



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 22

Commissioner: Honourable Justice Leo Barry

Monday

13 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Now, a little bit of housekeeping before we start.

It sounds like we are going to be snowed out or snowed in, whatever it is, tomorrow morning. We might be able to get in in the morning but by the sound of it we'd be caught in here for the afternoon. I think it's supposed to continue snowing, starting sometime tomorrow morning and going on, by the sound of the forecast, going on until the evening.

So we'll – I'll assume that we are not going ahead. Counsel has looked at how we might catch up and it's not too bad. We had some flexibility with some witnesses. We'll probably have to use this Friday afternoon, unless there's some great problem for counsel in so doing. And we'll be able to, I think, fit some – make some changes where we have witnesses who weren't expected to go the full period they were scheduled for. So I think we'll still be able to keep on schedule as much as possible.

Second thing – oh, by the way, we'll look at the, we'll listen to what the government says tomorrow morning, but – and we'll put up on the website the decision – but you can assume that if the government says they're going to close it down tomorrow, that we'll be closing down as well. Rather than doing what we managed to get away with the last time, which was start an hour earlier than was proposed by government.

The second thing is I'm going to give a decision on the proposed chair experience. Is Mr. Simmonds coming, expecting, Ms. Breen, or ...

MS. BREEN: No, Mr. Commissioner, he won't be here today.

THE COMMISSIONER: All right. Okay. So he'll have a copy of this. I have it in writing.

The decision – I'll have counsel distribute to you when I finish going through it. I'm going to go through it quickly in summary form, so as not to take time, and then you can read it at your, at your leisure.

I don't have the Schedule A attached because you all have copies of that but I will attach it before we put it up on the, on the website. So the Schedule A is a copy of the application with an attached description of the proposed experiment and the qualifications of Dr. Czarnuch – I think I may have spelled the name wrong, I see there now, Czarnuch, I think it is.

So we have the application, the initial description of the experiment prepared by the – Professor Czarnuch, and then there was a second additional letter from Dr. Czarnuch answering several questions that I'd raised, and there's a CV of his attached.

So, "The Applicant, Meghan Dunphy, has applied to have Dr. Steven Czarnuch, a biomedical engineer, called as an expert witness, to testify concerning the submission of self-defence made by Constable Joseph Smyth in the shooting death of her father Donald Dunphy. Ms. Dunphy seeks to have Dr. Czarnuch establish the physical movements involved and the time required for Donald Dunphy to access a rifle from his right hand side while seated in his chair."

The Background Facts: “Cst. Smyth has testified that, while questioning Donald Dunphy at his home, Mr. Dunphy raised a 22 calibre rifle from somewhere on the right side of the chair in which he sat and pointed it at the police officer. Cst. Smyth said that at the time he was looking down at a folder on which he was making notes and saw Mr. Dunphy in his peripheral vision. Cst. Smyth estimates he had been looking away from” Mr. Smyth – sorry, from Mr. Dunphy that should be – “for anywhere from two to six seconds.

“Ms. Dunphy says she believes that the proposed expert evidence will establish that her father could not have raised the rifle in the manner stated by Constable Smyth in the time he set out.”

Submissions of the parties: Ms. Dunphy through her counsels, “submits that the proposed experiment regarding the physical movements necessary to raise a rifle in the manner alleged and the time it would take would provide relevant and necessary evidence regarding whether Mr. Dunphy could have acted as he allegedly did within the suggested time frames. Counsel submits that this biomechanical engineering methodology would produce a reliable evidence-based standard against which the veracity of Cst. Smyth’s testimony might be tested and, together with the evidence from other sources, would assist the Commission in addressing its Terms of Reference, particularly those mandating inquiry into the circumstances of death and the ascertaining of whether there were any material deficiencies in the investigation of the death.

“Counsel says that if the time needed by Mr. Dunphy to raise the rifle exceeds the time Cst. Smyth estimates he was not looking at Mr. Dunphy, then this would raise doubts as to Cst. Smyth’s credibility. First, it would raise the possibility that Cst. Smyth may have had time to escape the room or take other action short of legal force. Second, if the time needed by Mr. Dunphy to raise the rifle was relatively long, or involved a significant physical movement, it casts doubt on Cst. Smyth’s assertion that he did not see the rifle until it was pointed at him.”

Constable Smyth’s submission: “Counsel for Cst. Smyth submits the experimental conclusions would have to be premised upon so many estimated variables that the experiment would have little probative value. He notes that Cst. Smyth could easily have spent several seconds looking around the living room and several more looking down at his folder. He also says that the principle of fairness binding a Commission when considering evidentiary issues requires that if evidence is submitted in support of serious misconduct alleged against an individual, then special care must be given as to whether or not to receive the evidence.”

The submissions of other parties: “Other parties, except for the Ad Hoc Community Coalition, also oppose the application on various grounds, one ground being that a part of the experiment will require estimates of the effect of Mr. Dunphy’s physical disabilities upon his ability to twist, turn and lift, matters outside the claimed expertise of Dr. Czarnuch.”

Issues, one issue really: “Whether the results of the proposed experiment would satisfy the test of relevant and necessary evidence.”

Next part, The Law and Analysis: The admission of expert evidence generally. The general rule is that all relevant evidence is admissible, but that has qualifications. “In the present application we are concerned with the exclusionary rule for opinion evidence.

“Normally a witness testifies to facts and does not express opinions about those facts. An exception where witnesses may offer opinions is in ‘matters of common experience,’ such as estimates of distance, or the speed of a vehicle, or the age of a person.” And see Ratushny, *The Conduct of Public Inquiries: Law, Policy and Practice* 2009, at page 323.

“Also, the law permits experts to express opinions in certain limited circumstances, where they are qualified by some special skill, training or experience. The opinion must be on matters within

their expertise. The subject matter must truly require expertise, be within a recognized discipline, and not be within the ‘common stock of knowledge’ of the public.” Again, Ratushny at 323.

“Assuming for the moment that the evidence which Dr. Czarnuch would produce through his experiment would in fact be expert evidence, I am satisfied, for the following reasons, that the proposed evidence does not meet the threshold test for admission of novel expert evidence.”

Admission of novel expert evidence: “The proposed experiment falls within the category of novel scientific technique in that the expertise asserted as needed to carry it out does not fall within a previously recognized area of expertise.

“In *R. v. Mohan*, [1994] 2 S.C.R. 9, the Supreme Court of Canada articulated the four part test to be considered with respect to the admission of novel expert evidence. The criteria are: (1) relevance; (2) necessity in assisting the trier of fact; (3) the absence of any exclusionary rule; and (4) a properly qualified expert.

“Surprisingly, the Court did not expressly note the reliability of the evidence as one of the criteria to be considered.” Justice Sopinka “did, however, at paragraph 18, refer to reliability in the context of relevance and when discussing the exclusionary rule relating to probative value.”

Also, at paragraph 28, Justice Sopinka stated: “In summary, therefore, it appears from the foregoing that expert evidence which advances a novel scientific theory or technique is subjected to special scrutiny to determine whether it meets a basic threshold of reliability and whether it is essential in the sense that the trier of fact will be unable to come to a satisfactory conclusion without the assistance of the expert. The closer the evidence approaches an opinion on an ultimate issue, the stricter the application of this principle.

“The jurisprudence since *Mohan* has made it clear that the threshold reliability of the underlying science must be carefully considered in the case of novel scientific evidence or technique.” For example, *R. v. J (L. J.)* – and I won’t go through the citations – and *R. vs. Trochym*, that’s T-r-o-c-h-y-m. These are examples of where a threshold reliability has been set out as something to be carefully considered.

“In the present case, as explained below, the proposed evidence meets neither the necessity test nor the test of sufficient probative value and, therefore, I need not otherwise get into the assessment of reliability.

“The *Mohan* test has been further refined by the more recent decision of *White Burgess Langille Inman v. Abbott and Halliburton*” Company. That’s a 2015 decision of the Supreme Court of Canada. And “In that case, the Supreme Court of Canada held that the inquiry for determining the admissibility of expert evidence is to be divided into two steps. The first step is the establishment of the four factors set out in ... *Mohan* as a threshold requirement before moving on to the second. If the *Mohan* test cannot be met by the party seeking to adduce the evidence, then it should be excluded. If the *Mohan* criteria can be met, then the second step must be considered. This step involves the trier of fact engaging in a discretionary gatekeeping role to ensure that the evidence proposed is of sufficient probative value so as to outweigh any potential prejudice or harm to the Inquiry’s process.”

Relevance: “In the present case the proposed experiment has some relevance in that I believe the results, if achievable, would, to some extent, advance this Inquiry because they would have a bearing upon an issue to be resolved, namely whether the description of the incident by Cst. Smyth is plausible. If it could be established that Mr. Dunphy could not have brought the rifle to bear upon Cst. Smyth within the alleged time frame, then this would challenge Cst. Smyth’s

testimony that he had insufficient time to see the raising of the rifle or to exit the living room and his only choice was to shoot at Mr. Dunphy.”

Necessity: “From the information provided concerning the proposed experiment, I do not believe that the times required for the alleged actions of Mr. Dunphy can be established with sufficient certainty to be considered necessary. The results of the proposed experiment will depend upon too many variables or hypotheticals. These include the various possible locations of the rifle, the various possible angles of the firearm if placed in a pocket on the side of Mr. Dunphy’s chair, the various possible degrees of disability of Mr. Dunphy, the various possible effects of agitation or adrenalin with respect to Mr. Dunphy at the time, the various positions he might have adopted in his chair (left side, middle or right side), the various ways Mr. Dunphy may have held the rifle (with one hand or two), and so forth. The evidence resulting from the proposed experiment will provide answers to what are hypothetical questions – where there is no agreement on the factual basis of the questions.”

In the J. J. case, Justice Binnie for the court adopted the conclusion of Justice Sopinka “in *Mohan* that the expert opinion must be necessary ‘in the sense that it provide information, which is likely to be outside the experience and knowledge of a judge or jury; ... the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature.’

“The proposed expert says that the planned times and motion trials ‘will help understand both the *average* time it takes to perform the considered action as well as the amount of variation one could reasonably expect as a result of individual capabilities.’ In other words, these trials will provide an expected range of times it would take for a healthy adult male to perform the necessary actions for each possible location and position of the” title – of the “rifle and then these times would be adjusted, based upon estimates of how physical and mental capabilities would affect Mr. Dunphy’s deviation from the average.

“I have not been shown that the adjustment process is within the expertise of Dr. Czarnuch. He properly pointed out that to establish the extent to which Mr. Dunphy’s physical disability may in fact have caused him to take more time than a young, healthy adult male to draw a weapon would require a better understanding of Mr. Dunphy’s disability than is currently known at this time. I note that Mr. Dunphy’s physician could provide only very general information in this regard. Dr. Thomas McGarry testified that Mr. Dunphy had suffered a crushed pelvis and would have some difficulty bending and twisting as a result of his physical problems. He had trouble getting out of a chair and was slow in his movements compared to a normal person.

“Even if one were able to arrive at a reliable deviation for disability, this would point to a different result for each variable, including the assumed location and angle of the rifle, each position of Mr. Dunphy in the chair and each method of holding the firearm. This series of results would not be of significant assistance to this Inquiry, particularly considering the time period of interest ranges from only two or three to five or six seconds. Because the experimental evidence to be obtained will be too speculative and uncertain to be of assistance, the applicant has not shown it will be ‘necessary’.

She fails to meet the ‘necessity’ criteria of *Mohan* or the first step of *White Burgess*.”

Probative Value: “In any event, considering the second step of *White Burgess*, I have concluded that the average times to be obtained under the many scenarios and variations would be of insufficient probative value to justify embarking upon the process of carrying out the proposed experiment. Indeed, I should say experiments. Fairness to Cst. Smyth would require that he have time to search for an expert in rebuttal if the results of the first experiment were not acceptable to him. This would mean delay in seeking experts. Eventually a battle of experts would ensue and it would be very difficult to meet the deadline for the submission of the Commission’s Report.”

A Matter of Common – A Matter of Common Experience: “A good argument can be made that the evidence in question is not expert evidence at all. An expert may not be necessary, in that, for the most part, we are dealing with matters of common sense and something in the ‘common stock of knowledge’ of the public. We can all roughly estimate within a second or so how long it would take a 58 year old man to raise a firearm if he has certain disabilities resulting in loss of flexibility or mobility. Such an estimate would arguably be as useful for present purposes as would the averages obtained by the proposed experiment.

“One may question whether the proposed experiment involves anything more than a sophisticated measurement of distances and times, which non-expert members of the general public could perform or approximate by reasonable estimation. I have not been shown the usefulness of having detailed explanation of the movements involved or off the ‘biomechanical modeling of the posture and posed deformation potentially required to reach the weapon’. The question is how many seconds or milliseconds it would take a person in Mr. Dunphy’s situation to” raise – sorry to “grab, raise and point the rifle. This is something which may fall within ‘matters of common experience’ as opposed to an area of expertise or a particular discipline. But whether experimental results are sought to be put in through an expert or by a demonstration of a non-expert, the same problem arises: there are too many variables at play to permit inferences to be drawn with the necessary degree of certainty. The probative value of the evidence will be insufficient to warrant the delay involved in obtaining it, whether the evidence goes in through an expert or non-expert. I am satisfied I will be able to arrive at satisfactory conclusions on the issues in question without the assistance of experts or experiments.”

The Chair Demonstration: “To avoid any misunderstanding by counsel, I must note that what I have stated above will not prevent counsel from utilizing Mr. Dunphy’s chair as a demonstrative aide in the course of final submissions.”

