, was coherent, as we talked about the rain, as I waited for the elevator. I assumed that Mr. PAUL, had probably just been released from upstairs, as he usually came in a couple times a week, as a H/SIPP. At approx. 20:30–21:30 hrs., later that evening I noticed one of the male PC wagon drivers, bring Mr. PAUL out of the elevator, Mr. PAUL had difficulty standing, and was laid on the floor, as the jail staff spoke with Mr. PAUL, it was noted that he was coherent and did not appear drunk. Mr. PAUL confirmed this. The decision was made to return Mr. PAUL, to his place of residence, via the wagon, as he had problems walking and because it was raining. I assisted the wagon driver in bringing Mr. PAUL to the wagon, helped place him in the wagon and returned to the fifth floor. Mr. PAUL appeared alert and coherent and not under the influence of alcohol. This observation is based solely on my experience in dealing with Mr. PAUL, in that two month secondment at VPD jail. It should be noted the Mr. PAUL, had problems being mobile and used a cane.<sup>38</sup>

b. Testimony during evidentiary hearings

**Cst. David Instant**

Cst. Instant testified that he dragged Mr. Paul into the elevator, positioning him so that he was lying on his back on the floor with his feet toward the door of the elevator. He said that Mr. Paul's position remained the same throughout his time in the elevator.<sup>39</sup> His clothing was not altered. He was not searched.<sup>40</sup>

Cst. Instant testified that when the elevator door opened at the Jail, he saw Sgt. Sanderson, the sergeant in charge of the Jail that night.

Sgt. Sanderson, standing a few feet back from the elevator door, said: "What do you have there?" Cst. Instant said he had Frank Paul for being intoxicated. Sgt. Sanderson entered the elevator and said: "There's no way that Frank's drunk. We just released him at 6:30."

Sgt. Sanderson stood by Mr. Paul. Cst. Instant testified that he told Sgt. Sanderson: "He was found laying on a vegetable rack at Dunlevy and Hastings," to which Sgt. Sanderson responded: "He's homeless. That's

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<sup>38</sup> Exhibit 44.

<sup>39</sup> This is consistent with the video, which shows Mr. Paul's position when Cst. Instant brought him into the Jail, and his position on being brought back down to the wagon bay. The position is the same.

<sup>40</sup> Transcript, Jan. 9, 2008, pp. 189–90.

where he sleeps.” Cst. Instant replied, “Well he can’t even walk.” Sgt. Sanderson advised that he could walk, but had a disability making him slow moving: “It takes him a while to get up and underway.” He added: “When we released him, it took him a half hour to get himself up and out of the bay.”<sup>41</sup>

Cst. Instant testified that Sgt. Sanderson asked Mr. Paul if he’d been drinking, and Mr. Paul made a sound, mumbling “no, no.” He recalled Mr. Paul saying something about not drinking for three days. Cst. Instant did not give much credence to this, because he appeared drunk. Sgt. Sanderson continued to stand over Mr. Paul, looking at him. He then advised Cst. Instant that Mr. Paul was not drunk, and in fact, had a condition that made him appear to be drunk, when instead he was just slow-moving and lethargic and passive.

The sergeant then asked Mr. Paul where he lived. Cst. Instant recalled Mr. Paul saying “Broadway” but could not understand what else he said. Sgt. Sanderson advised that this was Broadway and Maple, and then moved back to talk with booking staff to confirm the address. Cst. Instant understood that they could not confirm this, and that Mr. Paul had previously been booked as “NFA”—no fixed address.<sup>42</sup>

Cst. Instant then asked Sgt. Sanderson what he should do with Mr. Paul; should he breach him?<sup>43</sup> Sgt. Sanderson said yes, take him to Broadway and Maple. Cst. Instant felt he had the authority to “breach” someone on his own, but was asking for some direction as to where to go. His understanding was that Broadway and Maple was “the location or the best guess as to the area in which Mr. Paul may live on the street.”<sup>44</sup>

Cst. Instant did not have any further discussion, nor did he seek further direction:

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<sup>41</sup> Transcript, Jan. 9, 2008, pp. 191–94.

<sup>42</sup> Transcript, Jan. 9, 2008, pp. 194–96.

<sup>43</sup> A “breach of the peace” refers to the police policy of detaining and transporting a troublemaker from one area of the city to another, in order to prevent or remedy a breach of the peace. For a handy description, see the evidence of R. Turner, Transcript, Nov. 26, 2007, p. 166.

<sup>44</sup> Transcript, Jan. 9, 2008, pp. 196–98.

