

PART 3—FRANK PAUL’S FINAL DAYS

D. The Events of December 6, 1998

1. Discovery of Frank Paul’s body

David Kelly was a guest at the same party that Patrick Lewis attended, in the very building that Cst. Instant placed Mr. Paul behind. He testified that between 2:30 and 3:00 a.m., some people at the party went outside to look for the host’s lost cat. A man named Colin came inside and Mr. Kelly heard him say that he had found a body; the man called 911.

Mr. Kelly, recently trained in CPR, went out to check on the person’s pulse. He said the body was in the middle of the alleyway, face-up, with his head angling slightly away from the building. His pants were pulled down near his hip area and his lips were retracted a bit from his teeth. He noted a clothing tag close to his head, and a piece of eavestrough. He checked unsuccessfully for a pulse.¹

Mr. Kelly recalled that the body was more toward the middle of the laneway than the photographs of the scene depict, but equally he volunteered that it was 10 years ago and it was dark outside.²

When I examine the police photographs of the body’s location, I can see what looks to be the clothing tag and the piece of eavestrough near Mr. Paul. Given the other evidence, which I will discuss momentarily, I believe Mr. Kelly is correct to be skeptical about his recollection of exactly where the body was in the laneway.

Colin Robertson did not testify, but I accepted into evidence his 911 call, and a transcript of his police interview, which were part of the VPD’s Sudden-Death Report.³ According to Mr. Robertson, he was at the house party and went out looking for the lost cat at about 2:30 a.m. He came across Mr. Paul just off the pavement, lying on his back. His pants were pulled down somewhat and he had no shoes on, although his shoes were nearby. He called 911 and returned to the scene, where he met with the police.

¹ Transcript, Nov. 30, 2007, pp. 61, 65–73.

² Transcript, Nov. 30, 2007, pp. 76–78.

³ Exhibit 91, pp. 62–75.

2. Attendance of police officers at the scene

Cst. Darryl Ell was a police wagon driver. At approximately 2:30 a.m., as he pulled into the alleyway on his way to the Detox Centre, two white males flagged him down, and said there was a man who was not breathing. Cst. Ell got out and walked over to the male. He saw Frank Paul on his back, lying in a grassy area just to the side of the alleyway, immediately to the north of the gravel. His pants were down past his groin area and he was not wearing shoes. Within a few moments of Cst. Ell speaking to these males, Sgt. Ray Winters pulled into the laneway, followed by the ambulance. Cst. Ell then carried on toward the Detox Centre.⁴

Both Csts. Turner and Peterson, who had arrived on the scene, testified to a memory of Mr. Paul being seated against a building, slumped forward, when they attended the laneway. Cst. Turner prefaced his testimony by saying, “my memory is a little fuzzy on this.”⁵ He later added, “It’s [an] image I seem to have, but I can’t be a hundred percent sure I’m thinking of the right incident.”⁶

Cst. Peterson said:

... upon arrival, my memory of the discovering of Mr. Paul was driving unto the rear of the location, seeing Mr. Paul against the rear of this building in a slouched but seated position and I have a faint memory of light rain at that time.⁷

Cst. Peterson also testified that he spoke with an eyewitness who had come across Mr. Paul’s body before he did, who described a “male laying next to the lane.”⁸

There was conflicting evidence from police witnesses about which officers arrived in the laneway first. Csts. Turner and Peterson, working together, both said they were the first unit there.⁹ Acting Sgt. Winters, meanwhile, was not sure who was there when he arrived, but he remembered that Csts. Turner and Peterson came after he did.¹⁰ Cst. Ell was clear in saying that he was there just moments before

⁴ Transcript, Nov. 29, 2007, pp. 77–85.

⁵ Transcript, Nov. 26, 2007, p. 172.

⁶ Transcript, Nov. 26, 2007, p. 174.

⁷ Transcript, Nov. 27, 2007, p. 145.

⁸ Transcript, Nov. 27, 2007, p. 164; Exhibit 41.

⁹ Transcript, Nov. 26, 2007, p. 174 (R. Turner); and Transcript, Nov. 27, 2007, p. 145 (Cst. Peterson).

¹⁰ Transcript, Nov. 29, 2007, pp. 6, 16.