Summary and Disposition: “If viewed as novel expert evidence, the results of the proposed experiment or experiments will not meet the necessity test of *Mohan*. The experimental results will be too speculative and uncertain because of the many variables involved. For the same reason, the results will not have sufficient probative value to warrant admission. If the evidence is viewed as a matter of common experience, the same problem of too many variables and lack of probative value arise. I have kept in mind the importance Meghan Dunphy places upon what she sees as evidence which may challenge Cst. Smyth’s testimony regarding how he had no choice but to shoot her father in order to save himself. But in law this sort of evidence does not go in. I should note that I will be considering the available non-experimental evidence regarding difficulties Mr. Dunphy might have had in raising the rifle and I will be arriving at my own independent conclusion as to whether Cst. Smyth’s description of what occurred is plausible. I do not need expert opinion in order to do this. The application is dismissed.”

Now there are a couple of typos as I was going through that I should note before we run it off again for counsel.

UNIDENTIFIED FEMALE SPEAKER: We have them fixed.

THE COMMISSIONER: Sorry? You have them – you’re quicker than I am. All right. Thank you very much.

So you can distribute that to counsel. I don’t know if we have enough for some press present. If not, we’ll get copies for the press as well. And they will be put up on the Commissioner website.

Counsel are free to raise, if they are any questions outstanding when you finish having time to study this, you’re free to raise it at the appropriate time before we start on the next day or the day after.

All right. Are you ready to go, Ms. O'Brien?

MS. O'BRIEN: Yes, Commissioner.

THE COMMISSIONER: It took longer than I expected, but I couldn't see ways of summarizing some of it to make sense.

MS. O'BRIEN: Thank you, Commissioner.

Our first witness this morning is going to be appearing by telephone.

THE COMMISSIONER: Okay.

MS. O'BRIEN: And it is Staff Sergeant Tom Townsend of the RCMP.

THE COMMISSIONER: Thank you.

MS. SHEEHAN: (Inaudible.)

MS. O'BRIEN: Yes, go ahead please, Madam Clerk.

MS. SHEEHAN: Do you solemnly affirm that the evidence to be given shall be the truth, the whole truth and nothing but the truth?

S/SGT. TOWNSEND: I'm sorry, if you're speaking to me, I can hardly hear you.

MS. SHEEHAN: Do you solemnly affirm that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?

S/SGT. TOWNSEND: I do.

MS. SHEEHAN: Please state your full name.

S/SGT. TOWNSEND: My name is Thomas Churnley Townsend. Spelling of the second name is C-h-u-r-n-l-e-y. Surname is T-o-w-n-s-e-n-d.

MS. SHEEHAN: Thank you.

S/SGT. TOWNSEND: You're welcome.

THE COMMISSIONER: Staff Sergeant this is Leo Barry. I'm the Commissioner on the inquiry and Ms. Kate O'Brien will be putting some questions to you.

If you have difficulty hearing, as you noted just then, let us know. I think we have to be fairly close to the mic. So if you could speak up as well then we'll all be happy, I think.

S/SGT. TOWNSEND: Yes, I will, Mr. Commissioner. Thank you very much.

MS. O'BRIEN: Good morning, Staff Sergeant Townsend. It's Kate O'Brien speaking.

S/SGT. TOWNSEND: Good morning.

MS. O'BRIEN: Begin with a few questions. How many years of service do you have with the RCMP?

S/SGT. TOWNSEND: On February 1 of this year I actually retired from the RCMP, but prior to retiring I had 38 years' service with the RCMP.

MS. O'BRIEN: Okay. And at your time of retirement what was your position?

S/SGT. TOWNSEND: I was at the Staff Sergeant rank and my position was the senior polygraph examiner located at H division which is the Province of Nova Scotia for the RCMP.

MS. O'BRIEN: Okay. And the senior polygraph examiner position that would be with the Truth Verification Section, is that right?

S/SGT. TOWNSEND: That's correct.

MS. O'BRIEN: All right. And within your duties as a senior polygraph examiner what areas or regions were you responsible for covering?

S/SGT. TOWNSEND: I was responsible for the Province of Nova Scotia, the Province of Newfoundland and Labrador, Prince Edward Island and also for polygraph examinations that were conducted with the Territory of Nunavut.

MS. O'BRIEN: Thank you. And am I correct, Staff Sergeant Townsend, that you have been in Truth Verification since 2003?

S/SGT. TOWNSEND: That's correct.

MS. O'BRIEN: Okay.

I'm just going to get you to go over a little bit about the training and education process that you go through to become a polygraph examiner.

S/SGT. TOWNSEND: Okay.

MS. O'BRIEN: So I understand that you started in 2003 by doing a polygraph examiner's course at the Canadian Police College, is that right?

S/SGT. TOWNSEND: That's correct.

MS. O'BRIEN: Okay. And would that have been a three-month-long course?

S/SGT. TOWNSEND: That's a three-month course.

MS. O'BRIEN: Okay. And then, after doing that, I understand you did an internship program, internal to the RCMP, is that right?

S/SGT. TOWNSEND: I actually did my internship – it's managed through the Canadian Police College.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: And I did my internship with the Fredericton police service with a polygraph examiner who was stationed – posted to the Fredericton police service at the time.

MS. O'BRIEN: Okay, and how long was your internship?

S/SGT. TOWNSEND: Two weeks.

MS. O'BRIEN: Okay.

And then, after that, I understand you have to do a certification program, where you have to pass a number of forensic criminal examinations. Can you just tell the Commissioner about those?

S/SGT. TOWNSEND: Yes. Once the internship is done, which is testing each day under the observation of an experienced polygraph examiner, then what the course outlines is that you do a certification program. And the certification program includes the first 25 examinations, forensic examinations, that an examiner will complete.

During the first 25, once they're completed – the instructor at the polygraph school at the time was Mr. Neil Baker – I would send my 25 examinations, the list of the 25 examinations, to him, to the school, to the polygraph school, and the polygraph school would randomly pick four of those examinations for a complete review. I would send the key-material packages to the school, and that complete review would be done.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: If there were any deficiencies, that would obviously generate conversation and a request for additional examinations for review.

MS. O'BRIEN: Okay. And did you successfully complete this certification program?

S/SGT. TOWNSEND: Yes, I did.

MS. O'BRIEN: Okay. So at that point you would have become a qualified polygraph examiner, is that right?

S/SGT. TOWNSEND: That is correct.

MS. O'BRIEN: Okay. Are you a member of the Canadian Association of Police Polygraphists?

S/SGT. TOWNSEND: I'm a full member of the Association of Canadian Police Polygraphists and I have been since 2003.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: The association governs the activities of practicing polygraph examinations – examiners, excuse me, in Canada. I attend each year for updated training through that association, and I've done that since 2003 consistently.

MS. O'BRIEN: Thank you, and approximately how many years of updated training – or, sorry, how many hours of updated training do you complete each year?

S/SGT. TOWNSEND: With the association, that would be 30 to 40 hours of training; it varies, but between 30 and 40 hours of training.

MS. O'BRIEN: Okay. And I understand you became promoted to the role of senior examiner with the Truth Verification Section in 2008, is that correct?

S/SGT. TOWNSEND: That's correct.

MS. O'BRIEN: Thank you. And can you just tell the Commissioner briefly about what the role of the senior examiner is? When you were in that position, what did you do?

S/SGT. TOWNSEND: In addition to completing forensic polygraph examinations for criminal investigations and for complete – and as well as completing pre-employment polygraph examinations that are part of the application process for the RCMP, I was also responsible for the quality assurance of the polygraph examinations completed by the examiners within my area or my area of responsibility. That would include both chart evaluations of the examinations that they have completed and it would also include complete quality reviews of the entire examination that they would have completed. The chart evaluations were done for each and every examination, and the complete quality reviews on entire examinations take place on a quarterly basis for and as required, if I felt that I should look at additional examinations.

As well within that scope of responsibility, within Nova Scotia, I was also responsible for ensuring that the appropriate interview training was presented to our members as well as our partners here from other municipal police services within the Province of Nova Scotia.

MS. O'BRIEN: Thank you.

Staff Sergeant Townsend, have you been qualified by a court previously to give expert testimony on polygraph examination?

S/SGT. TOWNSEND: No, I have not. Polygraph, as you're, no doubt, all fully aware, is not acceptable within Canada within the criminal court process, the results are not. So I've not ever been qualified as an expert, no.

MS. O'BRIEN: Commissioner, I will be seeking – because we will be getting some opinion evidence from Staff Sergeant Townsend, we are seeking to have him declared as an expert in the area of polygraph examination, notwithstanding that this is not an area of expertise that's recognized for our criminal courts.

THE COMMISSIONER: Counsel have any questions on that that you want to explore as far as Staff Sergeant Townsend's qualifications are concerned?

Nobody? Okay.

Yes, I am satisfied from the extensive training and experience that Staff Sergeant Townsend has set forth that he should be qualified as an expert and permitted to give opinion evidence regarding his work and experience.

MS. O'BRIEN: Thank you.

Staff Sergeant Townsend, on April 9, 2015, I understand you were contacted by Corporal Monty Henstridge of the major crimes unit in Newfoundland and Labrador regarding the case of Mr. Donald Dunphy. Is that correct?

S/SGT. TOWNSEND: That's correct.

MS. O'BRIEN: Okay.

Prior to that contact, did you have any knowledge of Mr. Dunphy or his family?

S/SGT. TOWNSEND: None.

MS. O'BRIEN: Okay.

And what about Constable Joe Smyth or his family?

S/SGT. TOWNSEND: I have never met him; I have no idea who he is, with the exception I know now, obviously, he's a member of the Royal Newfoundland Constabulary. No contact.

MS. O'BRIEN: Okay. Thank you.

I'm just going to bring up in the hearing room here an exhibit of a note that was made by Corporal Henstridge of his discussions with you. It is Exhibit P-0359, Madam Clerk, which is the daily log, and ask you to go to page 145 of that document.

Staff Sergeant Townsend, you're familiar with the note that I'm about to bring you to?

S/SGT. TOWNSEND: Yes, if it's the note that we discussed on December 14, yes, I am.

MS. O'BRIEN: Yes, that's correct.

S/SGT. TOWNSEND: Thank you.

MS. O'BRIEN: We're just bringing it up there.

Thank you.

So the note says that "At the request of Cpl BURKE, Cpl HENSTRIDGE contacted S/Sgt Tom TOWNSEND who is NCO i/c" – so a non-commissioned officer in charge – "Truth Verification Section for H and B division. Cpl HENSTRIDGE provided S/Sgt TOWNSEND the facts as we know them and confirmed that the scene examination was consistent with the account provided by Sgt. SMYTH."

I'm going to stop there in reading the note, Staff Sergeant Townsend, and ask you a couple of questions.

S/SGT. TOWNSEND: Sure.

MS. O'BRIEN: In that note I just read, Corporal Henstridge is saying he provided you with the facts as they were known. What facts did he give you?

S/SGT. TOWNSEND: What he advised me of was the fact that Officer Smyth, who was working with the Newfoundland Constabulary within their – I would call it their VIP section, very important person section, and who is detailed to the premier's detail, visited Mr. Dunphy in relation to some electronic media that the premier's office received from Mr. Dunphy that someone there felt was concerning – and I have no idea what the contents of that information was – that he proceeded to Mr. Dunphy's residence, and while in Mr. Dunphy's residence a confrontation took place that resulted in Mr. Smyth – Officer Smyth, excuse me – discharging his firearm, which resulted in the death of Mr. Dunphy. And that Officer Smyth explained to the investigators that he had felt threatened in relation to the presence of a weapon, of a firearm, which he then responded to and discharged his weapon.

MS. O'BRIEN: Okay.

In the second part of the note that I just read out there, Corporal Henstridge says that you told him the scene examination was consistent with the account provided by Constable Smyth. Do you recall him saying that to you?

S/SGT. TOWNSEND: I don't recall exactly but I would have – I know I would have asked him if there was anything that their investigations revealed that, in fact, that wouldn't be, wouldn't be accurate. And that's how that conversation would have come up in relation to the scene being consistent.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: Again, I couldn't make that observation because I was not there and I'm not – I didn't have intricate knowledge of their investigation.

MS. O'BRIEN: Okay.

Did the consistency between the scene and Constable Smyth's statement matter to you for the purposes of giving your opinion?

S/SGT. TOWNSEND: No.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: Not on what he then asked me if, if it was possible for a test (inaudible).

MS. O'BRIEN: Okay and – all right. And thank you.

What question did Corporal Henstridge ask you about?

S/SGT. TOWNSEND: He wanted to know if it would be appropriate to complete an examination on Officer Smyth in relation to whether or not the rifle was pointed at him at the time that he discharged his weapon.

MS. O'BRIEN: So whether or not Mr. Dunphy's rifle was pointed at Constable Smyth when Constable Smyth fired his weapon?

S/SGT. TOWNSEND: Yes.

MS. O'BRIEN: Okay.

What was your answer? Was that a suitable –

S/SGT. TOWNSEND: No.

MS. O'BRIEN: – question for a polygraph test?

S/SGT. TOWNSEND: I explained to Corporal Henstridge that the fact that the weapon was pointed becomes subjective for interpretation. That we're talking about an issue, what a person thought or what a person observed as opposed to what a person actually did, a physical act, and that for polygraph, when we don't test on physical acts, that can cause issues with the examination process itself, where it's dangerous when we test – or if we were to test on what somebody was thinking or what they interpreted as opposed to what they physically did.

And I equated it to a sexual assault type of investigation where you have an alleged victim, an alleged suspect and they both say that the actual act took place. So what you're going to try to test on is what one individual was thinking as opposed to what the other individual was thinking, as opposed to a situation where one person says an act took place and the other person said it didn't.

That is the test issue because a physical act either took place or it didn't, as opposed to what a person is thinking. That's where things become grey and subjective, and in my mind, dangerous to polygraph.

MS. O'BRIEN: Okay.

So if Constable Smyth had denied shooting Mr. Dunphy, would the question: Did you shoot Mr. Dunphy, would that question have been a suitable question for a polygraph?