I was confused by it. It was something that I didn't see coming. I took him there for being—for being drunk and then I'm advised by an experienced sergeant of the jail that, in fact, what I'm seeing is not this man being drunk and, in fact, this is just a condition that he has where he appears drunk. So it was—it was a little confusing.<sup>45</sup>

Cst. Instant testified that, if he had felt medical attention was needed, he would have suggested it. However, Sgt. Sanderson appeared to know Mr. Paul very well, and he relied on the sergeant's observations and experience.<sup>46</sup>

Cst. Instant and Corrections Officer Greg Firlotte took Mr. Paul down in the elevator. At the wagon bay, they each took an arm and pulled him to the wagon. Mr. Paul remained motionless and silent, with his eyes open. He was placed in the side compartment of the wagon.<sup>47</sup> The videotape does not show the officers placing Frank Paul in the wagon but does show the wagon itself. This time recording shows that several minutes passed after Frank Paul was taken out of the wagon bay before the wagon drove away.

### **Sgt. Russell Sanderson**

Sgt. Sanderson was in charge of the Jail that night. He had been with the department for 18 years. He had been a Jail sergeant since April 1998. The training to become a sergeant involved a promotional exam, and training to be the Jail sergeant involved about one week of working alongside an existing Jail sergeant.<sup>48</sup>

Sgt. Sanderson testified that, as Jail sergeant, he bore the ultimate responsibility for determining whether a person could be held under the VPD's H/SIPP (Hold/State of Intoxication in a Public Place) policy. He could recall a few occasions when someone might be arrested H/SIPP but not admitted to Jail on that basis.<sup>49</sup>

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<sup>45</sup> Transcript, Jan. 9, 2008, pp. 199–200.

<sup>46</sup> Transcript, Jan. 9, 2008, p. 203.

<sup>47</sup> Transcript, Jan. 9, 2008, pp. 205–09.

<sup>48</sup> Transcript, Jan. 7, 2008, pp. 30–33.

<sup>49</sup> Transcript, Jan. 7, 2008, p. 46.

When asked about handling prisoners, he said it was not unusual to drag a prisoner who was unable to walk, and that this was done for the person’s safety, to prevent a fall and injury.<sup>50</sup>

Sgt. Sanderson knew Mr. Paul, who was in jail every second or third day as an H/SIPP arrest. On most occasions, Mr. Paul would be unconscious or virtually unconscious, and unable to answer questions. He said Mr. Paul had a tendency to be violent. Although Sgt. Sanderson testified that he did not know about Wernicke-Korsakoff Syndrome or its symptoms, he described Mr. Paul’s ability to move about as follows:

Mr. Paul always had difficulty walking. Most of the time he would—I use the expression “crab” along the wall. He would use the wall for support as he moved along it.<sup>51</sup>

Sgt. Sanderson first saw Mr. Paul that day at about 5:30 p.m., as he arrived for work. Mr. Paul was sitting on the floor of the wagon bay, against the wall opposite the elevator, eating a bag of potato chips. At about 6:15 p.m., a Jail staff member asked for permission to take Mr. Paul a cup of coffee. He gave permission, and the staff member took “a large scalding hot cup of coffee” to Mr. Paul.<sup>52</sup>

Sgt. Sanderson next saw Mr. Paul sometime between 8:00 and 9:00 p.m., when Jail staff alerted him that Mr. Paul was in the elevator as it arrived on the fifth floor. Sgt. Sanderson said there was “a disbelief” that Mr. Paul would be back in custody so soon, and he shared that disbelief. He said he asked Cst. Instant why he had brought Mr. Paul to the Jail, and Cst. Instant replied that he was arrested H/SIPP. Sgt. Sanderson said:

I found it extremely difficult to believe that, as I said, that Mr. Paul was actually intoxicated and therefore he should not have been arrested.

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<sup>50</sup> Transcript, Jan. 7, 2008, p. 49.

<sup>51</sup> Transcript, Jan. 7, 2008, pp. 50–52 (quotation p. 52).

<sup>52</sup> Transcript, Jan. 7, 2008, pp. 53–54 (quotation p. 54). It is not clear how the sergeant knew how hot the coffee was. The officer who brought the coffee, Linnett McKenna (Johnson), recorded in her written statement that it was hot but had both sugar and cream: Exhibit 51.

According to Sgt. Sanderson, Mr. Paul had difficulty getting around. He “would not be sprinting to the nearest liquor store,” and Mr. Paul usually did not have any money. He said that it would be difficult for him to get to a licensed premise for alcohol, and that those places selling rice wine would be closed sometime between 5:00 and 6:00 p.m.<sup>53</sup> For these reasons, he concluded that Mr. Paul could not have gotten intoxicated in the period of time since he left the Jail. He testified:

Q Can you compare how he looked when he was in the elevator as to how you had seen him at the beginning of your shift?

A His appearance hadn’t changed markedly at all. His outer clothing was wet but he appeared to be in the same state as my observations of him in the wagon bay at the beginning of the shift.<sup>54</sup>

Mr. Paul remained lying in the elevator while it was at the fifth floor. While there, Sgt. Sanderson asked him if he’d had anything to drink since being released from jail, to which Mr. Paul answered: “no.” He described the response as being immediate, in a quiet, gruff, hoarse voice that might be hard to understand if heard for the first time. He described Mr. Paul’s manner of speech as being the same as he would speak when being released from the drunk tank.

