

INVESTIGATION REPORT

RAPPORT D'ENQUÊTE

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CLASSIFICATION/DÉSIGNATION SÉCURITAIRE

OTHER FILE REFERENCES AUTRES CONSULTATIONS DE FICHIERS 2005-00568 East St. Paul Police #PR2005MAR104256 Manitoba Justice #008-10119 Manitoba Crt Docket	DIVISION D	DATE 2005-06-19	RCMP FILE REFERENCES CONSULTATIONS DES FICHIERS DE LA GRC 2006-633220
	SUB-DIVISION - SOUS-DIVISION "D" Division HQ		
	DETACHMENT - DÉTACHEMENT Winnipeg Major Crime Unit		

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2006-05-10

1. A memo was received by the Royal Canadian Mounted Police "D" Division from Manitoba Justice, Criminal Justice Division. The memo highlighted an East St. Paul Police Department (ESPPD) investigation into a fatal motor vehicle collision currently before the courts. The correspondence requested that the RCMP investigate allegations of improper conduct during this investigation by former ESPPD Chief Harry Bakema. The memo requests this investigation explore any potential statutory breach by Mr. Bakema, and if there existed any grounds for charges under the Criminal Code. See attached as Appendix "A".

2006-05-15

2. This matter was assigned to Cpl. Tracy Kennett of the Winnipeg Major Crime Unit, and Cpl. Todd Doyle of the "D" Division Criminal Operations Branch. At question is the ESPPD investigation surrounding the prosecution of Derek Harvey-mordenzenk (1974-02-21) aka Derek Harvey-Zenk for Refuse Breath Sample S. 254(5) CC, Impaired Operation Cause Death S. 255(3) CC, Dangerous Operation Cause Death S.249(4) CC, and Criminal Negligence Cause Death S. 220(b) CC. Harvey-Zenk, an off duty Winnipeg Police Service constable, was charged for these offences as the result of his involvement in a fatal motor vehicle collision February 25th, 2005. This collision claimed the life of Crystal Taman (1964-08-22).

3. Independent counsel, Mr. Martin Minuk was tasked with conducting this prosecution. Through contact with the file manager at ESPPD, current Chief Norm Carter, Mr. Minuk was advised that there were aspects of the investigation which were not fully documented or disclosed to council. Chief Carter provided a submission to Mr. Minuk dated April 25th, 2006 outlining a disclosure by Cst. Jason Woychuk of the ESPPD. Cst. Woychuk advised Chief Carter that on the morning of the fatal collision, former Chief Bakema indicated to him at the scene that Harvey-Zenk was impaired, and that Bakema counseled Woychuk on how to complete his notes. There was no indication in the disclosure package provided by Mr. Minuk that Bakema ever documented his belief that Harvey-Zenk was impaired at the time of the collision. It is Mr. Minuk's position that if accurate, this could be fatal to the prosecution of Harvey-Zenk. A copy of Chief Carter's correspondence is attached as Appendix "B".

4. Mr. Minuk provided investigators with electronic copies of the disclosure package provided by ESPPD. This is provided and attached as Appendix "C". Contained in this package are ESPPD police Incident Narratives from then Chief Harry Bakema, Sgt. Norm Carter, Cst. Jason Woychuk, Cst. Pedersen, S/Cst. St. John Offert, Cst. Ken Graham, notes of ESPPD officers, a Traffic Analyst Report prepared by RCMP Cst. Chris Blanford, various photographs, and scanned images of court documents.

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5. Investigators review disclosure package.

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6. Arrangements were made to interview Chief Norm Carter to explore events surrounding the February 25th, 2005 fatal motor vehicle collision, and disclosures made by Cst. Woychuk.
7. Chief Carter attended "D" Division Headquarters and a video, audio statement was obtained. Chief Carter described his actions the day of the fatal motor vehicle collision. He advised that he was called at home by the dispatcher to attend to the office. He was only told that there had been a fatal motor vehicle collision. He recalls going to the office with the intention of going out to assist at the scene. He arrived at the office around 0800 hrs. The chief of the day, Harry Bakema, contacted him via radio and told him to stay at the office and await the arrival of Cst. Woychuk. These were the only details he had at the time. He stated that his sister travels to the city using the route where the collision occurred, so he started to believe that she was involved in the accident. He further thought that Cst. Woychuk would be attending to conduct a death notification.
8. Carter waited for Cst. Woychuk who arrived at the office at 0812 hrs. He was told by Cst. Woychuk that he had an off duty Winnipeg Police Service officer in his police car, and that he had smelt a slight odor of liquor on him. Woychuk also commented that he was told by Bakema to turn Harvey-Zenk over to Carter. Carter states that at no time did Woychuk tell him of Bakema's comments regarding Harvey-Zenk's level of intoxication. At this point, Carter takes control of the accused making observations of Harvey-Zenk's motor skills. He formulated the grounds that the subject was intoxicated, arrested, chartered, and read the breath demand to him. Carter continues with the investigation as outlined in his notes and investigative narrative. Later in the afternoon of February 25th, Harry Bakema had an opportunity to speak with Carter after he had cleared the scene. It is at this point that Carter is assigned the file by Bakema.
9. The investigation continued with several police personnel contributing to task completion. Carter stated that even after the investigation was assigned to him, Bakema remained involved by taking several witness statements. Carter was asked about this involvement. He advised that this was not unusual for Bakema to stay involved, as he often took a more active role in investigations than most supervisors. Carter described the conversations he had with Cst. Woychuk regarding this investigation. Woychuk stated that Bakema characterized Harvey-Zenk to him as being "pissed" at the accident scene. Woychuk also told Carter that Bakema told him what to write in his notes in order that the times associated to police actions supported each other. Carter did not explore this with Woychuk, nor did the constable elaborate any further.
10. Cst. Woychuk and Chief Carter had a second conversation about this investigation. Woychuk repeated that Bakema told him Harvey-Zenk was intoxicated, and instructed him how to write his notes. He further told Carter that he did detect a faint odor of liquor about the suspect, but that he had a cold at that time and that it affected his senses. Again, Carter states he did not explore this with Woychuk in any more detail. Carter went on to say that Woychuk further characterized former Chief Bakema and Cst. Graham's actions as cowardly as he believed that they simply did not want to conduct enforcement action in this matter as it involved a policeman.
11. Chief Carter was asked about any conversations he had with Bakema regarding the investigation. At no time did Bakema ever disclose to Carter that Harvey-Zenk may have been intoxicated.

