

who is shot with a fatal shot would have kept holding the rifle after two shots were fired, one which may have missed and the other which struck him in the side of his chest and resulted in his death. Smyth said he did not touch the gun afterwards but when it was found, it was found in front of Dunphy, actually pointed towards him and not away from him as was suggested by Smyth. The gun, if it was being held by Dunphy when he was shot, would have likely fell out of his hands and fell to the floor.

During this event, Smyth also stated that Dunphy remained in his chair throughout. That seems inconsistent with his statement that Dunphy kept coming with the rifle pointed towards him.

I first thought that maybe Dunphy had been made aware of the fact that the police vehicle was there near his house. He would have had to pass Smyth's vehicle on the way to his house as it was parked next door. Smyth was of the view, however, that Dunphy was surprised to see him and he did not believe that he had been tipped off of Smyth's coming. The police may be inclined to give Smyth the benefit of the doubt and refer to the chair as a couch. I do not believe that such an inference must be made. We must take the words given by the person giving the statement and then put whatever interpretation we should on its context.

Smyth admitted in his statement that the media will find it hard to see as to why he fired four shots. He explained that he fired these shots in one and a half seconds. Then he said that he wasn't sure if he hit him in the head.

We know from the evidence obtained from the forensic pathologist Dr. Avis that the shot to Dunphy's body is what killed him. The shots to the head were not necessary to render him incapable of causing any harm. Why Smyth continued firing, especially the last shot which was very close to Dunphy's head and Dunphy was not moving, makes me wonder why this was done. Smyth says he was on automatic because that comes out of their training. If, however, it is not necessary for further shooting once the person who is causing the danger is rendered helpless, the extra shots really make sure that he is unlikely to survive. If it is not necessary to kill someone, why would a person need to fire extra shots that would ensure that person's death rather than to see whether some assistance could be given to them so they may survive.

The RCMP expert states Dunphy could have continued moving after he was shot in the chest. He does not deal with the 22 being on the floor which I believe

physically handled Dunphy during this time. Further, I was disappointed that the RCMP felt that they should not try a polygraph on Smyth to determine what his answers would be to certain questions as to exactly what had taken place between him and Dunphy. From what has been presented, I cannot make any determination as to whether or not there was any physical confrontation between Dunphy and Smyth other than the evidence of Dunphy's glasses which are found on the table in a broken condition. The autopsy, however, does not show any bruising other than the bullet wounds inflicted by Smyth.

If Dunphy had the gun where Smyth said it was located, it seems to me that somebody must have told Dunphy that the police were down there looking around and he could have moved the gun from the couch to the chair.

Another scenario could be that Smyth and Dunphy got into an argument, which I am sure they did, and Dunphy wanted him and ordered him out of his house. He could have then, if Smyth refused, gone to the couch and took up the 22 to threaten Smyth so as to get him out of his house. This could have probably been done while Smyth was looking around the house checking things out down the hallway.

There seems to be no doubt that Dunphy was probably shot in the area of the chair where he was found. The first bullet, however, according to Smyth was shot at his body and the angle of that shot seems to indicate that Smyth was probably somewhere in the vicinity of the door or opening whereby you exit the living room. The forensic pathologists indicates that the bullet entered on Dunphy's left side and then went across his body and damaged his aorta and killed him.

My conclusion on the remainder of the shooting indicates to me that Smyth intended to fatally injure Dunphy. When I think of his statement concerning his last shot in the side of Dunphy's head, one must realize that he was extremely close to Dunphy at the time which I would estimate as being about four or five feet. Also added to that is the fact that Smyth says he is an accurate shot and having already fired three shots at Dunphy and then adds a fourth.

I have considered the expert report which says that Dunphy could have continued moving the rifle after he had been shot in the body. However, my conclusion was that the shot which struck Dunphy in the body was when he lost control of the rifle and it fell to the floor in front of him. That would have ended the threat to Smyth.