The sergeant said he asked where he lived, and Mr. Paul replied “Broadway and Maple.” Sgt. Sanderson had some knowledge of “a group of Aboriginal males that frequented that area,” and said that he believed Mr. Paul had a place where he could go “to get out of the elements, whether it was his home or just the home of an associate.” He did not ask whether Mr. Paul had an address, nor did anyone else.

Sgt. Sanderson testified that, although the decision to admit or release Mr. Paul was his, he would take advice and comments from the Jail staff and that, in this case, there was a general consensus that Mr. Paul was not in fact drunk.<sup>55</sup>

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<sup>53</sup> Transcript, Jan. 7, 2008, pp. 55–57 (quotation p. 56).

<sup>54</sup> Transcript, Jan. 7, 2008, p. 57.

<sup>55</sup> Transcript, Jan. 7, 2008, pp. 60–63, 69–71.

Sgt. Sanderson agreed that, during Mr. Paul's time in the elevator, nobody asked him how he was feeling, if he was cold, whether he could move his hands or legs, why he appeared unable to move or whether he wanted to see a nurse.<sup>56</sup> The entirety of Sgt. Sanderson's assessment of Mr. Paul took place within three minutes, while Mr. Paul was in the elevator.<sup>57</sup>

Sgt. Sanderson felt that the "easiest way" was to send Mr. Paul to the ground floor and have him released into the alley behind the Jail. However, it was raining and a wagon and driver were on hand, and he thought it would be "much better for Mr. Paul to take him to where he stated that he lived so that he could find shelter and get out of the elements." Sgt. Sanderson stated that he reasoned there were no other good options; Frank Paul was not intoxicated so would not go to Detox Centre, and moreover, Sgt. Sanderson believed he was banned from there.<sup>58</sup>

This is what the sergeant said he expected would occur when the wagon got to Broadway and Maple:

I expected Cst. Instant to take him to that area, open the wagon door and ask Mr. Paul if this was in fact the area where he lived and obtain further directions, ensure that, if necessary, driving him half a block closer to his residence or whatever it called for, and release Mr. Paul and ensure that he was well on his way or in shelter before leaving.

He continued:

Unfortunately, my instructions were quite vague. I asked Cst. Instant to take Mr. Paul to Broadway and Maple. I did not give him any further specific instructions. He had listened to what was going on in the elevator and I assumed that he would understand what to do.<sup>59</sup>

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<sup>56</sup> Transcript, Jan. 8, 2008, p. 77.

<sup>57</sup> Transcript, Jan. 8, 2008, p. 80.

<sup>58</sup> Transcript, Jan. 7, 2008, pp. 71–72. There is no evidence, including in the audiotape, that indicates Sgt. Sanderson verbalized this belief with anyone, including Cst. Instant, at this juncture. I will return later in the report to the question of whether Mr. Paul was banned from the Detox Centre. For present purposes I observe that he was admitted there many times in the weeks previous to his death, including on December 4, 1998. Also, Sgt. Sanderson's insistence that Mr. Paul was not intoxicated, and therefore could not remain at the Jail, would also rule out the Detox Centre as a place to leave him.

<sup>59</sup> Transcript, Jan. 7, 2008, pp. 72–73.

Sgt. Sanderson testified that, with the benefit of hindsight, he should have been more specific and should have ensured that Cst. Instant would contact a senior officer or himself if he needed further instructions.<sup>60</sup> However, he stood by his decision not to admit Mr. Paul to the Jail, and believed that it was the correct decision.<sup>61</sup>

Sgt. Sanderson testified that he did not consider Mr. Paul a “breach of the peace” situation, but said that he agreed to Cst. Instant’s request to have the matter treated as a breach, to keep it within departmental policy.<sup>62</sup>

### **Corrections Officer Greg Firlotte**

Corrections Officer Firlotte was working as the floor security officer at the Jail that night. He was new to the job. He recalled being surprised to see Mr. Paul when the elevator door opened, having seen him in the wagon bay just two hours before. He recalled a discussion about Mr. Paul, and believes he asked, “Why is he here? [H]e just left.”

He stated that Mr. Paul was lying down in the elevator throughout.<sup>63</sup> He believed he helped to prop Mr. Paul up against the wall inside the elevator. He recalled that Mr. Paul was soaking wet, that he did not talk (although he did respond with a grunt or groans), and that he was awake and his eyes were open.<sup>64</sup> He agreed that Mr. Paul appeared oriented as to time and place.<sup>65</sup>

He stated that Sgt. Sanderson took a look at Mr. Paul and decided to release him out of the Jail. Mr. Firlotte went back to the elevator and told Mr. Paul, “Okay, you’re out of here,” and gave him back his jacket and shoes. He recalled that Mr. Paul could move his hands but not his legs. He stated that there was some discussion about where Mr. Paul lived, and Mr. Firlotte recalled Mr. Paul saying: “2<sup>nd</sup> and Nanaimo.” He understood Mr. Paul was being sent back out, and that Mr. Paul would be dropped at

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<sup>60</sup> Transcript, Jan. 7, 2008, p. 73.