S/SGT. TOWNSEND: It certainly would. And, in fact, it would be the most appropriate question because either the act took place or it didn't. Either you pulled the trigger, in this case with a firearm, and caused Mr. Dunphy's death, or you didn't. So it's a physical act of either he did or did not do.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: So that's an ideal case for polygraph as long as our subject, I mean being the person we're going to test, is a testable subject.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: But the issue in that particular case is very clear: It's whether or not you pulled the trigger or he (inaudible) pull the trigger that caused the death of Mr. Dunphy.

MS. O'BRIEN: Okay.

In this case where Constable Smyth, of course, had admitting to – had admitted to having shot Mr. Dunphy, so in this kind of a case would the question: Was Mr. Dunphy holding a gun when you shot him, would that have been a suitable question for polygraph examination?

S/SGT. TOWNSEND: I don't believe it would. And in my experience what I base this on is the fact that we have a very emotional set of circumstances that took place here. The emotionality attached to the discharge of the weapon – whether it be a police officer discharging a weapon or a civilian discharging a weapon that ended the life of another person – it would be very difficult for me, as an examiner, to get past that emotionality attached to that particular act to look at any questions in relation to this set of circumstances surrounding this particular incident.

Because I always would have to worry is that physiological response of whatever question I'm asking, in this case Officer Smyth – is that physiological response that I'm receiving on my polygraph chart associated to the actual question that I'm asking or is it associated to the fact that he pulled the trigger of his sidearm which resulted in the death of another individual.

And if I, as an experienced polygraph examiner, cannot justify to myself that if I ask this particular set of questions that I can have confidence in my result, well then I don't feel that that's a situation that I can put forward to a group of investigators.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: Because if I can't have confidence in the issue that I'm testing on, and if I can't have confidence in the results that I'm going to evaluate from that set of questions, that's a test that really should not take place.

MS. O'BRIEN: Okay.

So, Staff Sergeant Townsend, just to ensure that I'm understanding your evidence correctly, what I understand you to be saying is because this was a very emotional event, the shooting and killing of a man, a fatal shooting –

S/SGT. TOWNSEND: Yes.

MS. O'BRIEN: – that any questions about events secondary to that main event, even if they are sort of questions about physical actions, you're saying you – those would not be suitable for polygraph because you could not be certain that the reaction, the physiological reaction you are getting in the subject of the questioning was not related to the traumatic event. Is that what you're saying?

S/SGT. TOWNSEND: That what I'm saying. Where this incident took place – and anything close to the incident taking place as to what you would want me to test on or what an investigator may want me to test on, the fact that he discharged his weapon which caused a death, there's no way in the world that I can convince myself that I've removed the emotionality, that any question I ask that may be attached to that particular incident, that emotionality is going to be removed.

I wish I could tell you it's that black and white but it's not, because we're dealing with a subject, a person, who has emotions, who's been involved in a fatal incident as a result of his actions, pulling the trigger of a weapon. And I would have difficulty getting past that in the polygraph sense.

MS. O'BRIEN: Okay.

So what about if it was a question following the shooting; for example, in this situation where Constable Smyth admitted to having shot Mr. Dunphy. Would a question such as: After you shot Mr. Dunphy did you move or handle Mr. Dunphy's rifle? Would that have been a suitable question?

S/SGT. TOWNSEND: Where it's still associated to the actual event itself, again, I have to take into account the emotionality attached to the actual incident itself, which is him discharging a weapon. If I was to – if you were to ask me, for example, if there was evidence to suggest that days later a person went back and attempted to stage or manipulate a scene, you know, days after an event, that's something that I certainly could consider, but when I – if you're asking me that within, say, two minutes of him discharging a weapon, is the emotionality gone from that? No.

So I would have difficulty there because – I've always concluded polygraph examinations over the years when I felt the subject in the issue were good clear issues and the subject I'm testing, the person I'm testing, is a testable person. And if I don't stay with that doctrine, then what I'm doing is I'm creating other issues because, if I can't be confident with the results I'd get based on this examination, this set of questions, and I start to pass those results off investigators, I'm creating a real issue.

MS. O'BRIEN: Okay.

S/SGT. TOWNSEND: And that's something I don't want to do, no matter what the circumstances are.

MS. O'BRIEN: Staff Sergeant Townsend, just one question, if you can help clarify for us. I would assume when anybody is being asked to submit to a polygraph test because they're being accused of or investigated for criminal activity, I would think that would be – or very often be – an emotional event for that person, or the situation that is leading up them being questioned would have been an emotional event.

Can you just distinguish between that and this case? I mean, are you saying – you know, is this case a higher level of emotion than an ordinary type event that might lead to polygraph examination?

S/SGT. TOWNSEND: No, not necessarily. But in this particular case, you have a person that says, yes, I pulled the trigger and as a result of that I took someone else's life. So let's suggest, say, in a homicide investigation and there's a number of suspects involved in that investigation, that the police send their requests forward for consideration to be examined. I've never been asked to test somebody who's said, yeah, I killed the person, I've taken a person's life. So the people that I would test were people that have said I didn't do it.

MS. O'BRIEN: Okay.

And the fact that Constable Smyth is a police officer, did that factor into your opinion at all, or would your opinion have been exactly the same had Constable Smyth been a civilian?

S/SGT. TOWNSEND: It would have been exactly the same. I've completed examinations on police officers in the past. I've interviewed police officers who were suspect in the past. I've been involved in investigations where police officers have been charged in the past.

So when this request was made of me, I looked at the circumstances. I didn't look at whether it be Mr. Smyth or Officer Smyth. I looked at the circumstances that were presented to me.

MS. O'BRIEN: Okay.

Thank you, Staff Sergeant Townsend. Those are the questions I have. Other counsel may have further questions for you, as may the Commissioner.

S/SGT. TOWNSEND: Thank you very much.

THE COMMISSIONER: Now, who's going first, Ms. Breen?

MS. BREEN: Yes, Staff Sergeant Townsend, my name is Erin Breen. I'm counsel for Meghan Dunphy. Can you hear me okay?

S/SGT. TOWNSEND: Yes, I can, thank you.

MS. BREEN: Okay.

Staff Sergeant, I only have a brief question for you: You didn't take any notes, did you, of your conversation with Corporal Henstridge?

S/SGT. TOWNSEND: No, I did not. Constable – excuse me, Corporal Henstridge advised he would put the tasking in. This was on the phone and I didn't take notes.

MS. BREEN: Okay.

There is also an indication that you had said to Corporal Henstridge or recommended that he seek out a checklist from the SIRT body, I believe – and that's the acronym, S-E-R-T – in relation to investigating officer-related shootings. Do you recall making that recommendation to him?

S/SGT. TOWNSEND: I believe I may have said that. It would be my protocol, if I'm involved in an officer-related shooting, and I'm aware that the Serious Incident Response Team has a checklist. And I certainly could have brought that up to Corporal Henstridge.

MS. BREEN: Okay.

So you said you're aware that the Serious Incident Response Team does have a checklist and which – for which province are you talking for?

S/SGT. TOWNSEND: The Province of Nova Scotia.

MS. BREEN: Nova Scotia.

And do you recall what it was that led you to recommend that to Corporal Henstridge? Was he expressing any concern or making any comment for you to make that recommendation?

S/SGT. TOWNSEND: Not that I – no, I don't recall of any concern or any comment. It would just be – I've been involved in officer-related incidents in the past and you want to ensure that you go – even from the very onset of arriving on the scene there's a protocol that you want to make sure that you run your investigation by, in addition to the major case management and the principles and guidelines of that.

MS. BREEN: So that in addition to the general investigative procedures that the RCMP would normally use, these would be additional protocol that you're aware of that does exist and it's in the hands of the Nova Scotia SIRT. Is that correct?

S/SGT. TOWNSEND: That's correct.

MS. BREEN: And do you have a copy of that?

S/SGT. TOWNSEND: No, I don't.

MS. BREEN: And when was the last time that you reviewed that, Staff Sergeant?

S/SGT. TOWNSEND: I wouldn't be able to tell you that. I don't know. I have been out of the investigative – I've been in Truth Verification for a number of years, but I've also been involved with assisting investigations through my position here. So I know that there's a list that exists, and I know that because that's their primary responsibility, that they'd be in possession of that, of basically a checklist.

MS. BREEN: Okay, and have you, yourself – you've seen that in the past, have you, Staff Sergeant?

S/SGT. TOWNSEND: I've not seen that list in the past, but I know of its existence. I've not seen the actual SIRT list, the S-I-R-T list, but I know it's in existence.

MS. BREEN: Okay, and final question, how do you know it's in existence? How did you come to have that knowledge?

S/SGT. TOWNSEND: Through conversations with other investigators involved in other similar types of investigations.

MS. BREEN: Okay, thank you very much.

S/SGT. TOWNSEND: You're welcome.

THE COMMISSIONER: Any other counsel have a question?

MR. KENNEDY: Yes, Commissioner, I know it's a little bit early, but I wonder if I could have a five minute break to consult with my counsel – my client?

THE COMMISSIONER: Okay.

Staff Sergeant Townsend, we're going to break for about five minutes to let Mr. Kennedy consult with his client.

S/SGT. TOWNSEND: Okay.

THE COMMISSIONER: Thank you.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now in recess.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Okay, Mr. Kennedy.

MR. KENNEDY: Thank you, Commissioner.

Staff Sergeant Townsend, can you hear me?

S/SGT. TOWNSEND: Yes, I can.

MR. KENNEDY: My name is Jerome Kennedy. I'm the counsel for Constable Joe Smyth and I have a few questions for you, Sir.

S/SGT. TOWNSEND: Okay.

MR. KENNEDY: First, do you know if Constable Smyth was ever asked to do the polygraph test by the investigators?

S/SGT. TOWNSEND: I have no idea.

MR. KENNEDY: Were you – did you ask Corporal Henstridge whether or not that question had been put to Constable Smyth?

S/SGT. TOWNSEND: I can't recall if I did or not because the name – the conversation surrounded the actual issue of pulling the firearm.

MR. KENNEDY: Would it surprise you, Sir, that Constable Smyth – the evidence disclosed that Constable Smyth was never asked to take the polygraph?

S/SGT. TOWNSEND: Well, I could understand them maybe not asking him that until they clarified whether or not it was an actual testable issue.

MR. KENNEDY: That appears to be the sequence of events, Sir, from what we can see, is that the Task 060 – that they came to you and had a discussion on April 9. So that would have been approximately four days – the incident occurred on April 5 so approximately four days after the incident.

S/SGT. TOWNSEND: Right.

MR. KENNEDY: Okay.

My second question for you, Sir, is that my understanding of the polygraph is that it's not admissible in Canadian court – in Canadian court as evidence – but it's used by the police as an investigative tool.

S/SGT. TOWNSEND: That's correct.

MR. KENNEDY: And, Sir, perhaps you could explain to the Commissioner how it is used as an investigative tool.

S/SGT. TOWNSEND: Well, for example – just to qualify, too, I tested people on various criminal allegations, whether it be on homicides, murders, sexual assaults, assaults, thefts, robberies, public mischief, so as an investigative tool – for example, if I can utilize for example, a theft, an internal theft of deposit money. And the investigators may have – whether it be two people or four people or five people who have had access to that money, could they not be able to eliminate, it's taught being responsible.

They may ask those people to take a polygraph examination and that would be an investigative aide. In knowing full-well that I'm going to test on such and such a date, did you steal that reported missing money or that recorded missing deposit money, where I would come up with the conclusion of either truthful, deceptive, or an inconclusive conclusion, which is really no conclusion. And the majority of people that we test – or I test, excuse me I'll speak to myself. The majority of people come back as being truthful to what they're being tested on.

So that's where it could be used as an investigative aide. And it really, you know, as far as the complexity of the investigation or the seriousness of the investigation, what we look at: What are the circumstances, is it a physical act that you're asking me to test on, and there – are there any outlying issues.

Obviously within the polygraph process itself, it's divided into a few phases: there's the pre-test phase, the in-test phase and the post-test phase. During the pre-test phase, I'll come to a decision as to whether or not a person is testable or not. And I'll also make a clear understanding that we're speaking about the same issue that I'm going to test on. But, first, I'm testing it myself

from the information that I gained from the investigators. So that's how I could assist in an investigation.

MR. KENNEDY: Sir, in the pre-test stage then, do you ask questions about the actual incident, or is that more general questions to, relating to the individual, his or her lifestyle? Or do you actually ask questions about what occurred?

S/SGT. TOWNSEND: Both.

MR. KENNEDY: You do both.

S/SGT. TOWNSEND: I would ask questions about medical background, psychological background, how they're actually feeling that particular day as far as the suitability, to determine if the person is actually testable. And I would also ask them a little later in the pre-test stage what they know of the event. So I would obtain a version from them.

MR. KENNEDY: And if I understand your evidence, Sir, is that what you're saying, you measure a physiological response. Is that what the polygraph does?

S/SGT. TOWNSEND: That is correct.

MR. KENNEDY: (Inaudible) yeah.

So if there's an emotional component to that question, then it precludes the use of the – or may preclude the use of the polygraph. Do I understand that correctly?

S/SGT. TOWNSEND: That's correct. And in particular to this incident where there were the request dealt with what a person was thinking or what a person interpreted as opposed to what a person physically did.

MR. KENNEDY: (Inaudible.)

S/SGT. TOWNSEND: And then we have the emotionality of the person saying – in this case, Officer Smyth – that he discharged his weapon which resulted in the death of Mr. Dunphy. There's a whole lot of emotionality attached to the incident itself.

MR. KENNEDY: So again, Sir, do I understand it correctly that if the question – if Constable Smyth denied shooting Mr. Dunphy, then that would be a question upon which you could utilize the polygraph and perhaps utilize it successfully.

S/SGT. TOWNSEND: Yes.

MR. KENNEDY: But the question that was put to you of whether or not a firearm was pointed at Sergeant – or Constable Smyth is not one that would allow for you to have confidence in your result or your testing procedures.