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Carter also made it clear that he never questioned Bakema about any of his observations at the scene. Chief Carter added that Bakema was the type of manager to take an active role in an investigation, and would often take it upon himself to complete tasks. This would be consistent with the witness statements taken by the former chief during this investigation. Chief Carter also described that Bakema and Cst. Graham often rode together during shifts and characterized them as friends. See attached Appendix "D".

2006-05-24

12. Cst. Jason Woychuk of the ESPPD attended to "D" Division Headquarters to provide a statement. Cst. Woychuk was advised that the scope of our inquiries are focusing around the disclosures he had made to Chief Carter. He was further advised we would be exploring the actions of former Chief Bakema at the fatal motor vehicle collision February 25th, 2005. Cst. Woychuk was given an opportunity to review his investigative narrative and his notes. The statement started at 1254 hrs with Cpl. Kennett as the lead interviewer. Cpl. Todd Doyle monitored the audio and video taped statement.

13. Cst. Woychuk described his actions after receiving notification of the collision. He had just finished a night shift, but had yet to go home when the call came in. Cst. Woychuk advised that originally he thought the accident was west of East St. Paul and had headed in that direction. He was later advised by Cst. Graham the true location of the scene. When he arrived at the scene he observed three damaged vehicles in various locations in the intersection of highway 59 and 101. He also advised there were a number of emergency responders on scene including Chief Bakema and Cst. Graham. According to his notes he had been there approximately twenty minutes when Bakema came to his vehicle with a male subject. Bakema put him in the back of Woychuk's vehicle and told Woychuk that he was a city policeman and that he could be impaired. Woychuk was instructed by the chief to leave him in his car until Sgt. Carter could attend.

14. Cst. Woychuk went on to say that he got into the police car which has a screen installed. He could not recall if the screen was opened or closed. He advised that on that day he had a significant cold which affected his senses. Woychuk states that he asked the subject his name and he provided it along with a piece of identification. He noted that the subject's nose was bloody. He had no indication other than Chief Bakema's comments that the subject may be impaired. The exchange between the now identified Harvey-Zenk and Woychuk was quite short. It is at this point that a Selkirk Paramedic unit arrived and attended to treat Harvey-Zenk. Woychuk advised that he exited the vehicle while the paramedic got into the back of the police vehicle and did his work.

15. While outside the vehicle, Woychuk asked the chief what he was to do with Harvey-Zenk. Bakema told him to take him to Sgt. Carter at the ESPPD office. Once the ambulance attendant was done, Woychuk spoke with the paramedic and was told that Harvey-Zenk may have been drinking. The exchange between Woychuk and the paramedic was not an extended one.

16. As per the chief's instructions Woychuk departed the scene after Harvey-Zenk had been examined by first responders. According to his notes he left at 0808 hrs, and returned to the ESPPD office. Woychuk states that while enroute he detected a slight smell of liquor from Harvey-Zenk. When he arrived at the office he sought out Sgt. Carter to notify him that he had Harvey-Zenk with him. Woychuk told Carter that he detected an odor of liquor on the subject. It is at this point that Carter takes over the impaired driving aspect of the investigation.

17. Cst. Woychuk also went into more detail regarding his note development. He advised that at the time of the accident he was just finishing a night shift. After assisting Sgt. Carter in dealing with Harvey-Zenk, he went home and returned later that evening for his next shift. Chief Bakema was still in the office, and Cst. Woychuk...

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...began to write his notes. He was concerned about the delay in the arrest, and stated he asked Bakema for guidance on his note development. Bakema told Woychuk to put in his notes that he took Harvey-Zenk back to the ESPPD office in order to complete a Traffic Accident Report (TAR). It was also suggested to Woychuk that he not include in his notes the comments Bakema or the paramedic had made regarding Harvey-Zenk's potential impairment.

18. Woychuk was asked his thoughts as to why Bakema would suggest he omit these events from his notes. It was his belief that it was a way to ensure his notes were consistent with Bakema's. He advised that he was uncomfortable with this, but only being on the department for a few months with very limited experience he took the direction of the chief. He stated he felt that Bakema simply took steps in the initial stages of the investigation to distance himself from direct involvement with Harvey-Zenk because he was a city policeman. Given that Bakema was a former Winnipeg Police Service member, Woychuk felt Bakema did not want the responsibility of the arrest. Woychuk felt that the suggestion to include the TAR aspect was a way to account for any delay in the arrest and breath demand of Harvey-Zenk.

19. Investigators asked Woychuk about his observations of Harvey-Zenk's signs of impairment. He explained that his contact with the subject was very limited as he was in and out the car a number of times assisting with traffic control. He had no direct personal observations of the subjects level of intoxication at the scene, and only had a suspicion of potential impairment because of the comments by Bakema and the paramedic. His only observation came while en route to the police station. He notes a slight smell of liquor from Harvey-Zenk. Woychuk advised based solely on his personal observations of the subject, he would not have been in a position to arrest and make the breath demand of Harvey-Zenk.

20. In examining the notes made by Woychuk, his investigative narrative, and the statement provided, there does exist some inconsistencies. The most significant is that Woychuk states that immediately after his arrival at the scene, Chief Bakema brings Harvey-Zenk to his vehicle. His notes and narrative indicate that he arrives at the scene and conducts traffic control duties. There is a discrepancy of twenty minutes from his noted arrival at the scene and his first contact with the accused. It is felt that this inconsistency is due to the passage of time and the fact that Woychuk is recalling the events during this period which are most significant to him, and the question being posed. Woychuk's statement is attached as Appendix "E".

