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National Post

Why did he die?

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The death of Neil Stonechild, a 17-year-old Aboriginal who froze to death on the outskirts of Saskatoon in November, 1990, has widened the gulf between the city's police force and Saskatchewan's native peoples.

Many now suspect that the aboriginal teenager fell victim to a so-called "starlight tour," in which police drop native troublemakers on the city's edge, forcing them to walk home on cold nights.

"Starlight tours" are not an urban myth. In 2001, two Saskatoon police constables, Dan Hatchen and Ken Munson, were convicted of dropping an aboriginal man, Darrell Night, outside the city in January, 2000. Mr. Night survived his ordeal, and the two constables served time in jail for their actions.

Given this background, the recent findings of Mr. Justice David Wright, who presided over the inquiry examining the circumstances of Stonechild's death, were, sadly, not entirely unexpected.

He concluded that Constable Bradley Senger and Constable Larry Hartwig, both members of the Saskatoon Police Service, did indeed take Neil Stonechild into custody in the late evening of Nov. 24, 1990. He rejected the evidence of the two officers, who denied encountering Stonechild after they were dispatched to intercept him for causing a drunken disturbance.

The problem for the officers was the testimony of Jason Roy, Stonechild's friend and drinking companion on that night. Justice Wright believed Roy's claim that he last saw Stonechild in the custody of Constables Senger and Hartwig, seated in the back of their police cruiser, bleeding and screaming for help. Roy's account was corroborated by other evidence. (Police computer records confirm that the two officers had stopped Jason Roy shortly after responding to the disturbance call relating to Stonechild.)

In addition, police records reveal that the two officers had enough time (27 minutes) to transport Stonechild to the area where his body was found.

Those records also demonstrate that it took the two officers an unusually long time to arrive at the location of their next radio-call (six minutes, ostensibly to travel one block). Finally, Stonechild also had parallel cuts on his nose and marks on his wrists, which Justice Wright concluded were consistent with the markings that would have been made by police handcuffs.

Considering all the evidence, Justice Wright made three critically important findings. First, that shortly after 11:51 p.m. on Nov. 24, 1990, Constables Senger and Hartwig "came on Neil Stonechild. He was drunk and probably belligerent and uncooperative. The constables took him into custody." Second, that "Roy observed Stonechild in the rear of the cruiser." Third, "that Cst. Hartwig and Senger had adequate time ... to transport Stonechild to the northwest industrial area of Saskatoon."

Justice Wright was careful to avoid finding that the two officers are criminally responsible for Neil Stonechild's death. In Canada, commissions of inquiry, such as the one conducted by Justice Wright, are legally precluded from drawing such conclusions.

Despite Justice Wright's findings, prosecutors in Saskatchewan have decided against laying criminal charges. Saskatchewan's Minister of Justice, Frank Quennell, explained at a press conference that "inferences can be drawn from the findings he [Justice Wright] did make but those are only inferences." These comments betray a serious misapprehension of a very basic concept in the law of evidence.

Direct evidence is not a prerequisite for proving a criminal case. On the contrary, convictions are routinely secured in courtrooms across the country based on reliable circumstantial evidence. For example, in most homicide cases, the best eyewitness -- the victim -- is dead, so that it is quite often circumstantial evidence that establishes the case against the accused. In short, circumstantial evidence is all about drawing inferences from proven facts. The issue is whether there is enough evidence of this sort in a particular case to justify a prosecution.

In any other case, evidence that the deceased was last seen alive in the company of a suspect, that the suspect was in possession of an implement that could cause the unusual markings found on the body of the deceased, that the suspect had ample opportunity to commit the crime, and that the suspect lied about being with the deceased, would undoubtedly be considered enough to bring charges.

The Crown is making a serious mistake in dismissing the possibility of a criminal prosecution in the death of Neil Stonechild. And in doing so it is

reinforcing a belief that the justice system favours the police over natives. Justice officials should remember that when evidence supports the drawing of inferences that reasonably suggest guilt, a prosecution is always justified, regardless of who the accused happen to be.

The Crown's decision also leads to another practical problem. It places the Chief of the Saskatoon Police Service, Russell Sabo, in an untenable position.

In response to Justice Wright's report, he suspended the two constables with pay. Without a criminal prosecution, however, his next step is uncertain. The officers have not been convicted of any crime and therefore are still entitled to the presumption of innocence. How then can discipline or dismissal be justified?

Nevertheless, after Justice Wright's clear findings of wrongdoing, it seems even more unpalatable to simply reinstate the two officers without sanction. Of course, a criminal prosecution and subsequent investigation -- whatever the result -- would effectively solve this dilemma.

In light of all this, it's time for justice officials in Saskatchewan to take a second, hard look at the Stonechild case.

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