S/SGT. TOWNSEND: That's correct.

MR. KENNEDY: Other similar questions relating to the event itself would, again, involve that emotion of – involve that degree of emotionality which would – could impact the testing process and your confidence in the testing process. Correct?

S/SGT. TOWNSEND: That's correct and that's why I – that's what I didn't test.

MR. KENNEDY: Sir –

S/SGT. TOWNSEND: I recommended there that I couldn't test on that issue.

MR. KENNEDY: In terms of the question that was asked to you by Corporal Henstridge, whether or not you could test on that, do you know if Constable Smyth was ever consulted as to the content of the question or whether or not the question could be asked?

S/SGT. TOWNSEND: I don't know.

MR. KENNEDY: That would be very unlikely, wouldn't it?

S/SGT. TOWNSEND: Well, I would like – if an investigator is going to ask for a polygraph examination to be completed, I would like the investigator to actually determine what the investigative team would want to test on whether or not the test will issue –

MR. KENNEDY: Yeah.

S/SGT. TOWNSEND: – prior to going to whoever it is they want to test. Because if they put the question to the person and we determine at the onset, look, that's not a good testable issue, then they very well may have to go back and explain why they're not going to test on it.

I think, to ask first and then go back to the subject, to the person involved, is, in my mind, you know, the better step to take.

MR. KENNEDY: Okay.

Sir, in terms of a situation like this where an individual, a police officer, says there was a firearm pointed at me. It's essentially an argument of self-defence.

Have you had situations in the past where you've tested, where an individual – a similar situation where a police officer uses force in response to the pointing of a firearm or the utilization of a weapon?

S/SGT. TOWNSEND: I've not tested a police officer or a civilian in those types, those types of circumstances.

MR. KENNEDY: Oh, so you've never tested a civilian in those circumstances either, have you?

S/SGT. TOWNSEND: No, I have not.

MR. KENNEDY: So do I understand you correctly then, to summarize, that a polygraph would be inappropriate to use as an investigative tool in any case similar to the circumstances which we have here.

S/SGT. TOWNSEND: That's what I'm, that's what I'm saying, yes.

MR. KENNEDY: That it's nothing to do with Constable Smyth was a police officer. The same principle would have applied to a civilian in similar circumstances.

S/SGT. TOWNSEND: It, it does not matter to me the fact that Officer Smyth is an officer or if he's Mr. Smyth, because what I look at is the circumstances surrounding what that request is; the circumstances surrounding the event.

If I don't have confidence that that particular test issue is an issue that we can test on, that I'll have confidence in my results, there's no way in the world that I'm going to, just for the sake of saying, yeah, let's do that, that I would do that.

MR. KENNEDY: Okay.

And how many polygraph tests, Sir, would you have conducted in your career, do you have any idea?

S/SGT. TOWNSEND: I suggest between 800 and 1,000.

MR. KENNEDY: And how many have you conducted, if any, in relation to officer-involved shootings?

S/SGT. TOWNSEND: I've not conducted any in relation to officer-involved shootings. I've conducted others, in relation to officer allegations, but not in relation to these types of circumstances.

MR. KENNEDY: Okay. So you have, you have conducted polygraph examinations in others cases involving officer's use of force.

S/SGT. TOWNSEND: Not use of force.

MR. KENNEDY: Or allegations against police –

S/SGT. TOWNSEND: Other allegations, yes.

MR. KENNEDY: Yeah, allegations against police officers.

So just to be clear that if the question was: Did you shoot Mr. Dunphy? That would be an appropriate question?

S/SGT. TOWNSEND: 100 percent.

MR. KENNEDY: If you said to someone: Did you steal the money, where there was a denial of stealing. That would be an appropriate question?

S/SGT. TOWNSEND: Yes, it would.

MR. KENNEDY: And in a sexual assault case an appropriate question would be, where the person denies sexually assaulting someone: Did you sexually assault that person?

S/SGT. TOWNSEND: Or we would go to the actual issue. For example: Did you place your penis in so-and-so's vagina? Did you place, insert, put – we'd go to the actual act itself, yes.

MR. KENNEDY: So the physical act is what you contest on.

S/SGT. TOWNSEND: That is correct.

MR. KENNEDY: Okay. I don't have any further questions for you.

Thank you, Staff Sergeant Townsend.

S/SGT. TOWNSEND: You're welcome.

THE COMMISSIONER: Other counsel have any questions?

MR. AVIS: I have no questions, Commissioner.

Thank you.

THE COMMISSIONER: Mr. Freeman.

MR. FREEMAN: Just one question, Mr. Commissioner.

Staff Sergeant Townsend, can you hear me okay?

S/SGT. TOWNSEND: Yes, I can.

MR. FREEMAN: I Just wanted to raise an issue with you. There's a piece of correspondence here that's not in your exhibits. I've spoken to Commission counsel and it will be made an exhibit later when Pat Cahill is on the stand.

It's a piece of correspondence from a Paul Coughlin to Chris Fitzgerald on April 20, 2015, and they're looking at the issue of a check list from SIRT.

S/SGT. TOWNSEND: Correct. I'm sorry, yes, okay.

MR. FREEMAN: Keith Stothart from – are you familiar with Keith Stothart?

S/SGT. TOWNSEND: Yes, I know Keith Stothart.

MR. FREEMAN: He's a retired RCMP who's currently working for SIRT. Is that is right?

S/SGT. TOWNSEND: He's a civilian investigator with SIRT, yes.

MR. FREEMAN: Okay.

So if Keith were to say – and this correspondence veers this out – Keith advised that SIRT does not have a specific guide to this type of investigation and that in the past they had used an RCMP guide to member-involved shootings. You'd have no reason to dispute that. There is no check list from SIRT per say.

S/SGT. TOWNSEND: No, I don't.

MR. FREEMAN: So you would defer to Keith's, Keith Stothart's –

S/SGT. TOWNSEND: I would defer to what Keith Stothart had to say, yes.

MR. FREEMAN: Okay. Thank you.

I have no further questions for you.

S/SGT. TOWNSEND: Okay.

THE COMMISSIONER: Is that it? No further questions?

Okay. Thank you, Staff Sergeant Townsend.

Have a good retirement.

S/SGT. TOWNSEND: Thank you very much, Mr. Commissioner, and enjoy our weather tomorrow when it gets there.

THE COMMISSIONER: Thanks.

S/SGT. TOWNSEND: Have fun now.

MS. O'BRIEN: Thank you, Commissioner.

Our next witness is Sergeant Chris Saunders. He can come to the stand.

Thank you, Mr. Commissioner.

While we're just waiting for Madam Clerk to go back to her table, I'd seek an order to enter the following exhibits: P-0537 through to P-0544 inclusive, P-0548, P-0559 and P-0560 and P-0562.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

MS. SHEEHAN: Corporal Saunders, do you affirm that the evidence you shall give shall be the truth, the whole truth and nothing but the truth?

SGT SAUNDERS: I do.

MS. SHEEHAN: And could you please state your full name, please?

SGT SAUNDERS: Christopher William Saunders.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

Good morning, Sergeant Saunders, Kate O'Brien, co-counsel for the (inaudible).

How long, Sergeant Saunders, have you been a member of the RCMP?

SGT SAUNDERS: I've been a member for approximately 22 years.

MS. O'BRIEN: And your current rank is Sergeant.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: All right.

You have provided your CV to the, to the Commission and I am going to ask to bring that up now. Exhibit P-538 please, Madam Clerk.

Sergeant Saunders, I'm going to review your CV in some detail, but before we do, can you please explain to the Commissioner what a Forensic Identification Specialist, which I understand that's what you are, can you explain to the Commissioner what that is?

SGT SAUNDERS: A Forensic Identification Specialist is responsible for attending crime scenes, all types of scenes actually, and as well as handling exhibits, the goal being to document scenes to search for and process forensic evidence.

MS. O'BRIEN: All right.

I'm not going to go through every section of your CV Sergeant Saunders, but just noting here at the summary section of your CV, you're a Forensic Identification Specialist at the rank of sergeant, more than 21 years of policing service and I understand now from what you said, you're up to 22 years. The program manager of Forensic Identification Services for Newfoundland and Labrador for the RCMP and the supervisor to six other Forensic Identification Specialists, is that correct?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And you're responsible in that role for assisting in criminal investigations by examining crime scenes, vehicles and exhibits for forensic evidence; searching for, locating and gathering evidence such as fingerprints, footwear impressions and fire track impressions; DNA trace evidence and other types of physical evidence. Is that correct?

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: All right.

So I see here in the next section you have provided expert testimony to courts in this province on two previous occasions. Is that right?

SGT SAUNDERS: Actually, yeah, since then there's been one more occasion, about two weeks ago; I provided expert testimony at a preliminary hearing.

MS. O'BRIEN: Okay. And what area did you provide that expert opinion on?

SGT SAUNDERS: That was in friction ridge analysis comparison and identification.

MS. O'BRIEN: So would that be fingerprints?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. All right. So you are designated as a fingerprint examiner, and this section here kind of does a bit of a summary of your professional experience from December 2004 to present, and it states here that you've completed 794 case examinations and attended 412 scenes of crime, that you've recovered and analyzed 1,227 finger and palmprint impressions and 472 pieces of physical evidence. Is that approximately correct?

SGT SAUNDERS: Approximately. The numbers are a little higher now, but close.

MS. O'BRIEN: All right. In the next section of your CV, you go through in some detail a number of courses that you've done, training that you've done throughout the years, and I'm not going to go through those in detail. There is a long list going back through them. I'd like to go here because I understand, to become a forensic identification specialist, you do a training program with the RCMP, is that right?

SGT SAUNDERS: Yes, that's correct. It's the forensic identification apprenticeship.

MS. O'BRIEN: Okay. And I think in this section of your CV you describe that program. So I understand you begin with phase one, which is where you do an eight-week course at the Canadian Police College in Ottawa covering the areas here that we have listed on this page of your CV, is that right?

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: So after you complete that phase one, which is the schooling phase, then I understand that you do an apprenticeship. Can you just explain briefly to the Commissioner what the apprenticeship phase is?

SGT SAUNDERS: The apprenticeship phase, Mr. Commissioner, is a phase where we work alongside a forensic identification specialist, who's already been through this process and has years of experience. We would have a – there's three main groups of assignments that we do. Now, those assignments involve researching questions, conducting experiments and testing as well with regard to fingerprints, fingerprint comparisons, footwear impression comparisons. At the end of the phase where you do these three main assignments, there's a final fingerprint exam where we are tested on our ability to compare and identify fingerprints, and subsequent to that, there's a forensic identification qualification board.

Now, this board is, I guess, the – it sums up our training to date. It's a full-day session where we are sitting on a board in front of three senior forensic identification specialists. They will quiz us in the morning on all aspects of our training – it's an oral exam – and then in the afternoon we have to present a case before the board. One would play the role of defence, another the role of Crown and another the role of the judge. We would present our case to them and be subject to direct and cross-examination. And at the end of the day, we would be assessed on our performance throughout the day.

MS. O'BRIEN: And I understand the apprenticeship for you is approximately 18 months. Is that right?

SGT SAUNDERS: The full apprenticeship is really two years; however, up until the point where we do the qualification board, it was approximately 18 months, yes.

MS. O'BRIEN: Okay.

And after finishing this phase two, which includes the apprenticeship and the qualification board exam, it's after you complete this phase that you are considered a forensic identification specialist. Is that right?

SGT SAUNDERS: After the qualification board, we're a forensic identification technician.

MS. O'BRIEN: A technician, okay.

SGT SAUNDERS: Subsequent to that, there's four more – actually, at the time, three more mandatory courses that we do. As well, any deficiencies that were noted in your qualification board, you have to perform further research on that to show you've gained that knowledge.

MS. O'BRIEN: Okay.

SGT SAUNDERS: And then subsequent to that you're deemed a forensic identification specialist.

MS. O'BRIEN: Okay.

And do you recall what year approximately you were deemed a specialist?

SGT SAUNDERS: A specialist, it would have been March 2008.

MS. O'BRIEN: Okay.

And since then, since March 2008 – so this would be your – that would be at the end of your continuing learning – continuous learning phase, then, here that you've got noted in your CV, is that right?

SGT SAUNDERS: That is correct, yes.

MS. O'BRIEN: Okay. All right.

Commissioner, based on that and of the further information contained in Sergeant Saunders's CV, we would seek to have him declared as an expert in forensic scene examination.

THE COMMISSIONER: Any counsel have any comment they wish to question on Sergeant Saunders's qualifications?

Nobody objecting to his being qualified, I'm satisfied from reviewing his CV and hearing him describe his training and experience that he's entitled to be qualified as a forensic identification specialist for the purpose of giving opinion evidence in this matter.

MS. O'BRIEN: Thank you, Commissioner.

Sergeant Saunders, what was your position with the RCMP on April 5, 2015.

SGT SAUNDERS: I was a sergeant working out of the Grand Falls-Windsor Forensic Identification Section.

MS. O'BRIEN: Okay.

As a sergeant with the FIS unit, you were responsible for, I understand, all forensic identification units in the province, is that right?

SGT SAUNDERS: Yes, under the RCMP, yes.

MS. O'BRIEN: Okay. And we have four of them in our province, is that correct?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: And those would be in Clarendville ...?

SGT SAUNDERS: Clarendville, Grand Falls-Windsor, Corner Brook and Happy Valley-Goose Bay.

MS. O'BRIEN: Okay. And the number of officers, the number of FIS officers that you would be supervising in those 4 units, how many would that be?

SGT SAUNDERS: Six, and then myself would be the seventh position.

MS. O'BRIEN: Okay. And how long – as of April 5, 2015, how long had you been in that supervisory role?

SGT SAUNDERS: Approximately 4 years.

MS. O'BRIEN: Okay. And who is your immediate supervisor?