2006-05-25

21. Arrangements had been made to interview the Selkirk Ambulance paramedic Edward (Ted) Rosser. Rosser and his partner Rolland Fontaine were the third ambulance unit to arrive at the scene. Investigators met Rosser at the Selkirk Detachment where he was given an opportunity to review the statement he had provided March 24th, 2005. Rosser stated that he and his partner Fontaine were close to the end of their shift when the call was received of the motor vehicle collision. They arrived at the scene and were directed to attend to a police vehicle to examine someone. He does not recall who advised them to do this. When he arrived at the police car, a male subject was seated in the back seat. He was let into the car by a policeman, but does not recall who that would have been. Rosser conducted a medical history, got the subjects name and particulars, and inquired if he had sustained any injuries in the accident. Harvey-Zenk stated he was fine, and refused medical treatment. Rosser does recall Harvey-Zenk asking how the woman was who was in the accident. Rosser advised him he did not know.

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As a result of this contact, Rosser stated he detected the smell of liquor. He described the odor as noticeable, but not really strong. In describing Harvey-Zenk's demeanor, Rosser stated he looked to be very concerned over the accident and seemed to be concentrating on that. Rosser was asked if he relayed his observations to any of the policemen that were there. He advised that this would be something he would naturally do, however cannot remember for certain if he did. See Appendix "F".

22. Cpl. Kennett and Cpl. Doyle interviewed Dale Kasper. Kasper is a Winnipeg fireman, and it was learned through these inquiries that he was one of the first people to arrive at the scene. Shortly after 0700 hrs Kasper was on his way to work, in uniform, travelling south bound on hwy 59. He noted that the traffic light at the intersection of 59 and hwy 101 was green, but that vehicles were pulling over and stopping. He assumed there had been an accident. When he reached the intersection he pulled over and observed three vehicles. The first was a small yellow car, the second a car on the west side of the intersection, and a truck which was situated about three hundred feet through the intersection south bound. He advised that he saw that the yellow car was the most damaged so he went there to render assistance. He found a lady pinned in the front of the car, checked her pulse and found none. Given her condition he moved on to attend to any other injured parties at the scene.

23. It is at this point that he attends to the second car involved in the accident and speaks to a woman. Kasper states that she was on her cell phone, and he asked her permission to use it to call 911. She turned the phone over to him to make the call. He inquired with her if she was injured, and she said she was fine. It is at this point that he observes a male subject, early thirties, caucasian moving from the truck towards the intersection. Kasper asked this gentleman from approximately thirty feet if he was injured, or if there was anyone in his truck that needed assistance. The man from the truck said he was fine. This is the only interaction Kasper had with the gentleman believed to be Harvey-Zenk. Kasper also states that he does not take note of this man again during his time at the scene.

24. Kasper advises that he is on scene for approximately twenty five minutes. During this time ambulance crews, East St. Paul Fire Department, and police arrive on scene. He organized people to direct traffic, and assisted the fire crew in setting up the jaws of life to extract the driver of the yellow car. He also advised he had contact with emergency response people at the scene describing to them his efforts in relation to patient care. See attached Appendix "G".

25. At 1300hrs, Jonathan Hawkes attended "D" Division Headquarters for a statement. Hawkes works as an ambulance attendant for the City of Winnipeg. He and his partner Don Fottie were the first paramedics to respond to this motor vehicle collision. Hawkes had not spoken with police about his involvement until this date.

26. Hawkes advised that they got a call to respond to this accident sometime between 0700 hrs and 0800 hrs. When they arrived, they immediately attended to a small yellow car in the intersection of Hwy 59 and 101. It was apparent to him that the woman in the car was seriously injured. She was not breathing, and given her position in the vehicle they were unable to remove her. Hawkes advised that they then quickly did a scene survey to determine if there were any patients which could be attended to immediately. No patients were located, and Hawkes and his partner returned to the yellow car to again attend to the woman that was trapped. A heart monitor was put on her, and it was determined there was some heart activity, but no pulse. The attendants awaited for the arrival of the East St. Paul Fire Department. Once the fire department arrived, they extracted the victim.

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She was then transported to Concordia Hospital where death was pronounced. Hawkes advised they were only on scene for a short time, as it only took the fire department five or ten minutes to get her out of the car.

27. In his statement Hawkes advised they had very limited contact with the subjects he believed were driving the other two vehicles. This contact consisted of simply asking the two if they needed any medical attention, or if there were injured people in their vehicle. When they were told no, they moved back to the small yellow car to continue with the assessment of the driver. Hawkes had no significant contact with anyone at the scene except for the deceased. He advised he does not recall any interactions between the police and the other drivers as he was concentrating on the patient. He does recall that when they arrived on scene he or his partner were given some background of the situation by either a paramedic or fireman coming from, or going to work. It is believed that this subject was Dale Kasper. Hawkes statement is attached as Appendix "H".

2006-05-29

28. Attended to the Selkirk Hospital to interview Rolland Fontaine. Fontaine is a Selkirk ambulance paramedic, and on the day of the fatal motor vehicle collision he was partnered with Ted Rosser. Fontaine stated that it was near the end of shift at around 0700 hrs when they received a call about the collision. He advised that under perfect driving conditions a call to that area would take about twenty minutes to respond. Fontaine stated that upon arrival they were directed by an East St. Paul fireman to a ESSPD vehicle. They were told that there was a subject involved in the collision in the police car. Fontaine proceeded to the rear drivers side and opened the back door. He observed a male subject sitting in the back behind the front passengers seat. He advised he leaned into the subject, being only a couple feet away, and asked if he needed medical attention. He immediately detected what he characterized as a stale beer smell from the subject. He also observed that the subject never looked at him, that he stared straight ahead and indicated he was fine. It was Fontaine's impression that the male in the back of the police vehicle was very focused, with a lot of things on his mind. Fontaine indicated that on this particular shift he was the ambulance driver, and as such it was Rosser's responsibility to conduct an assessment. At this point Rosser became engaged with the subject now identified as Harvey-Zenk. Fontaine left the car and returned to the area of the ambulance.