<sup>61</sup> Transcript, Jan. 7, 2008, p. 86.

<sup>62</sup> Transcript, Jan. 7, 2008, pp. 74–75; Transcript, Jan. 8, 2008, pp. 128–37.

<sup>63</sup> Before seeing the video, Mr. Firlotte believed he had moved Mr. Paul out and propped him up against a wall; the video showed him this did not occur: Transcript, Nov. 28, 2007, p. 11.

<sup>64</sup> Transcript, Nov. 28, 2007, pp. 6–15.

<sup>65</sup> Transcript, Nov. 28, 2007, p. 101.

his address. He said there was no discussion of an ambulance and the Jail nurses, who were available, were not called.<sup>66</sup>

Mr. Firlotte assisted Cst. Instant in dragging Mr. Paul out of the Jail. They dragged him along the floor of the wagon bay out to the wagon. He testified that he climbed into the wagon and then pulled Mr. Paul up and put him in the wagon, propping him up so that his back was against the wall. He then gave him his jacket and his shoes, which had been taken from him in the elevator.<sup>67</sup>

Mr. Firlotte's evidence presented numerous difficulties. He initially misidentified the sergeant who dealt with Frank Paul that evening. He initially indicated that the wagon driver removed Mr. Paul from the elevator at the fifth floor of the Jail but he agreed, after seeing the Jail video, that this did not occur. He used language in his statement suggesting that Mr. Paul had difficulty standing and was laid on the floor, but accepted that this was not accurate, as Mr. Paul was never laid down on the floor from a standing position; he was already lying down.<sup>68</sup>

In his initial statement, Mr. Firlotte stated that Mr. Paul was "coherent and did not appear drunk," and that he was "alert."<sup>69</sup> Although it was suggested to him (and he accepted) that he used the term "coherent" in the alternative dictionary sense of being sensible, the context of the term in his statement seems only explicable as suggesting Frank Paul was speaking with sense and meaning that evening. He later accepted that this did not accord with his testimony, but he could not provide an adequate explanation for the difference.<sup>70</sup>

Further, Mr. Firlotte initially denied that a VPD detective had contacted him to provide a statement. However, when confronted with evidence

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<sup>66</sup> Transcript, Nov. 28, 2007, pp. 16–27.

<sup>67</sup> Transcript, Nov. 28, 2007, pp. 27–35.

<sup>68</sup> Transcript, Nov. 28, 2007, pp. 41, and 103–05. In his original written statement, he indicated that Mr. Paul "did not appear drunk": Exhibit 44. His explanation for the use of the word "drunk" was to the effect that Mr. Paul was always that way when he dealt with him. "To me, I guess drunk for Mr. Paul would be passed out" (p. 103). But Mr. Firlotte described Mr. Paul as having no mobility; it is difficult to understand the meaning he attributes to "not being drunk."

<sup>69</sup> Exhibit 44.

<sup>70</sup> Transcript, Nov. 28, 2007, p. 42.

suggesting the opposite, he seemed to imply that the detective's log notes were faked.<sup>71</sup> This testimony did not strengthen his credibility.

c. Other witnesses' testimony

Corrections officer Michelle Renville was on duty when Cst. Instant brought Mr. Paul to the Jail. She recalled hearing that an intoxicated man was being brought in.<sup>72</sup> She said:

I remember the officer standing there with the man and other officers coming around and taking a look at him, and I remember someone saying that he can't be intoxicated, he had just left, and he had just left out of the drunk tank.<sup>73</sup>

She was not sure who was present at the time, other than Greg Firlotte, whom she recalled being there. She added:

I think I just remember them talking, saying that Mr. Paul was a frequent inmate in the drunk tank, and they had said that when he had been released earlier he couldn't have gotten, you know, like far to be drunk enough to come back in that intoxicated state.<sup>74</sup>

She recalled Mr. Paul lying down, with officers holding him up by his shoulders. She recalled the sergeant asking him where he lived, and Mr. Paul saying "Kitsilano." This surprised her, because she considered it an upscale neighbourhood. She did not recall hearing an address mentioned. She did not recall discussion of a breach. She said Mr. Paul's eyes were open, his clothes were wet and when he was moved, he left a water trail.<sup>75</sup>

Ms. Renville's recollection of some of the events that evening disagreed with the video evidence. However, I found her to be a credible witness who was honestly attempting to give me her best memory of the events she witnessed many years ago.

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<sup>71</sup> Transcript, Nov. 28, 2007, p. 129 (and generally pp. 123–31).

<sup>72</sup> Transcript, Nov. 20, 2007, p. 191.

<sup>73</sup> Transcript, Nov. 20, 2007, p. 195.

<sup>74</sup> Transcript, Nov. 20, 2007, p. 196.

<sup>75</sup> Transcript, Nov. 20, 2007, pp. 198, 202–03, 205.