Sgt. Winters, and that Csts. Turner and Peterson arrived afterward. Nothing of significance turns on this point, but I find it unlikely that Csts. Turner and Peterson were the first to arrive.

There is conflicting evidence about the location of Mr. Paul’s body. Cst. Instant testified that he placed Mr. Paul against a building, and Csts. Turner’s and Peterson’s best recollections were that Mr. Paul was propped up against a building when they arrived on the scene. Neither constable included mention of this very important fact in his statement prepared at the time, which causes me to approach their recollection with caution, as new evidence emerging nine years later in very similar terms from two patrol-mates. Their evidence does not accord with any other evidence respecting where Mr. Paul’s body was found, including that of Sgt. Winters.¹¹

If the civilian witness, Colin Robertson, had described this—and there is every reason to believe he did, as it accords with his 911 call and his statements to police—it would be startling and unusual for the officer to find that the body was in an entirely different place. It would mean either (1) someone had moved the body before the police came; or (2) the witness he was dealing with was blatantly lying. Both propositions would be amazing. I cannot accept that this would have passed without notice.

Was the recollection of Csts. Turner and Peterson influenced by what Cst. Instant said?¹² This may be a case of fading memories, coloured by a memory of what was said about Mr. Paul’s position, rather than what was observed. In light of the evidence from civilians as to Mr. Paul’s position in the laneway, some distance away from the wall, on his back, I do not accept the recollections of Csts. Turner and Peterson on this point.

3. Attendance of ambulance attendants at the scene

Two ambulances attended the alleyway near the Detox Centre. Marilyn Oberg and Ward Findlay were in an Advanced Life Support (ALS) vehicle which carries

¹¹ Transcript, Nov. 29, 2007, pp. 3, 11. Further, there is Cst. Peterson’s recollection that one eyewitness described a male lying next to the lane.

¹² Indeed, Cst. Peterson has, since this incident, spoken with Cst. Instant and recalls Cst. Instant “saying that he had put [Mr. Paul] against the wall in the lane at detox [Centre]”; this may be the source of the “memory” of this fact. Transcript, Nov. 27, 2007, p. 148.

sophisticated life-support equipment. Ms. Oberg knew Mr. Paul and noted that he had recently had a haircut. They checked his vital signs and used a defibrillator to check for electrical activity in his heart. He showed lividity and rigor, indicating he was dead. They phoned a doctor at Vancouver General Hospital for orders, and were told to discontinue their efforts to resuscitate Mr. Paul.¹³ Ms. Oberg testified that the photographs showing Mr. Paul's body accurately showed where he was when the ambulance attendants found him.¹⁴

Fernando Grossling, an attendant in the other ambulance, recalled the call being a "code 4," meaning an obvious death. He remembered gravel having been moved in the area of the body, like a snow angel, which he speculated may have been from a seizure.¹⁵

Cst. Instant testified that he attended the scene after learning of the sudden death through the police dispatch system. He was shocked. He told Sgt. Winters that he had put Mr. Paul there. He asked Sgt. Winters if he could take a look at Mr. Paul, and Sgt. Winters permitted him to do so. Cst. Instant then testified: "I walked back to Sgt. Winters and I asked Sgt. Winters if he had been moved, did EHS move him."¹⁶

The fact that Cst. Instant asked this question suggests that he was puzzled as to how Frank Paul made it away, on his own, from the building wall where Cst. Instant had left him several hours earlier. It confirms, at the least, that Cst. Instant was skeptical that Frank Paul was capable of any significant movement after he left him in the alley.

¹³ Transcript, Nov. 22, 2007, pp. 14–16.

¹⁴ Transcript, Nov. 22, 2007, p. 24; see also evidence of W. Findlay, Transcript, Nov. 23, 2007.

¹⁵ Transcript, Nov. 23, 2007, pp. 44–46. There was evidence, from Ms. Oberg, of Mr. Paul having a history of seizure activity.

¹⁶ Transcript, Jan. 11, 2008, pp. 35–37 (quotation p. 37). Cst. Instant wrote out a brief report describing his dealings with Mr. Paul. His handwritten report gives a time of 3:53 a.m., and this would appear to be accurate. Cst. Instant then prepared a three-page typewritten duty report with his lawyer, which was dated December 7, one day after the incident in question. Both statements are contained in Exhibit 74.