29. As the result of questions posed to Fontaine, he states that after speaking with Harvey-Zenk he spoke with Norm Carter and related his observations to the policeman. This aspect was explored further with Fontaine as it is well documented that Carter never attended this scene. Fontaine was quite open in saying he could be mistaken about talking to Carter specifically, because he had attended so many calls in the past where Carter was the investigator. He did however believe that he spoke with an ESSPD officer, and related to him/her his observations of Harvey-Zenk. He also observed a WFPS ambulance by the yellow car, but that there was no active extraction or treatment being provided to anyone outside the ambulance. Fontaine went on to advise that once Rosser had received a signed waiver of treatment, they departed immediately as their shift had ended. He stated that they were there maybe a total of ten minutes. See Appendix "I".

30. Investigators were also able to speak with Ken Ford this date. Ford was a passerby on the morning of the collision and directly contacted the ESSPD for attendance. He states he was northbound on Hwy 59 heading to work on Henderson Highway. As he approached the intersection of 59 and 101 he saw a lot of four way flashers, and cars pulled onto the shoulders. He advised that instead of stopping, he went through the intersection

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....so not to cause any more traffic congestion. He described the three vehicles in the intersection, and that he observed a man standing beside a yellow Sprint. Ford recalls the man being in a dark uniform, possibly an emergency responder or a bus driver. Given the statements received to date, it is believed Ford is describing Dale Kasper. Ford did not have any contact with the accused in this matter, and departed the scene prior to any emergency vehicles arriving. Ford's statement is attached as Appendix "J".

2006-05-30

31. Cpl. Doyle attended to Selkirk Detachment and met with Denise Bukowski. Bukowski along with her husband Allan were south bound on hwy 59 the morning of February 25, 2005. As they approached the intersection of 59 and 101, she saw that the light was green, however there was no traffic flow. Bukowski advised that she noted two vehicles in the intersection damaged, and her attention was drawn to a car with a woman exiting from the drivers side. She stated that she got out to see what she could do and her husband got onto the phone to call 911. She approached the woman who had exited her car and inquired if she needed assistance. The woman said she was fine. Her attention was then drawn to the small yellow car which was more in the middle of the intersection. Bukowski approached this vehicle and noted a woman who appeared to be deceased. She turned away and noted a man walking toward the yellow car from a pickup truck. She was unsure if this vehicle had been involved in the accident. Bukowski stated that she was about ten feet from the man and asked him if he was all right. He never responded, and looked to be in shock from the accident. She described him as about 5'10, short hair, and younger. This was all the interaction Bukowski had with this subject, who is believed to have been Harvey-Zenk.

32. Bukowski also states that she observed a man in an emergency response uniform standing beside the yellow car. She approached him, and now knows this to be Dale Kasper. She asked him if there was anything they could do for the woman in the car and he responded no. Bukowski then states that she realized emergency vehicles would be arriving and decided to depart the scene. They left prior to any first responders arrived. Bukowski stated that she does not believe that her husband got through to 911 to report the incident. See Appendix "K".

33. Cpl. Kennett spoke with Vernon Stevens this date. Stevens states that he was driving southbound on hwy 59, and observed a vehicle to the right spinning out. Vehicles were moving to the right to avoid the accident. He observed an off duty fireman directing traffic, and attending to the woman in the yellow vehicle. He saw a male off to the east of the yellow vehicle, standing there looking at the accident. He asked this unknown male if he needed assistance, and if he wished to warm up in his truck. The male indicated he was fine. There was no other interaction between Stevens and this unknown subject. Stevens described the male to be in shock, and did not believe he was impaired. This comment did not form part of his previously provided statement. Stevens departed the scene prior to police arrival, but the first ambulance was on scene. In his original statement he used the name Crystal to describe the female in the yellow car. He however did not know the female personally and had obtained this knowledge through the media. Stevens was on scene for approximately ten minutes. Throughout his time on the scene, the male from the truck just stood there observing. Stevens statement is attached as Appendix "L".

34. Garth Shaw attended "D" Division RCMP Headquarters to speak with Cpl. Kennett and Cpl. Doyle. Shaw was the only witness to the entire accident. He stated that he was south bound on hwy 59 approaching the intersection to 101. He was driving in the median lane and observed that the light was red. He also observed two vehicles stopped at the intersection so he changed lanes , thus approached the intersection in the curb lane.

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He stated that he was not yet at the intersection, and was traveling at a speed of about 40 km/hr. Shaw then observed a blue pick up truck go past him in the median lane at a high rate of speed. He approximated the speed of the truck to be 80 km/hr. The truck then struck the rear end of a yellow car, crushing it against the first car at the light. The first vehicle, a green car, was pushed across the intersection into the south west corner of the intersection. The yellow car was pushed through the lights, and the blue truck spun through the intersection, hit a light standard and traveled into and through the middle ditch.

35. Shaw advised that after the accident he did not speak with any of the drivers. He observed a lady get out of the green car, and a man get out of the blue truck. He described that he exited his van, went over to the yellow car, and determined there was nothing he could do for the driver. He advised he moved his van across the intersection north of the yellow car. He then observed the male from the truck walk up to the yellow car to look at the driver. He stared for a moment and then walked back to his truck to stand. Approximately ten minutes later emergency vehicles started to arrive so he moved his van to a different position in the intersection. While he was sitting in his van, he was approached by a policeman who he believed was from ESPPD. After providing a brief description of the events he witnesses, the policeman asked him to remain at the scene until further details could be gotten from him. During this time he observed an ambulance arrive and tend to the woman in the yellow car. He said the attendants put a heart monitor on her, and then she was extracted by a fire crew. She was then transported away from the scene. Shaw stated that he then observed a policeman walk over to the driver of the truck who was still standing outside. The two were in normal conversation distance from each other for about five minutes. Shaw then described that after the ambulance had left, he observed the policeman escort the man from the truck across his line of sight. He noticed nothing remarkable about the man from the truck in either his actions or demeanor. He assumed that the man was taken to a police vehicle. This was the only police action Shaw observed at the blue truck, or with the male occupant of that vehicle. See Appendix "M".