Kenneth Low was a police custodial guard in 1998, and was on duty when Mr. Paul was brought to the Jail that evening. Unfortunately, Mr. Low's recollection of events was demonstrably wrong.<sup>76</sup> His recollection was that Mr. Paul left at 2:00 a.m. on December 6, and he thought he had checked in on him after he was arrested just behind the Jail. Mr. Low readily accepted, after seeing the Jail videotape, that his memory was in error. It is understandable that with the passage of many years, a person's memory of a particular shift at work may not remain with any great clarity. What is unfortunate is that no one asked Mr. Low for a statement or interview, until Associate Commission Counsel did in late 2007.<sup>77</sup>

Police custodial guard Linnett Johnson (now McKenna) prepared a statement 10 days after the event, in which she could summon only a few basic facts. When she testified, she had no recollection of the event, but she did recall preparing the statement, and saying to Sgt. Sanderson that there had to be a better place for Mr. Paul than the Jail.<sup>78</sup>

Nurse Ruth Brandon, a long-serving Jail nurse on duty that evening, testified by video conference. She could not recall any of the events of that evening, other than confirming that she had provided a statement when asked to do so, after Mr. Paul's body was discovered.<sup>79</sup>

d. The audio recording of what was said

Two audio recordings assist in determining what happened in the Jail that evening.<sup>80</sup> Although the recordings may not have captured everything that was said within the elevator, they represent fresh and previously unexamined evidence that sheds substantial light on what happened. I caution that the poor quality of the recordings means that there is a possibility of omissions and mis-transcriptions.

The audio recording begins with someone asking, "What we got here?" Someone says, "They picked him up at Dunlevy and Hastings. State of

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<sup>76</sup> Transcript, Nov. 26, 2007, pp. 13–24, 41, 56, and 65–66.

<sup>77</sup> Transcript, Nov. 26, 2007, p. 1.

<sup>78</sup> Exhibit 51.

<sup>79</sup> Transcript, Feb. 14, 2008, pp. 149–52.

<sup>80</sup> Exhibits 45, 188 and 192.

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intoxication SIPP. Turner.” From the sequence this would appear to be either a member of the staff watching Paul’s arrival in the bay on the Jail video, or Cst. Instant conveying information about where Mr. Paul was arrested.

There appears to be a direction from Sgt. Sanderson, for Cst. Instant not to take Frank Paul out of the elevator: “Frank, hang on a sec, Frank.”

Then there are three statements, apparently by two or more people: “Is Frank Paul here? Frank, are you still here? When was the last time you had a drink, Frank?” It is not clear who says these things; it is unlikely to be Cst. Instant and may be a mixture of comments by Sgt. Sanderson and others.

The audio records someone saying, “He can’t walk. He sleeps anywhere he can now. He’s totally incapable of walking. It took him three-quarters of an hour to get through the elevator bay.” This appears to all be one voice and is difficult to attribute to Cst. Instant, as it is unlikely that he would have known about the earlier release from the wagon bay. It may be Sgt. Sanderson explaining away Mr. Paul’s immobility, or perhaps a Jail staff member volunteering information about Mr. Paul.

Then someone, probably Sgt. Sanderson, asks, “Frank, have you been drinking since we kicked you out of here today?” The reply is unintelligible, but sounds like a negative response. This is at odds with Cst. Instant’s recollection that Sgt. Sanderson asked Paul if he had a drink over the past three days and was told no. The audio recording confirms that whatever information the Jail staff received concerning Frank Paul’s recent drinking from him was confined to a single one-word response.

Next, someone asks, “Frank, you’re back?” and the answer is “yeah.” This is likely a different Jail staff member speaking into the elevator.

Someone asks, “What are you doing in Kitsilano, Frank? What’s the address?” to which the answer is “Broadway or Maple.” This phrase was not understood by many at the time, so it may be that someone, perhaps Sgt. Sanderson, has repeated it after Mr. Paul said it.

The audio transcript confirms that Sgt. Sanderson gives the direction, "Take him and release him." Someone comments, "In the wagon for over an hour," perhaps referring to the wagon bay earlier that day—this would not be a reference to the police wagon, as Mr. Paul had only been in there a short while.

Next, Cst. Instant asks, "So you can, uh, authorize a breach?" prompting Sgt. Sanderson to reply, "Oh yeah, not a problem. That's fine. Yeah, take him to Broadway and Maple, if you don't mind."

The last recorded comment is, "You guys go and help get Frank get his butt back in the wagon before he gets too [unintelligible] in here? Okay you guys. That's all you gotta do." This would be Sgt. Sanderson directing not only Cst. Instant, but also Greg Firlotte, to take Mr. Paul away.