SGT SAUNDERS: At the time –

MS. O'BRIEN: At the time, yes.

SGT SAUNDERS: – it would have been Inspector Pat Cahill.

MS. O'BRIEN: And at the time he was the officer in charge of major crimes, is that correct?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: And now, prior to April 5, 2015, approximately how many shooting scenes had you been involved in examining?

SGT SAUNDERS: Approximately five prior to this.

MS. O'BRIEN: Prior to that date, did you know Constable Smyth or any member of his family?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: Were you ever asked by a superior officer about whether or not you knew Constable Smyth or any member of his family?

SGT SAUNDERS: Not that I recall.

MS. O'BRIEN: Okay. Prior to that date, did you know Mr. Donald Dunphy or any member of his family?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: And were you ever asked by a superior officer whether you knew Mr. Dunphy or any member of his family?

SGT SAUNDERS: Not that I recall, no.

MS. O'BRIEN: I understand from our pre-hearing interview that the FIS section with the RCMP does from time to time work with the RNC on cases.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Can you just explain to the Commissioner under what circumstances, what types of circumstances, that kind of co-operative kind of work would typically occur?

SGT SAUNDERS: That would occur in situations, I guess, mainly – in my experience it's been mainly with the City of St. John's, when crimes that would occur within St. John's would overflow into the RCMP jurisdiction or vice versa.

For instance, there was one case where a homicide had taken place inside of the city limits and the body was discovered some time later. Initially, the RCMP attended because it was RCMP jurisdiction, and when it was determined that the body came from St. John's and it was believed

that the offence took place in St. John's, the RNC was brought in. This happened on two occasions under my supervision while I was a supervisor.

MS. O'BRIEN: Okay, so in terms of the frequency of that kind of joint work, you're talking about two times in the last four or so years. Is that what you're saying?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. All right

I'm going to get into your notes, some of the details that you had recorded in your notes, Sergeant Saunders. But I understand that you have essentially two sets of notes that we'll be looking at today; one is a set of handwritten notes. And I understand you would have taken those notes, sort of at the time that events were unfolding, more or less. Is that correct?

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay.

And then you have further typed-up notes that have been formally entered into an Ident Occurrence Report. And I understand that you would have made – typed in those notes after you returned to your office in Grand Falls-Windsor.

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay.

And so that would have been on April 7. Is that right?

SGT SAUNDERS: Yes, I believe.

MS. O'BRIEN: Okay.

And when you did your typewritten notes I take it you were relying on your handwritten notes that you had created.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Your memory of events.

SGT SAUNDERS: And my photographs.

MS. O'BRIEN: Your photographs. And also, I believe, you also said perhaps the call log on your telephone; you would have referred to that as well.

SGT SAUNDERS: Yes, for the initial calls.

MS. O'BRIEN: Okay.

Okay, I don't need to bring up the exhibit but there was also – you worked on this file in conjunction with Corporal Kelly Lee. She was the other member of the Forensic Identification service team.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: And we have some notes from Kelly Lee that eventually formed part of your FIS file. And those have been entered into evidence and we may look at some of those today as well.

I'd like to start with your typewritten notes. And, Madam Clerk, could you bring up P-0537, please.

And, Sergeant Saunders, I'm going to lead you through some of the initial evidence here a little more quickly. I don't think it's in much dispute among the counsel in the room and we'll just move a little faster that way.

Okay. So these are your typewritten notes and what you have recorded here is on April 5, 2015, at approximately quarter to 3, or 1442 in the afternoon. You were at home on call for FIS East when you got a call and was advised of an officer-involved shooting.

They reported that an RNC member was in the Holyrood detachment area and shot someone. Holyrood members were en route to scene. I asked that a responding member call me once they arrived on scene. I advised I would prepare to attend the scene and my estimated time of arrival would be approximately five hours.

And so then I understand here from your notes, Sergeant Saunders, that a few minutes after that at 1448 you contacted Corporal Kelly Lee of the Clarenville Forensic Identification section as you prepared to depart for your office and you requested her attendance as well.

Why is it that you selected Corporal Lee to assist you with this matter?

SGT SAUNDERS: At the time my co-worker was away on vacation. Clarenville is closer to Mitchells Brook than say, Corner Brook or Goose Bay would be. So I selected Corporal Lee simply because she was qualified, she was close to the scene and actually the only other one available in Clarenville at the time. The other officer in Clarenville was an apprentice at the time

MS. O'BRIEN: Okay.

SGT SAUNDERS: – and Corporal Kelly Lee was a specialist.

MS. O'BRIEN: Okay. Is it usual to bring two ident members to this type of a scene?

SGT SAUNDERS: Yes.

MS. O'BRIEN: All right, going back to your typewritten notes we see here that at 1450 you received another call from the OCC, which is the Communications Centre we understand, who advised that the person shot was deceased. I requested that they contact members at the scene and ensure that the scene is cordoned off with police tape and a guard is posted.

Sergeant Saunders, whose responsibility was it to ensure that the scene was contained?

SGT SAUNDERS: It would be the responding members that were at the scene. The supervising member or whoever was the senior member at the scene would ultimately be responsible for securing the scene until we arrived.

MS. O'BRIEN: Okay.

What should be done to properly secure a scene?

SGT SAUNDERS: The scene should be taped off using police tape. That's an indicator to the public that they are not to cross that line. An area that would fully encompass the scene should be cordoned off with police tape and as well, guards posted – a guard or guards depending on the situation posted – to prevent people from entering the scene, and as well, when people do enter the scene, to record that in a logbook.

MS. O'BRIEN: Okay.

In the case of Mr. Dunphy's house, we know that that house had three entrances to the outside; so there was one at the front of the house and two at the rear of the house. To ensure that this particular scene was properly secured would it have been necessary to post an officer at the, or officers at the exterior doors to the rear of the house?

SGT SAUNDERS: I can speak to the exterior in the back porch in the top right of the diagram. That door, I believe, was sealed shut.

MS. O'BRIEN: Okay.

SGT SAUNDERS: Screwed or nailed shut or insulation around the door. The front door, of course, faces the front, which is where the guards were when I arrived. The back door at the – what's marked, addition, at the top of the diagram; I don't recall seeing any guards there. I don't know what determination was made by them at the time; I can't speak to that over the necessity to have a guard there.

MS. O'BRIEN: Okay.

All right, but should someone have been – should the security be such that an officer would see if anyone, you know, tried to enter the house through that door.

SGT SAUNDERS: In this situation, as you're sort of getting to in my report there, there was actually an officer inside the residence when we got there because of the situation with the cats. So I think that would have, I guess, made it not necessary to have a guard at the back of the house –

MS. O'BRIEN: Okay.

SGT SAUNDERS: – for that period of time.

MS. O'BRIEN: Okay. So when the officer was on the inside it wouldn't have required a further guard on the outside, but if that officer was not present in the home a guard should have been posted. Is that what you're saying?

SGT SAUNDERS: Ultimately, that would be the best practice.

MS. O'BRIEN: Okay.

And in this case do you know what guarding had been done prior to your arrival on the scene when – of course, Corporal Foote is who we're referring to, when Corporal Foote was in the house. Do you know what was done previous to that?

SGT SAUNDERS: No, I don't. No.

MS. O'BRIEN: Okay.

Who decides what areas of a scene to exam and document?

SGT SAUNDERS: It's a combination of the Forensic Identification people that attend the scene as well as the investigative team.

MS. O'BRIEN: Prior to the Forensic Identification team, or sometimes referred to as the ident team we know, prior to you going and doing your initial examination of the scene do you consult with the investigative team or the first responders or people who have been in at the site or gotten early statements?

SGT SAUNDERS: Somewhat. We – there's a few things we need to know or we like to know. And that's basically what the scene looks like, you know, what kind of things we're dealing with. Is it an outdoor scene, an indoor scene, inclement weather, perishable evidence? And we need to know what type of equipment to bring.

Also, it could be a scene where, I guess, a further specialist is required. If there's more than one scene we may have to bring a third person along. All those things come into play when we're trying to determine that.

MS. O'BRIEN: Okay.

Is there any limit to the amount of information you want to know before you go in to do your initial examination of a scene?

SGT SAUNDERS: Certainly. Initially, we don't really want to know too much about what's been said. We like to go in and view the scene, let the evidence speak for itself so to speak and determine if anything appears to be out of the ordinary. So when we document the scene we're doing so with a fresh, open mind and we let the evidence dictate what we do from there.

MS. O'BRIEN: Okay.

So during your initial assessment of the scene, is it the ident team then who decides what type of documentation to make? For example, is it you and other members of your team who decide whether to photograph, to video, what to photograph, what to video? Is that what the FIS team decides initially?

SGT SAUNDERS: Yes, in all scenes of human death in – well, in this situation, in an officer-involved shooting, we would always take photographs, always take video and always take measurements to prepare two-dimensional plan drawings.

MS. O'BRIEN: Okay. And what about what testing to do at the scene? So, for example, what – whether to do fingerprint testing at the scene, footwear-impression testing, those kind of tests, is that initially the FIS who decides – makes that decision?

SGT SAUNDERS: Initially, yes, and that depends on the scene. Every scene is different.

MS. O'BRIEN: Okay. And then after the initial stage is it that sometimes you go back and consult with the investigative team before you, before the scene is – you ultimately release the scene?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

Would that be the same for the exhibits that are to be ceased? Is that initial assessment made by the FIS team and then later on you might go back and consult with the investigative team to make sure you got everything you needed?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Is it your responsibility, as the FIS team, to ensure that you have the legal authority that you need to go into a crime scene and, you know, do the work, the searching and seizure that you're going to be doing?

SGT SAUNDERS: No, we rely on the Major Crime Unit investigators or whoever is investigating the crime, or investigating the scene. We're not experts in judicial authorizations and when is required and when one isn't so we rely on them. If they're calling us to the scene, then the expectation is that we have legal authority to go into that scene.

MS. O'BRIEN: Okay.

In this case for Mr. Dunphy, when you arrived on scene did you understand that you were involved in a homicide investigation?

SGT SAUNDERS: I understood that we were going into document and search for evidence at an officer-involved shooting, and that our authority was under the fatalities investigations act.

MS. O'BRIEN: Okay. So are you saying – is that saying no, you did not understand it to be – you understood it to be something different than a homicide investigation?

SGT SAUNDERS: It wasn't really stipulated that this is – it just stipulated that it's an officer-involved shooting and that's what we're investigating.

MS. O'BRIEN: Okay. Would that have affected the way you processed the scene? So would you have done anything differently here had you been told this is a homicide investigation as opposed to an officer-involved shooting incident?

SGT SAUNDERS: No.

MS. O'BRIEN: And any difference in the way that you did your scene processing here because one of the individual's involved was a police officer.

SGT SAUNDERS: It's a different scene in that often times when we go to a homicide scene we have a deceased but there is nobody there. We're trying to find out who actually shot the person, say, for example. In this situation, the officer had advised, I guess, our investigative team, what had taken place, so we had that knowledge. So that was – it gave us an indication of what took place so we weren't trying to place somebody in the residence. He was already admittedly in the residence and was there at the scene when the responding members arrived.

MS. O'BRIEN: Okay. So would that have been the only difference?

SGT SAUNDERS: Yes.

MS. O'BRIEN: All right.

Just going to go back to your notes, I understood – so here we see you arrive at the scene at 2040, which is 8:40 in the evening on April 5, and I understand that you came in your own

vehicle but you stopped off in Clarendville and met up with Corporal Kelly Lee there. She took her vehicle and then you both proceeded to the scene in Mitchells Brook together. Is that right?

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: Okay. So you arrived there on 8:40 that night, which is about 5 hours and 40 minutes or so after the first responders had come to scene.

One quick note here just prior to that, I note, while you were travelling at 1535 you note you received a call from Sergeant, Staff Sergeant Tilley who advised there are possibly 30 cats in the residence and discussed how to deal with this and the potential for evidence disturbance. It was agreed that we would post a member inside of the scene to keep the cats contained and away from the deceased, and then you note you met with Corporal Kelly Lee.

In the ordinary course, after the first responders do what they need to do at a scene in terms of assisting anyone who's has been injured, that kind of – you would give that immediate medical-type assistance and clear the scene to ensure that there's nobody there. In the ordinary course, is the scene then left completely empty and guarded prior to the ident team arriving?

SGT SAUNDERS: That is the normal course, yes.

MS. O'BRIEN: Okay. And in this case they obviously, Staff Sergeant Tilley is checking with you and you agreed with the decision to post Corporal Foote inside to just keep the cats out of the living room.

SGT SAUNDERS: Yes.

MS. O'BRIEN: In the ordinary course, do first responders do any photography of the scene?

SGT SAUNDERS: Not normally, no.

MS. O'BRIEN: Okay.

Is that still the case where you have, in a case such as this, the ident team was, you know, over five hours away from arriving at the scene, so a fairly lengthy period of time. Would that still be the same case that the first responders don't, don't take photographs?

SGT SAUNDERS: Normally, yes. Unless there's perishable evidence, say a footwear impression in the snow or something like that. Normally, there would be no photos taken until we arrived.

MS. O'BRIEN: In the case that we have here with the Mr. Dunphy case, we've had testimony from the first medical responders, so the paramedic and the EMR who attended at the scene, and their memory – they've already given testimony here before the inquiry – and their memory of the scene is different in a few aspects then how the scene was ultimately recorded by you and Corporal Lee, that five and half or so hours later.

If the first responders don't take any photographs to record the scene when they first go in there how does one determine then if the differences in the, in this case, the paramedic and the EMR's memory is because the scene changed or simply because there is frailty in their memory, you know, they're just remembering incorrectly?

SGT SAUNDERS: I guess I can only speak to the scene as it was presented to me. So anything that happened prior to that I would have no knowledge of. So in that situation, I guess, initial

photos may have either supported or refuted that claim; however, it's not something we normally do and it's –

MR. KENNEDY: Excuse me, Commissioner. Isn't it also important to point out though that the two RCMP officers who went in to the scene identified the scene as demonstrated in the pictures and the two paramedics came in after the RCMP officers?