2006-05-31

36. Cpl. Doyle attended to the work place of Allan Bukowski. Bukowski along with his wife Denise were traveling south bound on hwy 59 just after the accident had occurred. He stated that as they were heading south, he noted the light was green but traffic was not moving. They pulled up, and saw the vehicles involved in the accident. He positioned his car on the right shoulder, and said he was beside a dark colored van. He stated that he observed a small car in the south end of the intersection quite damaged, and another vehicle to the west of that. He did not note any other vehicle that may have been involved in the accident. Bukowski stated that his wife got out of the vehicle and went to see if she could render any assistance, while he attempted to call 911. He advised that his cell phone was dead, so he rummaged around the car looking for an adapter. Bukowski said that this took him quite a bit of time, and in the end he was never able to get a call placed. His wife returned to the car, and they departed before any emergency vehicles arrived.

37. Bukowski added that at no time did he speak with anyone at the scene other than his wife. They then departed the scene to get his wife to work at Concordia Hospital. They turned west onto the perimeter and drove for some minutes until they could turn back east bound. They reapproached the accident intersection and noted that emergency vehicles had arrived. He then proceeded to the hospital and dropped off his wife. See Appendix "N".

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38. At approximately 1310 hrs this date, Cpl. Kennett and Cpl. Doyle met with Cst. Glenda Pedersen of the ESPPD. Pedersen was escorted to an interview room and given an opportunity to review her notes and investigation narrative from this incident. A formal interview commenced at 1320 hrs. Cst. Pedersen advised that she was working a day shift the morning of the collision. She believed that the call came directly to the station, and was answered by Cst. Graham. It was her understanding that the location of the incident was at Henderson Highway and the perimeter, so she departed alone in that direction. Finding no accident she learned that in fact the collision occurred on hwy 59. She headed east, and when she approached the accident minutes later she noted emergency vehicles had already arrived. This included Chief Bakema and Cst. Graham in one of the ESPPD cars, Cst. Woychuk in the department's truck, and an ambulance. She was going to stop at the scene but was instructed by Cst. Graham to head north up hwy 59 and divert traffic west bound onto the perimeter highway.

39. As she departed the scene, she noted that Cst. Woychuk had just arrived as it appeared he had just exited his vehicle. She observed Woychuk walk toward Chief Bakema and Cst. Graham, who were standing in the middle of the intersection engaged in a conversation. She believed that there were other emergency vehicles at the scene, but does not recall the exact number or their location. She stated that she then proceeded north to a set of weigh scales to direct traffic. During her time at this location she observed other emergency vehicles arrive, but was too far away to identify individuals or specific actions.

40. She advised that there had been quite a bit of talk internally between the policeman at the ESPPD about the way the investigation was handled. These conversations surrounded elements such as the delay in the arrest, charter and demand, the fact that a junior member like Cst. Woychuk was given Harvey-Zenk for transport, and the subsequent assigning of the investigation to Sgt. Carter who never attended the scene. Overall, the feeling was that the matter could have been handled differently, and may be in jeopardy at court. See Appendix "O".

41. Cpl. Kennett and Cpl. Doyle attended to the residence of Kathleen Beattie of East St. Paul. Beattie was the driver of the green sedan which was involved in the accident. Beattie had yet to provide a statement in this matter. She advised that she was heading to work the morning of the accident, and stopped at the traffic light at hwy 59 and 101. She was stopped in the passing lane and a second vehicle was behind her. Beattie states that the light had just turned green and she was going to proceed, when she struck from behind and she was thrown through the intersection. She got out of her car and noted what she describes as a small red car also in the intersection. The red vehicle was severely damaged. Beattie described that she was unsure if it was a convertible, but noted that there was no roof on the car. She also noted a truck farther away from her, but at the time did not associate the vehicle as being in the accident. Beattie used her cell phone to contact her husband who is a Winnipeg Police Service officer. It was described that she spoke with him for a short time and told him about the accident, and asked him to get some police out there as it appeared that no one was coming. Beattie then had a short exchange with the man from the truck. She asked this gentleman if he was ok. Beattie stated that the man just stared blankly at her and continued back to his truck. She noted nothing remarkable about his demeanor or actions, and commented that he appeared to have been in shock.

42. During additional questioning, it was learned from Beattie that she recalls ambulances arriving and that she was seen by attendants from the first ambulance, and then was transported to a second. She does not recall seeing any police or fire vehicles at the scene, and saw no one who had additional interaction with the man from the truck who is believed to be Harvey-Zenk. Beattie's statement is attached as Appendix "P".

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43. Given that Beattie had disclosed her conversation with her husband Chris Beattie, investigators took the time to briefly speak with him. A formal statement was not obtained. He advised that shortly after 7:00 am the morning of February 25th, 2005 he got a call at the Winnipeg Police Service duty office by his wife. She told him she had been in an accident, where it had occurred and that she believed she was ok. He said that he got changed, and drove out to the area of the accident, which would have taken him about twenty minutes. When he got there he stopped by a road block and had to walk into the scene area. The ambulance his wife was in was just leaving, so he walked back to his car and followed it to the Concordia Hospital. Mr. Beattie advised that he did not see or note anything about emergency personnel, or anyone else at the scene. See investigators notes.

44. At 1850 hrs, Cst. Mike Krawchuk of the ESPPD attended to the "D" Division RCMP Headquarters to provide a statement. Prior to the interview, Krawchuk was given an opportunity to review his notes he had brought with him. He advised he was scheduled to work at 1100 hrs the morning of the collision, but was called in early by Chief Bakema. He got to work at 1030 hrs and was briefed at the station by Sgt. Carter. Carter indicated to him that a Winnipeg Police Service member was in custody for his involvement in the fatal motor vehicle collision. At 1110 hrs, Cst. Krawchuk assisted Sgt. Carter in escorting the accused Harvey-Zenk to a washroom. He states that there was no conversation between him and the accused. At 1114 hrs, Harvey-Zenk was escorted to an interview room where he was left with Sgt. Carter.