The recording is useful for several reasons:

- It dispenses with the suggestion that there was any concerted or general decision to refuse Frank Paul admission to the Jail. No one other than Sgt. Sanderson is recorded as expressing any opinion on that question.
- It confirms Sgt. Sanderson's central role in the decisions made at the Jail.
- It confirms Cst. Instant's recollection that Sgt. Sanderson was outside the elevator door when he and Mr. Paul arrived in the elevator, and they were stopped before progressing into the admissions area.
- Sgt. Sanderson clearly directs that Mr. Paul be released, and repeats that direction.
- When Cst. Instant asked Sgt. Sanderson if he would authorize the use of the breach procedure (which by VPD policy was in that situation required to be authorized by him), he clearly does so.
- It confirms that Mr. Paul's release earlier that day was the subject of comment and that he was asked if he had been drinking in the short time since he was released. The recording does not record any person stating that it was impossible for him to get drunk, and the recording is consistent with the interval being remarkable for its brevity but not for the outcome of Mr. Paul being drunk once again. It is not possible from the recording to conclude that the Jail staff believed Mr. Paul to be drunk, or for that matter, sober.

- It confirms the superficiality involved in the police “assessment” of Mr. Paul at the Jail. He was asked a few questions and gave only a few short answers. The video and audio both confirm that little or no care was taken to assess what Mr. Paul’s condition was that evening.

## **6. Events at the Cobalt Hotel**

Cst. Instant testified that after he and Mr. Firlotte put Mr. Paul into the wagon, he was dispatched to the Cobalt Hotel, in the 900 block of Main Street, about seven blocks south of the Jail. As he drove, he processed Sgt. Sanderson’s direction to take Mr. Paul to Broadway and Maple, and realized he needed more information.

When he arrived at the Cobalt Hotel, he met three police officers on the sidewalk—Cst. Candace Murray, Cst. James English, and Sgt. George Wood. They had three men in handcuffs. Cst. Instant decided to move Oscar Angel from the rear compartment to the side compartment, so there would be no mixing of those with handcuffs and those without. Cst. Instant testified that in placing Mr. Angel in the side compartment, he observed Mr. Paul sitting on the second step of the compartment, eyes open, looking at him. Cst. Instant told Mr. Angel to hop up inside, and told Mr. Paul, “Frank, you’re going to have company,” to which Mr. Paul “made a mumble.” Mr. Angel crawled over Mr. Paul to the bench seat. Cst. Instant then placed the three new individuals in the rear compartment.<sup>81</sup>

While at the Cobalt Hotel, Cst. Instant spoke with Cst. English. According to Cst. Instant:

I told him, I said: Look, I have Mr. Paul in the wagon. He can’t go to Detox so I took him to the Jail. The Jail NCO told me that he wasn’t drunk and take him to Broadway and Commercial—sorry, Broadway and Maple. And I said: Does that make sense to you? And he said: Mr. Paul’s homeless, he doesn’t live there.... I said: Okay. Where do you think I should take him? And then Cst. English said: You know what, the best spot is probably the lane behind Detox. That’s a safe place to release him.

Cst. Instant understood this to refer to the laneway generally rather than directly at the entrance to the Detox Centre. Cst. Instant also testified that he told

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<sup>81</sup> Transcript, Jan. 11, 2008, pp. 5–9, 12.

Cst. English that Mr. Paul was not intoxicated.<sup>82</sup> According to Cst. Instant, he told Cst. English: “Okay, I’ll think about it.”<sup>83</sup>

According to Cst. English, Cst. Instant was “a little bit beside himself,” and said he had Mr. Paul, who was drunk, and that the sergeant told him to take him to Broadway and Maple, where he lived. Cst. English said he told Cst. Instant that Frank Paul was homeless and suggested that he try taking Mr. Paul back to the Jail, but that Cst. Instant did not want to go back to the Jail.

Cst. English said they discussed taking Mr. Paul to a hospital, but Cst. Instant said he was drunk, not injured, so the hospital wouldn’t take him. Further, Cst. English recalled telling Cst. Instant to discuss the matter with his sergeant, Sgt. Winters, but Cst. Instant said he was not available.

Finally, Cst. English said he told Cst. Instant to talk with Car 10, an inspector with city-wide oversight of the force. He added that if the Detox Centre would not admit Mr. Paul, he had the option of driving around with him in the wagon all night, or if he were released, he might be released right at the door of Detox Centre, to “force their hand to admit him.” Cst. English said Cst. Instant said he’d deal with it, and got in the wagon.<sup>84</sup>

Cst. English did not provide a statement about what happened that evening until nine months later. Indeed, the evidence suggests that VPD investigators found it difficult to obtain a statement from him, and had to repeatedly make efforts to get one. There are several inconsistencies between his written statement and his testimony. For instance, he made no mention in his statement of getting advice from a senior officer; driving around all night with Mr. Paul in the wagon; or trying to persuade the Detox Centre to admit Mr. Paul.

## **7. Events at the Vancouver Detox Centre**

After leaving the Cobalt Hotel, Cst. Instant drove to the Detox Centre. He testified that he backed his wagon in to the entrance bay, and got out. He rang the buzzer and a Detox Centre worker came out and walked over to the side compartment with him, to get Mr. Angel. Cst. Instant helped Mr. Angel out and walked him

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<sup>82</sup> Transcript, Jan. 11, 2008, pp. 12–14.