MS. O'BRIEN: Well, we have heard from Corporal O'Keefe already. We will hear from Constable Cox and there's some difference there, and I will mention to him about Corporal Foote, so if I could just ...

THE COMMISSIONER: Yes, that's not really an objection, Mr. Kennedy. The, you can get, you can get, bring out anything that Ms. O'Brien –

MR. KENNEDY: Well, Commission counsel should be doing that, Commissioner, I would suggest.

MR. COMMISSIONER: Why?

MR. KENNEDY: I would suggest, in fairness, that it's not simply enough to put to this witness that the two first responders saw a scene that appeared to be different than the photographs, when there are two officers in before these paramedics who say the scene is as demonstrated in the photographs.

MS. O'BRIEN: Mr. Kennedy, that's not actually the case with Corporal O'Keefe. His memory is not – and we have not yet heard from Constable Cox, but, Commissioner, just to be clear, my questions –

THE COMMISSIONER: Just one second –

MS. O'BRIEN: Sorry.

THE COMMISSIONER: Just one second now. Just refresh my memory now. We had the two first police responders.

MR. KENNEDY: That's correct.

THE COMMISSIONER: And they were Constables –

MS. O'BRIEN: Corporal O'Keefe.

THE COMMISSIONER: Corporal O'Keefe and ...?

MS. O'BRIEN: Constable Cox.

THE COMMISSIONER: Constable Cox.

MS. O'BRIEN: Constable Cox will give evidence next week.

THE COMMISSIONER: Sorry?

MS. O'BRIEN: Constable Cox will give evidence next week.

THE COMMISSIONER: He will testify.

And then we had Constable Foote, was it? Who is it –

MS. O'BRIEN: Corporal Foote.

THE COMMISSIONER: – who went in to preserve the scene from the cats?

MS. O'BRIEN: That's correct.

THE COMMISSIONER: Okay.

Now, we had – he went in after the two medical responders. So we had the two police responders, then they waited for the two medical responders. And then we had Constable Foote come in after the medical responders left, okay?

Now, Mr. Kennedy, you're suggesting that for some reason Ms. O'Brien's last question was incomplete in terms of ...

MR. KENNEDY: Yes, it is incomplete in that we have two police officers say that is the scene as we found it, is the one that's demonstrated in the pictures.

THE COMMISSIONER: Well, that's fine. Ms. O'Brien has her own line of questioning which she's entitled to put.

And, you know, if it turns out that somehow it's unfair when the line of questioning is completed that's one thing, but I don't think at this stage – I think it's a bit premature for you to raise the objection. You may still –

MR. KENNEDY: There's been a pattern, Commissioner –

THE COMMISSIONER: Sorry?

MR. KENNEDY: Sorry, what I'm saying to you here is that if you're going to – the role of Commission counsel is to put all of the evidence to the – fairly and fully before the Commission and to a particular witness.

THE COMMISSIONER: Which as far as I can see has been done, so far. Now, is there something in the past that you're concerned about?

MR. KENNEDY: That's fine, Commissioner.

THE COMMISSIONER: Continue, Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

Just to clarify, these questions that I'm asking Sergeant Saunders; he's someone who is an expert in forensic scene examination and he has said that in the ordinary course, first responders to the scene don't take photos and that they wait until the ident team comes. And, typically, it's the ident team, as I understood you say, Sergeant Saunders, who goes in and takes the first record, photographic record of the scene. Is that right?

SGT SAUNDERS: That is correct. Yeah.

MS. O'BRIEN: So the question I was putting to Sergeant Saunders is that, you know, in a case like this where there is quite a period of time in between, whether that, you know – and the first

responders have not recorded photographs. And so we do have, certainly, not all – and I agree with Mr. Kennedy, we are going to hear from Constable Cox. And as I understand his evidence, it will be consistent with that of Corporal Foote as to how he saw the scene. And I think that Corporal O’Keefe may stand to be corrected on the record but his memory just wasn’t as definite as some of the other first responders.

But my question here is more to ask Sergeant Saunders that, you know, how do – without having someone photograph when they first go in, how do they deal with an issue like this –

THE COMMISSIONER: Right.

MS. O’BRIEN: – that has arisen in this case, where without that initial photographic record it’s very – it’s hard to know. Are we dealing with a changed scene or are we dealing with the frailties of human memory?

THE COMMISSIONER: All right, well, put the –

MS. O’BRIEN: So that’s really the point of my question.

THE COMMISSIONER: – put the question. Yeah.

MS. O’BRIEN: So that was the question I was putting to you, Sergeant Saunders. Do you have any comment on that?

SGT SAUNDERS: This is the first time that we’ve – I guess, in my experience – I’ve dealt with a situation like this. Knowing I guess in hindsight, there may have been some benefit to take initial photos; however it’s not a best practice that we’ve had prior to this.

MS. O’BRIEN: Okay.

And in this case as we have had evidence when Corporal Foote did go in to the evidence, which was some time after the paramedic and EMR went in, but he did on his phone just capture a few of the scene photos while he was in there. And, Commissioner, those have already been entered into evidence; Corporal Foote’s photos.

All right, so going back to your note, Sergeant Saunders, you arrived at the scene at 2040 and at this point, the paragraph that you’ve written here in your notes says that Major Crime Unit members Corporals Steve Burke and Monty Henstridge were present as well as Sergeant Steve Conohan, Constable John Galway and other general duty members guarding the scene.

“MCU members informed me that there were two shots fired according to their information. It was dark at this time and lighting in the area was minimal. The ground was dry with no precipitation. The temperature was approximately 3 degrees Celsius.” Do you recall which officer said to you two shots?

SGT SAUNDERS: I don’t recall which. It was either Corporal Steve Burke or Corporal Monty Henstridge. I had stopped on the road and they were sort of travelling toward me and we stopped and had a conversation on the road with our – between our open windows. And I’m not sure which one of them said it but I recall hearing one say two shots were fired.

MS. O’BRIEN: Okay. And did they say what the source of their information was at that time, whichever one of them it was?

SGT SAUNDERS: No, they did not.

MS. O'BRIEN: Okay.

Going to the second paragraph here you say: "The residence was a single family dwelling on the opposite side of the road from the water and faces southeast. There were two outbuildings that appeared to be on the same property to the west of the residence. The residence appeared to be in a state of disrepair and there was garbage around the exterior. I obtained some exterior photos of the driveway and the front of the residence. I then donned an officer protection suit and entered the premises with Cpl. LEE. We met with Cpl. Dion FOOTE who was guarding the interior scene. He advised of multiple cats contained in two rooms with closed doors. He then departed."

In that paragraph –

THE COMMISSIONER: Can you tell me where that is?

MS. O'BRIEN: We're on page 2 of Exhibit P-0537, Commissioner. And it's the –

THE COMMISSIONER: On page 2. Okay (inaudible).

MS. O'BRIEN: Yeah. And it's the second paragraph that Sergeant Saunders has entered under the time at 2040.

THE COMMISSIONER: Yeah, okay.

Thank you.

MS. O'BRIEN: In that paragraph, Sergeant Saunders, that I just read out you refer to protection suits. Can you explain, please, to the Commissioner: What are officer protection suits?

SGT SAUNDERS: An officer protection suit is – basically, it's a Tyvek suit. And it covers your body from your neck to your ankles, and there's actually a hood that goes with it as well and it comes with boot covers. So that was included in the officer protection suit that we wore; boot covers as well as latex gloves.

MS. O'BRIEN: Okay.

And do you keep your protection suits on the entire time that you are processing the scene?

SGT SAUNDERS: Yes.

MS. O'BRIEN: And when you, when you have to leave – I assume that sometimes you have to leave the house, leave the scene itself to go to your vehicle to get equipment, because as we're going to get into today, you do use some fairly sophisticated equipment in doing your work.

When you do that, would you change your booties when you're coming in and out of the house?

SGT SAUNDERS: Yes, that's the normal course of ...

MS. O'BRIEN: Do you ever change your gloves while you're processing the scene?

SGT SAUNDERS: Constantly.

MS. O'BRIEN: Sorry?

SGT SAUNDERS: Constantly.

MS. O'BRIEN: Constantly. Okay.

When you arrived at the scene and you saw Corporal Foote, was he wearing a protection suit?

SGT SAUNDERS: He was not.

MS. O'BRIEN: Okay. Should he have been if he was there guarding the scene?

SGT SAUNDERS: I didn't have a great concern because he was just standing in the entrance to the living room. He was just kind of out in the hallway, I guess. Generally, members don't have officer protection suits; it's something that the forensic ident people use. Sometimes at scenes when we need a member to come in with us we'll provide them with the suits or with the booties, depending on the situation.

MS. O'BRIEN: Okay.

So I understand – I'm not going to go through every paragraph in your note, but you – that night you started to do some photography. And you took some photos that night and then you took some photos the next day when you had the benefit of daylight. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And just to confirm, Sergeant Saunders, I understand you took 187 photos in this case and we have had those entered into evidence, Commissioner, as exhibit P-0010, which we referred to many times already, and also exhibit C-0001, which are the confidential photos.

MR. KENNEDY: So all of the photos are P-0010, are they, Ms. O'Brien?

MS. O'BRIEN: All the photos are either in P-0010 or C-0001, and these are the photos that Sergeant Saunders took –

MR. KENNEDY: Okay.

MS. O'BRIEN: – when he was processing the scene on April 5th and 6th. Is that right, Sergeant Saunders?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

Now, while you were working at the photographic camera, I understand that Corporal Lee took video of the scene, is that correct?

SGT SAUNDERS: That is correct, yes.

MS. O'BRIEN: Okay.

And, likewise, she started taking her video footage that evening when you arrived and then she finished the next day during daylight, is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

Can you give us your general impressions of the home and property?

SGT SAUNDERS: It was in an obvious state of disrepair. There was – on the outside there was a lot of garbage around the exterior of the residence. I guess the property itself was unkempt. The roof was covered in tarpaulins. The siding, I noted some areas that were rotting, and the front bridge, the front deck on the house, the steps were, I guess, non-existent, but they were replaced by a couple of tires, tire rims, and there was a couple of boards put across there for a step.

MS. O'BRIEN: Okay.

What about inside the house? What were your first impressions inside?

SGT SAUNDERS: Inside the house similar to the outside. It appeared to be quite an unkempt residence. There was a lot of garbage around. A lot of things on the countertops, on tables, in the bedroom. For example, the bed was covered in furniture and boxes and whatnot, obviously appeared that it wasn't being used.

The living room in the house, there were multiple beverage containers, newspapers, miscellaneous items around the floors kind of just strewn about.

MS. O'BRIEN: Okay. We're going to see some photographs of that.

What about in terms of smell?

SGT SAUNDERS: It was obvious walking up the driveway to the residence that there was many cats. You could smell cat urine walking up the driveway and approaching the residence. That smell was – for two days at the residence we could smell that smell, both inside and outside.

MS. O'BRIEN: Okay.

SGT SAUNDERS: There was also areas in the residence where I noted it appeared to be vomit or feces on the floor in areas of the interior.

MS. O'BRIEN: Presumably – well, you were presuming that was from cats, were you?

SGT SAUNDERS: Presuming, yes.

MS. O'BRIEN: Did you see any mould growth in the house?

SGT SAUNDERS: Yes, I did. In the bathroom, the ceiling appeared to be falling in and there was mould on the ceiling, what appeared to me as being mould. In the cat room there also appeared to be mould there. And I believe in the laundry room ceiling, there, there appeared to be mold.

MS. O'BRIEN: And the diagram that you're looking at right now is a – you brought us in a larger version than what we had previously. This has also been entered as an exhibit, as P-0035, but this is a – and we'll talk a bit about it later on how you came to create it, but this is a diagram or a mapping of the house that you, yourself, created, is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And as we're referring to your testimony from time to time, it would be helpful for us to look at that, to what we are referring to here as the scene map.

When you and Corporal Lee first entered the house, where did you go?

SGT SAUNDERS: We entered through the front porch, up the stairs, across the deck, in through the front porch and kind of just stood in the front-porch area, and looked around and then moved our way in. We talked briefly with Corporal Foote. He advised that the cats were kind of barred into a couple of rooms and he left the scene at that point. We went into the living room first and just kind of went in and looked around and saw what was presenting itself to us there, and then did the same through the rest of the residence.

MS. O'BRIEN: Did your first walk-through?

SGT SAUNDERS: Did our first walk-through. We didn't open the doors to the cat rooms, or the rooms where the cats were at that time, for fear of letting them out.

MS. O'BRIEN: Okay.

Did you see any cats upon entering the residence?

SGT SAUNDERS: Not upon entering the residence. Outside there were.

MS. O'BRIEN: Okay. What about in the living room? Did you see any cats ever in the living room when you were processing in there?

SGT SAUNDERS: Not on the first day. Toward the end of the last day, after we had opened the cat room doors, and there was at least one cat that got out while we were actually doing our trajectory.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Got out from the room where it had been barred in, to where?

SGT SAUNDERS: One of the – I'm not sure where it got out from there. It could have been one of the rooms or it could have been what I call the laundry room because the ceiling was open, and when I was in that room a cat jumped up into the ceiling from I believe it was on top of a washer or dryer, and there was another cat up there. When we were in the residence, you could hear cats running around up in the attic of the residence, so ...

MS. O'BRIEN: Okay. We're going to look at some of those photos in just a few minutes.

When you entered the residence, did you make any record or note of what doors of the residence were open or what doors were closed?

SGT SAUNDERS: My photographs would be as they were. The doors would be as they were in my photographs. So my initial photographs when we entered the scene would, I guess, tell you what doors were open and what doors were closed. The only door in the hallway, I believe, that was open was bedroom number two. I know on the diagram here I have it as closed, but if you refer to my – that's an error on that diagram of bedroom number two. If you could refer to my photographs, that door is open. So at the time of us going into the residence, that door to bedroom number two would have been open.