45. Krawchuk was then directed to attend to the accident scene to relieve members. He arrived at 1146 hrs and believed he took up traffic control duties for Chief Bakema and Cst. Graham. It was Krawchuk's impression that the two had been at the scene the entire time and needed a break. At 1232 hrs he was then directed to go to Cst. Pedersen's location at the weigh scales to take up traffic control at that location. It was Krawchuk's belief that Cst. Pedersen was send to deal with matters at the hospital. Krawchuk remained on scene until it was cleared at 1606 hrs. It was his belief that Cst. Graham had helped out the RCMP Traffic Analyst. Krawchuk was asked about any conversations he was aware of regarding the way this investigation was handled. He advised that there was talk, especially the fact that the accused was passed on to Cst. Woychuk who was junior, and was just coming off a night shift. He indicated that there were also general discussions that because of the way the accused was handled, there may be a charter issue raised by defense at trial. Cst. Krawchuk's statement is attached as Appendix "Q".

2006-06-01

46. Cst. Bryan Maloney of the ESPPD attended to "D" Division Headquarters to provide a statement on this matter. Maloney advised that he was on holidays when this fatal motor vehicle collision occurred. His knowledge of the details of the occurrence were gained by him through conversations with other members of the ESPPD and reviewing the file. Maloney advised that when he returned to work he did review the electronic version of the file, and quickly made the conclusion there was a charter issue given the delay in arresting Harvey-Zenk. He also stated he noted that there was some scene and file management issues from reviewing the occurrence. Maloney commented on the negative aspect of placing the accused with a very junior member such as Cst. Woychuk.

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47. When asked about his impression of Chief Bakema's actions, he indicated he wasn't surprised by them. Maloney described his belief that Bakema was a poor manager and a poor policeman. He went on to provide an account of other fatal motor vehicle accident scenes he had attended with Bakema. Maloney said Bakema rarely showed him any strong performance ability. He was convinced that Bakema would not have the skills to manage such a scene, or investigate it with any thoroughness. Maloney also stated that it was fairly common practice for Bakema to sit down with others who had attended a particular call for service and do their notes. He commented that after reviewing the electronic file, the notes on file, and having observed Bakema conduct his day to day duties, he was convinced that Bakema's motivation to pass off Harvey-Zenk to Woychuk was to distance himself from the arrest. It is Maloney's feeling that both Bakema and Graham would have done anything to get out of being associated with the arrest of a Winnipeg Police Service member. Maloney's statement is attached as Appendix "R".

48. Cst. Randy Chudyk of the ESPPD attended for a statement. Chudyk advised that the day of the accident he was on a Traffic Analyst course, and was not at work for weeks after. Upon his return to work, he heard the stories around the office of how the investigation was managed and wasn't surprised. He stated that he had attended accident scene's with Chief Bakema and commented that he did not have strong scene management skills, nor was he particularly a strong investigator. He described that some months after the accident he was approached by Cst. Woychuk. Chudyk is the ESPPD Association President, and Woychuk had approached him in this capacity. The nature of the conversation surrounded Woychuk's actions at the scene as directed by Bakema. As described by Chudyk, Woychuk was concerned about getting into trouble over his actions, especially after court. Chudyk told him that he had the full support of the association, and he could call upon them should there be any repercussions over the handling of this case. He further told Woychuk that he should disclose what he was instructed to do at the scene, and to simply ensure he tells the entire truth.

49. Chudyk described that he and Bakema did not get along that well. He said that Bakema would try to manage through intimidation, and had his favorites in the office. Bakema's management style often led to discussions with him as the ESPPD Association President. Chudyk's statement is attached as Appendix "S".

2006-06-02

50. Cpl. Kennett contacted and made arrangements to interview East St. Paul Fire Chief, Ray Riddolls. Riddolls advised that he was the first responder from the East St. Paul Fire Department to the scene, and arrived at 0722 hrs. Upon his arrival he stated that the male subject from the truck was already in a police vehicle. The first ambulance arrived at the same time as he did, and he began a scene survey. His fire crew arrived shortly after, and requested they conduct an extrication of the female from the yellow car. After this task was complete, he left a pump truck on scene to clean the area, and departed himself at 0820 hrs. Riddolls does not recall specifically which ESPPD members he dealt with as he deals with them on a regular basis and is unable to differentiate one scene from another. He did not observe a policeman dealing directly with the driver of the truck. It was his belief that the driver of the truck was in a police car upon his arrival. See Appendix "T"

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51. Cpl. Kennett called and spoke with Detective Andrew Smith of the Winnipeg Police Service Professional Standards Unit. Detective Smith advised that retired Sgt. Harry Bakema worked for the Winnipeg Police Service from July 12th, 1971 to March 22nd, 2003. He worked in District 3, B3 shift from January 22nd 1995 to his retirement. While at District 3, he was a full sergeant, and was the supervisor for the watch. He had been trained as a Breath Technician June 1985. It was asked of Detective Smith if there was anyway it could be determined how many impaired driving investigations Bakema may have been involved in during his service. Due to a new occurrence management system implemented by the Winnipeg Police Service, this information was not available. Detective Smith did comment however that Bakema was responsible for reviewing all files on his watch at District 3.

52. The purpose in speaking with the Professional Standards Unit was also to attempt to determine if Bakema and the accused Harvey-Zenk had ever worked together, or knew each other. Detective Smith advised that Constable Derek Harvey-Zenk worked for the Winnipeg Police Service in District 3, B1 shift from December 4th, 2000 to November 11th, 2001. He did not work directly for Bakema, and would have had a different supervisor. Harvey-Zenk's shift followed Bakema's shift in the rotation. Given this, there would have been regular overlaps between the two rotations on both day and night shifts. Thus it would only stand to reason that the two would certainly have known, or knew of each other.

2006-06-09

53. As a result of statement reviews, investigators determined a need to explore in more depth Cst. Woychuk's actions the morning of the collision. Specifically, there is a contradiction between his notes, narrative and statement he has provided. This contradiction surrounds his actions when he first arrived at the scene. His notes indicate that he arrived on scene at 0722 hrs, and conducts traffic control of vehicles attempting to turn west off of hwy 59 onto the perimeter. It is at 0742 that he notes Chief Bakema brings Harvey-Zenk to his vehicle and places him in the back. Cst. Woychuk's statement however indicates that immediately upon his arrival at the scene Chief Bakema approaches his vehicle and places Harvey-Zenk in the back. In fire chief Riddolls' statement, he indicates that he arrives at the scene also at 0722 hrs. It is his belief that the male from the truck is already in the back of a police vehicle, and that he does not see the subject moved.