<sup>83</sup> Transcript, Jan. 11, 2008, p. 13.

<sup>84</sup> Transcript, Nov. 29, 2007, pp. 102–09, 140.

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over to the entrance door of the Detox. While at the side of the wagon, the Detox Centre worker (John Collens) asked, "What about Mr. Paul?" Cst. Instant replied, "No, he's not for you, he's going to be staying with me." Cst. Instant testified he did not ask to have Mr. Paul admitted at the Detox Centre because he didn't believe he was drunk.<sup>85</sup>

Currie Low, a nurse at the Detox Centre, testified that at about 9:00 p.m. she was working with John Collens when the police wagon came to the Detox Centre. She recalled that Oscar Angel was brought in, but Mr. Paul was not. She testified that the officer said that Mr. Paul "had been in and out of jail most of the day and that they were going to release him out of the area."<sup>86</sup>

According to John Collens, the police wagon came into the Detox Centre at about 9:00 p.m., and he went out to meet the officer:

I asked him how many and he said he had one client for detox and another client in the wagon. So I went with the wheelchair<sup>87</sup> to assist the one client that was coming in, who was Oscar Angel, and then the officer said the other client was Frank Paul but Frank wasn't being brought to [the sobering unit at the Detox Centre] that evening, that he had been in lock-up all day.<sup>88</sup>

Under cross-examination, Mr. Collens qualified this statement to say that the officer had said Frank Paul was "in and out of jail that day and he wasn't intoxicated and, therefore, he didn't require the services of the sobering unit."<sup>89</sup> This view accorded with his written statement prepared shortly after the incident.<sup>90</sup>

Prior to the commencement of this commission it had been suggested that Mr. Paul may have died before he was taken out of the wagon. Mr. Collens's evidence that Mr. Paul was alive, however, satisfies me that Mr. Paul was still alive, particularly when coupled with the evidence of Patrick Lewis, which I shall

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<sup>85</sup> Transcript, Jan. 11, 2008, pp. 17–18.

<sup>86</sup> Transcript, Nov. 26, 2007, pp. 97–100 (quotation p. 100); Exhibit 31.

<sup>87</sup> This is a point of difference between Mr. Collens and Cst. Instant, who said Mr. Angel was walked in, not taken by wheelchair.

<sup>88</sup> Transcript, Nov. 27, 2007, pp. 73–74.

<sup>89</sup> Transcript, Nov. 27, 2007, p. 107.

<sup>90</sup> Exhibit 38 (prepared December 12, 1998).

address shortly. Briefly stated, all the evidence shows he was still alive in the wagon when Cst. Instant went to the Detox Centre.

Mr. Collens went to the rear of the Detox Centre building, where the laneway ends and where the police wagon had backed up. He recalled seeing Mr. Paul, whom he knew, sitting in the side compartment with Mr. Angel, and that he was hunched over and sitting in the corner. Mr. Collens said, "He looked at me when I said hello to him." He explained that while Mr. Paul did not move or make any noise, he did look at him.<sup>91</sup> Mr. Collens said that the officer indicated Mr. Paul was being taken out of the area.<sup>92</sup>

It appears that approximately six months after the incident, lead investigator Det. Doug Staunton asked Mr. Collens to canvass the recollection of his co-workers, in particular as to whether they recalled some discussion, between the Detox Centre staff and Cst. Instant, about a new shelter called the Haven. The staff members he spoke to could not recall such a conversation.<sup>93</sup> Cst. Instant, in his statements at the time and in his testimony, recalled no discussion about a particular shelter. I find the evidence that there was mention of a shelter to be highly uncertain and I conclude that this was not spoken of in Cst. Instant's presence. In addition, I see no reason why Cst. Instant would have disregarded such information if it had been given to him in the form of a recommendation by Detox Centre staff.

The activities and conversations in the alley behind the Detox Centre are tragically pivotal—but it is the lack of conversation and clear communication between the VPD and Detox Centre staff that is most salient. Sgt. Sanderson's earlier assertion that Mr. Paul was banned from the Detox Centre, although wrong, may have reflected his own belief.<sup>94</sup> There was evidence that Mr. Paul had stayed overnight at the Detox Centre the previous night without incident, and Cst. Instant had not been told that Mr. Paul was banned from the Detox Centre.<sup>95</sup> One more question at the Detox Centre may have prevented Mr. Paul's death in the alleyway. It would appear reasonable that the Detox Centre would have taken

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<sup>91</sup> Transcript, Nov. 27, 2007, pp. 74–82.

<sup>92</sup> Transcript, Nov. 27, 2007, p. 91.

<sup>93</sup> Transcript, Nov. 27, 2007, pp. 84–85; Exhibit 39.

<sup>94</sup> The evidence on this question of how people were banned and whether Frank Paul was on any blacklists was so equivocal as to be unreliable.