MS. O'BRIEN: Okay, well, we might be able to address that as we go through because, for instance, and when we get to the photographs of the bathroom, I'm seeing the first photograph of the bathroom with the door open, and yet in your diagram, your scene diagram here, it looks to be closed. But that's something we can look at as, perhaps, we go through some of the photographs.

SGT SAUNDERS: That may not have been the first photograph of the bathroom.

MS. O'BRIEN: Okay.

So, right now, what you can tell us is the way the doors are shown on this scene diagram, whether they're open or closed, is not necessarily representative of how they were when you first went in the house. And, Sergeant Saunders, what I will suggest is perhaps on the break you and I can clarify what photographs so we can firm up that evidence, okay?

SGT SAUNDERS: Certainly.

MS. O'BRIEN: All right.

Now, after you did your initial photographing, and I understand Corporal Lee did some video, I understand that one of the things that you – the next major thing that you do is you identify areas or objects of interest at the scene and you mark them with placards or little neon-coloured numbers, is that right?

SGT SAUNDERS: Yes, after we take our first photos and videos, then we mark the evidence.

MS. O'BRIEN: Okay. And just briefly, because we're going to go over each of those, the placards you placed, in some detail, and they are recorded here in your notes, in your typed notes, exhibit P-0537 at page 3. But just in terms of the process that you go through to decide where to place your placards, can you just explain that generally to the Commissioner?

SGT SAUNDERS: Well, we – in this instance, we knew it was a shooting; it was related to us and it was obvious upon entering the room. So we're looking for things like shell casings and anything that may be related to the incident at hand. We also knew that the RNC officer was there investigating a potential threat made through Twitter. So a computer or a phone, or iPad or what have you is also something that we would be looking for.

MS. O'BRIEN: Okay.

So maybe what we'll do then is we'll go through the placards you placed and you can explain your reasoning for each of those. That might be the most efficient way to do it.

SGT SAUNDERS: Certainly.

MS. O'BRIEN: So we do have the list here. Just for your information Commissioner, I have brought it up there on the screen, the list of the 10 placards that were placed. I'm going to leave that list now and actually go to photographs of each of the placards as we go through the evidence. So the first placard that you placed was for a .22 calibre rifle. And, Madam Clerk, if you could please bring up photo 97 please.

Your note – in your typed notes, Sergeant Saunders, are .22 calibre rifle, C/W live round in chamber. What does C/W mean?

SGT SAUNDERS: Consistent with.

MS. O'BRIEN: Pardon?

SGT SAUNDERS: Consistent with.

MS. O'BRIEN: Consistent with, okay.

All right, so this –

SGT SAUNDERS: Sorry; complete with, in this situation.

MS. O'BRIEN: Okay, complete with.

All right. So here we see placard number one in this photograph that you placed by the rifle. And then, Madam Clerk, if you could just bring up please, photo 98, we're just going to look at that, the photograph where you captured that live round in the chamber.

All right, Sergeant Saunders, so this is a photograph that you took of a close-up of the chamber of the rifle?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. And is this the exact position that you found it in when you entered the scene?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. So I think what we're seeing right here, is that right – is that what you're referring to as the live round in the chamber?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay.

All right. The next placard you placed, we're going to see it in photograph 101, please, Madam Clerk.

You have in your notes, Sergeant Saunders, entered this as .22 calibre live round of ammunition on round table in front of the deceased. So we see it here and we can see this is – there's many photographs to look at but we can see this is the wood of the table here and it appears to be on some paper.

Was the .22 –

THE COMMISSIONER: Sorry, just help me out here. Is that on the floor or –?

MS. O'BRIEN: No.

THE COMMISSIONER: On the table?

MS. O'BRIEN: Yes. Maybe you could point, Sergeant Saunders, using the scene map –

THE COMMISSIONER: Yeah, I think I have it. That's all right. There's no need. I saw it.

MS. O'BRIEN: Okay.

There's a little – there is a round table in front of Mr. Dunphy –

THE COMMISSIONER: I think if we – I don't know if it will disturb any, but move that one – tilt it around a little bit so I can follow it, as well as the witness.

MS. O'BRIEN: Thank you, Ms. Chaytor.

THE COMMISSIONER: It's hanging a little bit too much to the right. All right.

MS. O'BRIEN: I think it's –

THE COMMISSIONER: Oops! Tilt, okay. Yes, I can see it there. That's good.

MS. O'BRIEN: Thank you.

And, Mr. Commissioner, if it's – it may assist you, that diagram at Tab 10 of your binder in front of you, you also have a paper copy of the diagram as well.

THE COMMISSIONER: Uh-huh.

MS. O'BRIEN: So as we're going through the placards, the 10 placards you placed. Sergeant Saunders, I understand you have actually depicted those placards in your scene diagram. Is that right?

SGT SAUNDERS: That is correct. There should be – well, there are 10 red circles in the diagram and they correspond with the placard numbers.

MS. O'BRIEN: Okay.

So those 10 red dots we see. So number two here, so this is actually, we see a dot there on the little round table immediately in front of Mr. Dunphy. So that would be placard number 2, would it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And so here is a fairly close-up shot of placard number 2 but we see an ashtray here, some ashes spilling out, and then we see what your marking here I understand is the 22 live round of ammunition.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

Was the 22 live round on this table the only other ammunition you found, live ammunition you found in the room additional to the one in the rifle itself?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay.

The next placard you placed is placard number 3. And if, Madam Clerk, you could please bring it up, it is photo 103. I'll just get you to make it a little bit smaller Madam Clerk, smaller again because I want to see the placard number. Thank you. That's good.

Sergeant Saunders, can you please tell us what is it you're marking with the placard in this photograph?

SGT SAUNDERS: In this marking, you'll note that there's quite a large number of beverage containers and garbage, paper and whatnot on the floor. I noted that in this garbage there appeared to be roughly linear shape void on the floor. I discussed it with Corporal Lee, who agreed that it was kind of odd for that location where all this garbage is around and then in this one particular area there wasn't any beverage containers that had spilled out into that area. So I marked it and photographed it.

MS. O'BRIEN: Okay.

At that time, did either you or Corporal Lee have any information as to where Constable Smyth had advised the other police officers where he said or believed that the rifle came from?

SGT SAUNDERS: No. Not at that time.

MS. O'BRIEN: So at that point you had no information from Constable Smyth associating the rifle to the right-hand side of Mr. Dunphy's chair.

SGT SAUNDERS: No.

MS. O'BRIEN: Did you attempt to capture in photograph the various positions in the room from where that void area could be seen by somebody standing or sitting in the room?

SGT SAUNDERS: Not specifically that, no, I obtained overall photos of the whole room, but not specifically where that particular area could be seen.

MS. O'BRIEN: Okay.

All right. The next placard that we have is, we can see it in photograph 105 please, Madam Clerk. Thank you. Can you make that full-size please? Okay, thank you.

Sergeant Saunders, we see actually two placards, and this is on the oval coffee table in front of the couch in the room. Right now I'd like to ask you about placard number 4, and in your notes you've indicated that it's placed by an iPhone on coffee table in front of couch. Why did you choose to specifically mark and photograph the iPhone?

SGT SAUNDERS: Well, as I've stated, I was aware that Constable Smyth was at the scene investigating Twitter messages. There was no other computer in the residence or device with which you could transmit Twitter messages. So I thought that the phone would be important in this matter.

MS. O'BRIEN: Okay. So that, that information about the Twitter is information you got before you entered the home from the, from the other RCMP members outside. Is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And before I leave this photograph, I'm going to jump ahead to placard number 10 because it is, it's visible in this photograph 105. You have described that in your

notes as a yellow folder with papers inside containing printouts of Twitter messages on the coffee table. Why did you choose to identify and photograph the yellow folder?

SGT SAUNDERS: As you'll see in my earlier photos, initially I didn't, as I didn't know if it was related or not, but then I opened up the folder and saw what it contained and closed it again and marked it as number 10.

MS. O'BRIEN: Okay. What did you see it contained?

SGT SAUNDERS: It contained printouts of Twitter messages. So I thought it may be related to the matter at hand.

MS. O'BRIEN: Okay.

Prior to marking the folder with the placard and taking the photos, had you had any – had anyone discussed with you Constable Smyth's statement of having a file folder with him when he was in the residence?

SGT SAUNDERS: No.

MS. O'BRIEN: And if Madam Clerk can bring up, please, photograph 123.

Sergeant Saunders, is, can you identify this as the photograph that you took of the inside contents of the folder?

SGT SAUNDERS: Yes, it appears to be the photograph I obtained.

MS. O'BRIEN: The next placard you placed, going back now to our earlier order would be numbers 5, 6, 7 and 8 and these are all spent 40-calibre S&W, which I understand to be Smith & Wesson bullet shells. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

So I'm going to look at three photographs so we can get a sense of where you found those shells in the room. The first photograph I'd ask to see, Madam Clerk, is photograph 107.

So, Sergeant Saunders, what we're looking at here now – and maybe I'll point you to your scene map. But what we're looking at now is the northwest corner of the living room more or less. Is that fair to say?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And in your scene diagram there, I know you've noted a – what I understand is this blue-seated wooden chair that we are seeing in the photograph here. And you've also put it in your scene diagram as well, right?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: Okay.

And then in your scene diagram we can see another rectangle of a, sort of a creamy type colour against the northern wall of the room. And I understand that to be this table that I'm just indicating here in photograph 107. Is that right?

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay.

And so placard number 5 is sort of under that little table. And am I correct, Sergeant Saunders, that what you're noting here is of a small object that I'm drawing a circle around now with the mouse, being the 40-calibre shell casing?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

THE COMMISSIONER: I didn't hear that. What was it?

MS. O'BRIEN: That what I'm drawing right here, Commissioner, what I'm indicating right here, that's the 40-calibre shell casing –

THE COMMISSIONER: Okay.

MS. O'BRIEN: – that placard number 5 was intended to mark.

THE COMMISSIONER: Oh yeah.

MS. O'BRIEN: And, Commissioner, if you want to see a more close-up photograph of that, we can go to Scene 108.

MR. KENNEDY: I'm sorry, what was the one – what was the photo we just had up, Ms. O'Brien?

MS. O'BRIEN: 107, Mr. Kennedy – 107.

So here's just a close-up of the placard number 5. And, Commissioner, there you can see a little closer view of that shell casing there.

THE COMMISSIONER: I see it.

MS. O'BRIEN: Okay. The next photograph to show the rest of the shell casing placards I'd ask to see photograph 110, please.

So, Sergeant Saunders, I understand now we're underneath this blue chair. And I'll just get you to confirm that I am seeing what – I am in fact seeing what I believe to be seeing. But here at placard number 6 I see right in front of it there, it's a very small object. Would that be the shell casing that placard number 6 is marking?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And then over on the right-hand side of the photograph we see placard number 7. And just there to the left of that placard there's another shell casing. Is that the shell casing that placard 7 is marking?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. And it is somewhat obscured, obscured here by the leg of the chair. But behind the leg of the chair that would be placard number 8, is it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And then just to the right of placard number 8 that – is that the other shell casing, the four shell casing that's being marked?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay.

MR. KENNEDY: Could we just stop. Commissioner, I just need a little bit of help here. I'm looking at the screen, I see Exhibit P-0103. I go up top, so Exhibit P-0103, then it's P-0010, then Scene 110. So I'm just trying to figure out which is the actual photograph that we're dealing with?

MS. O'BRIEN: We're dealing with – I can't explain the P-0103 up top, but I can tell you we are dealing with Exhibit P-0010 –

MR. KENNEDY: Yeah.

MS. O'BRIEN: – which is the book of all publically –

MR. KENNEDY: Right.

MS. O'BRIEN: – available photographs. And we are Photo 110 within that book.

MR. KENNEDY: Yes. Thank you.

MS. O'BRIEN: All right and the last one, just to show another view of these placards here, is photograph 114, please, Madam Clerk.

So this is just another view. I think I selected this one because the number 8 had been obscured in the last photograph, but here we see placard number 7 and 8 there and the shell casings again.

Sergeant Saunders, so again when we look at your, what's been entered as P-0035, your scene diagram here, in that northeastern corner of the room we can see four red dots up there which are to show where the placards were placed. Is that correct?

SGT SAUNDERS: That's correct, yes.

MS. O'BRIEN: Yes.

MR. KENNEDY: Can I approach?

THE COMMISSIONER: Hmm?

MR. KENNEDY: Can I approach that?

THE COMMISSIONER: Oh yes. Go ahead.

MS. CHAYTOR: (Inaudible) it's bit smaller ones in behind. You can take it down.

Why don't you take that one down?

MR. KENNEDY: No, it's just the colour is a little bit different there. Those are the four, are they? Those are two red and there's two (inaudible).

MS. O'BRIEN: Yes, I think the issue that Sergeant Saunders is trying to deal with is that some of these placards were actually underneath the blue chair.

SGT SAUNDERS: That's correct. Yeah.

MS. O'BRIEN: Right? So we do see the two that we see there kind of – the two little red dots on the blue cushion itself, those are the two that are underneath the chair, number 7 and 8.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And then we see, then number 6 is the one just kind of closest to the western wall there, right kind of touching the wood of the blue seated chair. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And then the last one, number 5, is the one that as we said, pointed out earlier, is up near how you've represented that marble-top table.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

Okay, the next photograph, the last placard you placed would be placard number 9. And if we could see, please, Madam Clerk, photograph 119.

Okay. Here you have described this in your notes, Sergeant Saunders as long wooden stick on floor to the left side of deceased with duct tape on one end. Why did you choose to mark and photograph this stick?