54. At 1050 hrs, Cst. Woychuk attended to "D" Division Headquarters and spoke with Cpl. Doyle. Cst. Woychuk was again supplied a copy of his notes he had made in relation to the collision. Several areas were explored with him, with an emphasis placed on the twenty minute discrepancy between his statement and notes. He advised that when the department had the previous dispatch service, members would often log times with them. These times would then be faxed to the department, and often notes were made from these logs. He stated that he believes that during his note development for this matter, some of his times were gotten in this way, as he had not made notes during the incident itself. When asked specifically about the 0722 hr, and 0742 hr entries he commented that he would not have logged with the dispatch the time Harvey-Zenk was turned over to him, because the nature of the entry. He could not provide a source for the time he wrote down, as he admits he was not making any notes at the time. He concedes that he could have indeed gotten that time from Chief Bakema, but stressed that he was never directed to use that particular time for that entry. He stated that the only suggestions in regards to note...

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....development that may have been given to him by Bakema, was the exclusion of comments made of the accused's state of impairment, and the inclusion of a rationale for transporting Harvey-Zenk to the station.

55. Several questions were posed to Woychuk about his recall of events, and in particular what he did when he got to the scene. He was unsure from strict recall if the accused was brought directly to his police car upon his arrival, or if he first put out cones and did traffic duties. He stated he was confident in his notes, but admits he is unaware of how he came up with the 0742 time entry. Woychuk advised that he now recalls that a Winnipeg City policeman came to the scene, and has since learned that it was the husband of the lady in the green car. He also believed that the ambulances were still on scene when Harvey-Zenk was in the back of his police car. Woychuk contributes the discrepancies between his notes and his original statement to the passage of time since the occurrence, and poor note taking. Woychuk's second statement is attached as Appendix "U".

56. In an effort to add to the number of concrete times for this event, Winnipeg Fire and Paramedic Service was contacted. They were asked about any reports generated by the two ambulance units which responded to this collision. WFPS provided incident sheets for Unit 24, and Unit 2. Unit 24, with attendants Jonathan Hawkes and Don Fotti received the call on February 25th, 2005 at 0712 hrs. They responded at 0713 hrs, and arrived on scene at 0735 hrs. The unit departed the scene with patient Crystal Taman at 0743 hrs and arrived at Concordia Hospital at 0751 hrs. They cleared this call at 0910 hrs.

57. Lisa Trochim and Len Pleskacz attended to this scene in Unit 2. According to the incident sheet, the unit was dispatched at 0713 hrs, and responded at 0715 hrs. They arrived on scene at 0725 hrs and departed at 0745 hrs en route to Concordia Hospital. They arrived at the hospital at 0754 hrs, and cleared there at 0853 hrs. At conflict are the times associated with these incident sheets. According to Hawkes, they were the first to arrive on scene. This will need to be explored during interviews with Fotti, Pleskacz, and Trochim. See Appendix "V".

2006-06-12

58. Cpl. Doyle made contact with Len Pleskacz, an ambulance attendant for the City of Winnipeg. Arrangements were made to meet him at the firehall on Day Street, as he was on duty. At 1250 hrs a statement was obtained from Pleskacz. He advised that on the day in question he and Lisa Trochim were partners in Unit 2. A call was received early in the morning, however the exact time is not known to him. They responded to hwy 59 and 101, and were the second unit on scene. Pleskacz advised that Unit 24 with Jonathan Hawkes and Don Fotti had arrived before them. He stated that on that particular day he was the attending paramedic, while Trochim was the driver. When they arrived, Unit 24 was in the midst of dealing with the driver of a small yellow car which was very damaged. Pleskacz began to assist them, and Trochim attended to a female driver of a green sedan. For his entire time at the call Pleskacz states he assisted Unit 24. He states it took some time for the extraction team to arrive, but once set up, the extraction went very quickly. The driver from the yellow car was then loaded into Unit 24, and he went to assist Trochim. Shortly after he drove their unit to the hospital.

59. It was explored with Pleskacz why there would be a discrepancy between the computer generated incident report, and his assertion they were the second unit on scene. He was one hundred percent certain they were the second ambulance to attend, and attributes this contradiction to the fact that Unit 24 may have forgotten to push the status button showing that they had arrived. Pleskacz also stated that geographically the hall Unit 24 responded from is closer to the accident scene than from where they responded from. He further advised that he did not note any police activity at the scene, and had no contact with the third driver said to be involved in the collision. This statement is attached as Appendix "W".

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60. Cpl. Doyle attended to the Winnipeg Firehall #2, and spoke with Lisa Trochim. Trochim provides an account consistent with Pleskacz. They responded to the collision and were the second ambulance to arrive. Pleskacz was requested to help Unit 24, and she was advised to attend to a woman driver from a green car. She took the driver to her ambulance where she conducted an assessment. She stated that it was her impression these were the only subject that needed attention. She did not have any other contact with witnesses or emergency people, and can not recall if details of the accident were provided to her.

61. The inconsistency with the incident report and witness accounts was explored with Trochim. She could only say that for certain they were the second unit on scene, and that it must have been human error which generated the time reference on the incident report. Trochim's statement is attached as Appendix "X".

62. Cpl. Doyle also contacted the Selkirk Ambulance service and requested a log sheet for the times associated to the ambulance run conducted by Ted Rosser and Rolland Fontaine. Interlake Region Health Authority faxed a letter advising that the call for this ambulance on February 25th, 2005 was received at 0717 hrs, responded to at 0720 hrs, arrived at the scene at 0738 hrs, and departed at 0756 hrs. This letter dated June 12, 2006 is attached as Appendix "Y".