<sup>95</sup> Transcript, Jan 11, 2008, p. 152.

Mr. Paul, if Cst. Instant had said something to the effect of, “I’m about to drop Mr. Paul in the alley, any chance you could take him?” Similarly, if Mr. Collens had suggested that he would take Mr. Paul, or asked to take a closer look at him, Mr. Paul may have been admitted to the Detox Centre.

It is clear from the evidence that there was no coordination between the VPD and the Detox Centre as to who would be accepted to the Detox Centre.

**8. Leaving Frank Paul in the alleyway at about 9:00 p.m.**

Cst. Instant testified that, after leaving Mr. Angel at the Detox Centre, he drove down the lane trying to decide on the appropriateness of the location to leave Mr. Paul, given what Cst. English had said to him. He looked around, trying to find a location that he thought would be safe. He settled on a spot close to Scotia Street on the north side of the alley:

And that was a large gravelled area that was well illuminated, lots of light, and there was a large shrub hedge there, and I felt that that was a good area to release Mr. Paul to while he collected himself and continued on his way.<sup>96</sup>

Cst. Instant gave the following account of how he handled Mr. Paul. He said that he pulled the wagon over to where the asphalt of the alley and gravel met, got out and opened the side door. He said, “Frank, it’s time to get out.” Mr. Paul placed his right hand on the side door and leaned back, so Cst. Instant took his legs and slid them out off the step. He then lifted him out by his arms, walked him to the wall of a building and sat him down. Mr. Paul did not say anything. His clothes were in a normal position. He stated that Mr. Paul had just one shoe on when he sat down, so Cst. Instant went back to the wagon to get the other shoe, which he put on.<sup>97</sup> Cst. Instant described that when he put Mr. Paul’s shoe on, his leg was outstretched and the back of the shoe was broken down, so that it just slipped onto his foot.<sup>98</sup> This is consistent with the photographs showing Mr. Paul’s shoes to be broken down at the heel. Cst. Instant left Mr. Paul in the alleyway sometime

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<sup>96</sup> Transcript, Jan. 11, 2008, p. 20.

<sup>97</sup> Transcript, Jan. 11, 2008, pp. 27–30.

<sup>98</sup> Transcript, Jan. 11, 2008, p. 134.

between 8:51 p.m. (when he left the Detox Centre) and 9:02 p.m. (when he arrived back at the Jail).<sup>99</sup>

December 5 was a cold night, about five degrees Celsius, according to Cst. Instant. It had rained off and on, and the laneway was wet. Cst. Instant recalled that where he left Mr. Paul was dry and offered shelter, close to a major street, and was in an area Mr. Paul would have been familiar with. He knew that police vehicles and the Saferide van frequented the alley. The shelter he referred to was a slight overhang of a building, and a very large shrub or hedge. However, he agreed, after looking at photographs of the area, that the building afforded no protection from the rain.<sup>100</sup>

Cst. Instant did not conduct his own assessment of Mr. Paul's state of intoxication or his health and did not ask him how he was feeling.<sup>101</sup>

## **9. After Cst. Instant drove off**

Patrick Lewis testified that at about 10:00 p.m. that evening, he was a passenger in a taxi travelling north on Scotia Street, as it passed the laneway where Mr. Paul's body was later found. He testified:

The cab was coming I guess it would [be] north on Scotia downhill, and as it approached the intersection it slowed. I was sitting on the right-hand side looking out the window and as the cab passed by the alleyway I saw an individual lying in the alley. He was rising up on his elbows. My recollection is he was on two elbows but it may have just been one. He was rising up. His face was toward the cab, he was facing out of the alley.<sup>102</sup>

Mr. Lewis testified that the man's head was to the west (toward his taxi), and he was "basically prone on the alleyway, in the middle of the alleyway, and was rising up." No one had previously shown Mr. Lewis any photographs. When he saw a photograph of the alley, he located the place where he saw the person who must have been Frank Paul. The place he indicated was away from the building and away from where his body was found. He could not see the man's face because he had "straggly hair."<sup>103</sup> Mr. Lewis went on to a loud party nearby. He

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<sup>99</sup> Transcript, Jan. 11, 2008, p. 34.

<sup>100</sup> Transcript, Jan. 11, 2008, pp. 19–24.

<sup>101</sup> Transcript, Jan. 11, 2008, p. 35.

<sup>102</sup> Transcript, Nov. 23, 2007, p. 2.

<sup>103</sup> Transcript, Nov. 23, 2007, p. 3.

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recalled trying to telephone about the man, but the phone was in use and he became distracted. Later on, some people from the party discovered Mr. Paul's body and called 911.<sup>104</sup>

Mr. Lewis's observation must be considered a fleeting glance at the alleyway, as he drove past on a dark winter night. However, he was clear (and was not challenged) about seeing a man in the alleyway who was propped up. This evidence is further confirmation that Mr. Paul was alive in the alley at about 10:00 p.m.

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<sup>104</sup> Transcript, Nov. 23, 2007, pp. 7–8.