2006-06-13

63. Arrangements were made to interview former ESPPD constable Ken Graham. Graham attended to the RCMP "D" Division Headquarters where an audio statement was provided. Graham was given an opportunity to review his notes prior to his statement. He advised that shortly after 0700 hrs February 25th, 2005 he took a call at the ESPPD station. The caller advised there had been a serious accident at the intersection of hwy 59 and 101. He advised that he and Chief Bakema went in the same car to the scene arriving at 0716 hrs. He conducted traffic control at the scene and noted that it appeared three vehicles were involved in the collision. These included a yellow Sprint convertible, a green sedan and a pick up truck. He stated that he attended to the yellow Sprint and ambulance attendants were working on her, but that it was obvious she was severely injured. He also had a conversation with the lady in the green car. She told him that her husband was a Winnipeg Police Service inspector, and that he noted she did not appear to be seriously injured.

64. Graham added that he had moved to different positions at the scene on a few occasions to deal with the traffic issues. He stated that the only time he ever noted the accused, later identified as Harvey-Zenk, was in the back of Cst. Woychuk's vehicle. He never had a conversation with Bakema regarding the accused at the scene, nor did he observe Bakema interact at all with Harvey-Zenk. He is confident that at about 0725 hrs the daughter of the deceased arrived on scene and he dealt with her and her father until they left for the hospital. He does recall observing a paramedic at Woychuk's vehicle with the door open in some sort of exchange with the man in the back, and assumed he was getting treatment. It is after the family departs the scene that he attends to the accused vehicle. He did so to get the registration information for his own notes. He immediately detected a smell of liquor, and saw a WPS uniform which he seized. He did this to ensure it was not stolen when the tow truck company took possession of the truck. Graham recalls making notes at the scene because it was so cold that morning. He does not recall making any notes with anyone, or using other members notes for times or details. Graham's statement is attached as Appendix "Z"

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65. Cpl. Kennett arranged to interview the last ambulance attended who responded to this fatal motor vehicle accident, Don Fotti. Fotti was given an opportunity to review the incident report sheet provided by Winnipeg Fire and Paramedic Service. He advised that from the time of the call, they are only five minutes to the location of the accident and were the first emergency vehicle on scene. They arrived and conducted a scene survey. Given the critical condition of the driver in the yellow car, a call was made for an extraction team which came from East St. Paul. Fotti advised he did have an occasion to observe the driver of the pickup truck walking toward his vehicle. He didn't note anything in particular about the subjects movement.

66. The attendants efforts then focused on Taman, in respect to removal and treatment. She was loaded in their ambulance, and he believed they were assisted by Len Plesckaz. Fotti was asked about the discrepancy with their arrival time, and he contributed it to not pushing the status button upon arrival. He stated that the victim was transported to Concordia Hospital, and they cleared the call just before 0800 hrs. See Appendix "AA".

67. Included in this investigational package is a copy of the ESPPD shift schedule for the days leading up to and following the collision February 25th, 2005. This schedule is attached as Appendix "BB"

68. Cpl. Kennett contacted former ESPPD Chief Harry Bakema. He was advised the nature of this investigation and was requested to attend to our office to provide a warned statement regarding this matter. Bakema advised he would have to make a call and would be in touch next week.

2006-06-14

69. Bakema contacted Cpl. Kennett and inquired if what we were looking for is a statement that we could provide to the crown for disclosure (this was not discussed between investigators and Bakema). Cpl. Kennett replied yes, and he inquired if any charges were being layed today, and he was advised no. Bakema advised he would be willing to attend RCMP "D" Division and discuss this further. Bakema attended and was informally advised of the police warning and that he was not detained, prior to being requested to provide a pure version statement of his involvement with this fatal mvc, 2005-02-25. Bakema was advised that we are investigating the obstruction of justice. He requested time to contact his legal counsel and then wished to provide a statement.

70. Bakema escorted out of interview room and he left the building to use his cell phone. Bakema returned a few moments later and advised he was unable to speak to counsel, and did not wish to provide a statement until he was able to do so. Approximately twenty minutes later, Bakema phoned to advise he had an appointment set for 2 pm this date with legal counsel, and would call back. Interview concluded. This statement is attached as Appendix "CC".

71. Cpl. Kennett and Cpl. Doyle's notes regarding this investigation are attached as Appendix "DD" and "EE". To date, there has been no response from Bakema regarding him providing a statement.

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72. Cpl. Doyle spoke Cpl. Chris Blandford of the Banff RCMP Detachment. Blandford is the RCMP Traffic Analyst who attended to the fatal motor vehicle collision scene at the request of the ESPPD. See Appendix "C" for his report. Blandford was asked about any dealings he had with members of ESPPD while at the scene. He advised that his portion of the investigation proceeded in a typical manner. He obtained photos and measurements and believes he was assisted by Cst. Ken Graham. He recalls that when he arrived on scene, all emergency response vehicles had departed except police. Blandford advised that he had been on scene for quite sometime before he learned that the accident involved a Winnipeg Police Service member. He stated that at no time was he approached by an ESPPD member and advised that the occupant of the truck was impaired. Blandford stated that he did learn that the driver of the truck was charged for impaired driving, however he is not clear if he learned about the impairment that day, or days after.

Summary

73. The scope of the requested investigation was to explore the conduct of Chief Harry Bakema during the course of this fatal motor vehicle collision. After interviewing those individuals who could provide insight into Bakema's actions, it appears two significant issues have been raised. The first is that Bakema at no time notes, or acts upon stated suspicions that Harvey-Zenk was impaired at the time of the collision. The second is the aspect that Bakema told Cst. Woychuk, the only other policeman to deal with Harvey-Zenk at the scene, to omit comments made by himself and Ted Rosser regarding Harvey-Zenk's state of impairment. Bakema also told Woychuk to include in his notes that Harvey-Zenk was being transported to the ESPPD to complete a traffic accident report.

74. The Winnipeg Police Service Professional Standards Unit confirmed that Bakema retired from their organization with almost 32 years of policing service. During this time he attained the rank of patrol sergeant. His duties in this role would have included the supervision of ongoing investigations, and the review of file work. Bakema was also a certified Breath Technician, having complete his training in June 1985. Given the experience and training possessed by Bakema, it can be assumed that he had knowledge and understanding of the elements needed in an impaired driving investigation.

75. This report submitted for review.

Tracy Kennett, Cpl.
Winnipeg Major Crime Unit

T.E. Doyle, Cpl.
"D" Division Criminal Operations