SGT SAUNDERS: When we – excuse me, when we first entered the residence, this is basically the first item that we came across. As we're walking through the residence we're looking down because we're making sure that we're not going to step on anything that could be of evidentiary value. So we're looking down and this is the first thing that I observed in the doorway to the residence.

It's obviously a homemade device of some sort. Whether it was a weapon or used as a walking stick, I don't know. However, it seemed to be kind of out of place and in the way, for lack of a better term, so I thought it might be important to the investigation.

MS. O'BRIEN: Did you see any other weapons or what could possibly be weapons other than the rifle that you photographed and the stick you've just referred to?

SGT SAUNDERS: Many other things that could have been used as weapons, yes. Like there's tools throughout the residence, bottles, many things that could have been used as weapons.

MS. O'BRIEN: Okay.

No other – you didn't find any other firearms, though, did you?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: Okay, and we'll see some of those – I think there's some household knives and type things in the house as well that we'll see as we go.

Okay, I understand that after you placed the placards, you photographed again with the placards in place, and we have a large book of your scene photographs here – I don't intend to take you through every one, but I do intend to go through a number of them, particular ones on inside so we can just make sure that when we are looking at the photographs we can properly link the photograph to the room as you've identified it on your plan diagram.

The first photograph I want to ask you about is actually photograph number 1 in your series and this is P-0010, Photo 001. This is just an introductory card, while Madam Clerk is bringing it up, it an introductory card, your first photo of the series. We see here or marked on it is the date, April 5, but it says: Murphy – Shooting Death.

Can you just explain why that says Murphy?

SGT SAUNDERS: Initially that's my understanding – my understanding of the deceased's last name was Murphy.

MS. O'BRIEN: Okay. So that was just an error. You later learned it was Dunphy?

SGT SAUNDERS: Yes, that is right.

MS. O'BRIEN: Okay, that's fine.

The first photograph I'd like to look at from outside the scene is photograph 014, and I'll move through these fairly quickly, Sergeant Saunders. Photograph 014, okay, I understand – so this is a photograph of the two vehicles, is it, as they were found in the driveway?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

We've already reviewed a number in the evidence number of photographs taken from outside the house, but I do still have a few more to take you to. Can I have photograph 021, please?

Okay, so photograph 001 is taken from the corner of the house and we can see a sign here that we've had testimony on earlier in the course of our hearings, but this photograph here we can see a little bit up to the backyard of the property and we're not seeing any police tape in that area. Is that correct?

SGT SAUNDERS: That's correct. I don't recall seeing any police tape back there.

MS. O'BRIEN: Okay. I understand from earlier testimony that the police tape might have only run across the front of the property and then up the right-hand side of the driveway. Would that be consistent with your memory?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And just leave this photograph up, please, sorry, Madam Clerk, 'cause I just want to ask – in some of the photographs that we're seeing outside we are capturing some exterior lights, but I understand that the on or off condition of these lights is not necessarily indicative of how they would have been when you arrived. Is that correct?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Can you just explain that to the Commissioner?

SGT SAUNDERS: It was quite dark in around the house and somewhat treacherous to get in and out of the house, so I know at one time I had turned on a light so we could allow to us to more safely enter and exit the residence.

MS. O'BRIEN: Okay. I'll just ask you to hold it, please, Madam Clerk. Now, we see here in this photograph 021 a part of the window on the front of the house that looked into Mr. Dunphy's living room. Am I correct to say that you did not capture a photograph specifically of the scene looking in through that front window; is that right?

SGT SAUNDERS: There is one photograph where you can actually see, I guess, the top portion of the deceased head from the outside driveway.

MS. O'BRIEN: Okay. And that would be the best one – it's kind of hard to see through that one –

SGT SAUNDERS: It is.

MS. O'BRIEN: – is that fair to say? Okay.

Did you look in the front window yourself?

SGT SAUNDERS: As we were approaching I did, yes.

MS. O'BRIEN: Okay. Did you go up to peer in the window, or just you, what you could see as you were walking towards the front of the house to enter it?

SGT SAUNDERS: What I could see as I was walking working toward the house.

MS. O'BRIEN: Okay. And as you were walking toward the house, what did you see in the living room?

SGT SAUNDERS: Just seen the deceased sitting in the chair.

MS. O'BRIEN: Okay. So you – could you see the rifle at that time?

SGT SAUNDERS: No.

MS. O'BRIEN: Okay. Again, with this photograph still up, I understand that you did see some security cameras on the property; is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. Did you check those security cameras to see if they were functioning?

SGT SAUNDERS: I didn't check them myself. I did note that the one by the front door, the cord appeared to be hanging down and not plugged into anything. There was also one on the side of the house you see in this, this image on the screen, and there was a third one on a shed to the opposite side of the property.

MS. O'BRIEN: Okay. So you didn't check any of them; is that right?

SGT SAUNDERS: That's right.

MS. O'BRIEN: Okay. But one on the, on the front of the house near the front door you, you could tell, you noted that a cord was dangling.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So just, I'm going to just, so that, Commissioner, you're aware of where the security cameras are –

THE COMMISSIONER: Where was the second one?

MS. O'BRIEN: Yes –

THE COMMISSIONER: I see that one.

MS. O'BRIEN: Okay. So this is in photograph 021, we can see on the side of the house. And so you didn't note anything about a cord unplugged or unplugged for that camera; is that right?

MR. KENNEDY: Excuse me, Commissioner, could I just approach Ms. O'Brien for one second –

MS. O'BRIEN: Yes.

MR. KENNEDY: – because my photographs seem to be confusing. So we are looking for Photo 021 here.

MS. O'BRIEN: Photo 021, yeah.

MR. KENNEDY: I don't know if someone has taken them apart –

THE COMMISSIONER: Yeah, up in the top right corner on mine – well, on this one there's Photo 021, you say –

MR. KENNEDY: I'm looking at the wrong number (inaudible).

Thank you, Commissioner.

MS. O'BRIEN: Okay, so that's that one. I think we'll see the one you refer to at the front of the house perhaps in photograph 032, please, Madam Clerk.

Okay, Sergeant Saunders, right here in the top left-hand corner of the photograph, is this the camera that you were referring to having seen?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: And this is the one you noted that the cord was dangling on; is that what you're saying?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And the third photograph, Madam Clerk, photograph 028. Okay, so this is one of the outbuildings – we have a larger outbuilding sort of towards the back that we can just see, it's uncovered, pressboard of some type there in the back top right-hand corner. But, in this little outbuilding here, just above the door, is that the third security camera you recall seeing?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And you don't know anything about the functionality of that one?

SGT SAUNDERS: No, I don't.

MS. O'BRIEN: Okay.

All right. I'm going to take you through now some of the indoor, the interior photographs, so we can match them up with your map. The first one I'd like to start with is photograph 035.

Okay, can you make that just a little bit smaller please, Madam Clerk – even smaller again?

Sergeant Saunders, am I correct that this is the view of the house just after you entered the front door, looking down the hallway there towards the kitchen?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

This panelling here that's laid up against the kitchen door, is that in the position it was when you found it when you entered the house?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay.

The next one I'd like to look at is photograph 038 and this is a photograph of the living room. Sergeant Saunders, now we're going to have lots of photographs of the living room, but I just want to confirm that this one shows it as you first found the living room – is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

Madam Clerk, if you could just maximize that, please. You don't need to change – if you just maximize the window there, okay, and bring it back to – I'm noticing a signal here, Sergeant Saunders. There's something on the television. Is that the condition you found the television in when you first found it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. Do you know what that image that we're seeing on the television is?

SGT SAUNDERS: It says audio only.

MS. O'BRIEN: Okay.

Was there any sound coming from the television when you were in there?

SGT SAUNDERS: I don't recall any sound.

MS. O'BRIEN: Okay.

All right. Okay

The next one I want to go to is, I believe, the kitchen, photograph 052. And, again, Commissioner, I'm intending to walk through these very quickly. Other counsel may have specific questions with regard to certain photographs but I'm just trying to get a mapping of the scene map. Okay, that's great.

So here I see – sorry, here, this is a photograph of the kitchen which you have marked as the kitchen on your scene map. We're seeing a door off here, off the kitchen here, and I understand that would be to the little room that you have identified in your scene map as the back porch. Is that correct?

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay. And then I'll quickly go to a photograph of the back porch, photograph 054, please.

Okay. Sorry, this one here is – sorry, Madam Clerk, if you could just – you can leave all of these, I think, at 100 per cent will be fine for the purposes of my examination here. So, sorry, this is just a closer-up view of that door, but in it we can see here this is the exterior door to the outside off the back porch. Is that right?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: And that's the one you said earlier was not – you checked it and it was not functioning?

SGT SAUNDERS: Yeah, I recall it being sealed shut. I don't recall if it was sealed by screws or nails or caulking or whatnot but ...

MS. O'BRIEN: Did you take any photograph of that?

SGT SAUNDERS: You may be able to see it from the inside of the laundry room (inaudible).

MS. O'BRIEN: Okay, so that's one maybe on the break you can just take a look in case there's an additional photograph that could help us with that.

So we're seeing here some, what looks to be marijuana plants, is that right?

SGT SAUNDERS: Appears to be. Yes.

MS. O'BRIEN: Yeah. And on your scene map the area there you've shown in the back porch area showing this green area, that's you representing those plants, is it?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And we're going to get a more interior shot now in photograph 058. And this is an interior shot of the back porch. What I believe to be, what you're going to confirm for me I think.

SGT SAUNDERS: Yes, that's the back porch.

MS. O'BRIEN: Okay. Sorry, that's maybe –

SGT SAUNDERS: No, sorry, that's the laundry room.

MS. O'BRIEN: Sorry, yes. So – sorry, can we go to 100 per cent size of the photograph, please.

Okay. In the back porch, as you've shown in your diagram, there was an – there was the exterior door we just spoke about but there was an interior door that led into another room that you have referred to here as the laundry room.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And I think, Commissioner, when Meghan Dunphy gave her testimony she referred to that room as the furnace room.

THE COMMISSIONER: The one we're looking at in the photo?

MS. O'BRIEN: The one we're looking at in the photograph here. So I think this is a view in through that door, you're sort of standing in the back porch looking through the door into what you have marked as the laundry room on your scene map. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay, and – sorry. And here on your photograph there of the scene map I see you look to have a washer and dryer on your scene map located in that room. And this would be the washer here maybe and the dryer here. Is that right? What I'm looking for here in the bottom left-hand corner of this photograph?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And there's a cat on one of them.

You also, I think, in your diagram there, looking at your scene diagram, you show a grey circle with two, sort of, sticks on it. Would that be the hot water heater?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. And in your scene diagram you show a, sort of, a fourth appliance there in the southwest corner. Do you recall what that was?

SGT SAUNDERS: I don't recall off hand now, but you can see it in this photo on the screen now on the far right.

MS. O'BRIEN: On the far right. So that's what we're seeing over here, is it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

SGT SAUNDERS: Appears to be possibly a chest freezer or a deep freeze.

MS. O'BRIEN: Okay.

Now, you talked earlier about there being some damage or mould to the ceiling. And I think you said you saw cats jumping up and down out of the hole –

SGT SAUNDERS: Yes.

MS. O'BRIEN: – in the laundry room. So is this the hole here that you were referring to earlier?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. And so that's a cat we can see there peeping down, is it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay, and then we have another cat sort of sitting on top of the appliance there down below. Okay.

The next photograph that I would like to look at is Photo 063.

Okay. Sergeant Saunders, I understand this would be the view looking down the hall towards the bedroom area. Is that correct?

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay. And what we're seeing here in this section of the photograph I am referring to – is that a woodstove, is it?

SGT SAUNDERS: Appears to be. Yes.

MS. O'BRIEN: Okay.

And here at the, on the right-hand side of the photograph we're seeing that panelling, that board that had been adjacent to the kitchen door. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay, great.

Next photograph, please, photograph 064; again, if we could just get it at 100 percent. Thank you.

So this is a view of the bathroom, is that correct?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And you referred earlier in your testimony there to be damage and some mould in the ceiling of the bathroom area. Is this what we're seeing here, what you were referring to in your earlier testimony?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And, Commissioner, we did have – there is a close-up photograph of that area and I believe we looked at it when Rita Farrell gave some testimony before the Commission.

MR. KENNEDY: Excuse me, what – why are we – where are we?

MS. O'BRIEN: We are in the bathroom, Mr. Kennedy, looking into the bathroom; photograph 064.

MR. KENNEDY: (Inaudible.)

MS. O'BRIEN: So you can see – thank you.

All right, the next photograph that I wanted to go to is photograph 070. And, Sergeant Saunders, when this comes up I understand we're going to be looking into what you have labelled the cat room in your scene map.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

So here we're looking through an open door and I understand we're in the hallway. Is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: And so that woodstove that we saw a few minutes earlier would be off to the right-hand side here. We can't see it in the photograph.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: And we're looking through an open door here into what you have on your diagram labelled the cat room.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Is that correct?

SGT SAUNDERS: Yeah.

MS. O'BRIEN: Okay.

And then – so all right, so I’m going to take you, we can see – and in the next photograph I’m going to go inside the cat room I think, photograph 071.

So now we are inside that room and we see a chesterfield that I believe you do have drawn in on your scene map diagram. And inside this room we see another, there’s not a door there but there is an opening into a second room that I understand is the one that you have labelled as the addition on your scene map.

SGT SAUNDERS: Yes.

MS. O’BRIEN: Is that correct?

SGT SAUNDERS: That is correct. Yes.

MS. O’BRIEN: Okay.

And we’re going to look at one photograph inside that addition and that would be photograph 081.

Okay, so this is inside the addition. Is that right?

SGT SAUNDERS: Yes, that’s correct.

MS. O’BRIEN: Okay. And what we’re seeing here in red, in sort of the centre area of the photograph, that would be the exterior door.

SGT SAUNDERS: Correct.

MS. O’BRIEN: Is that correct? Okay.

And do you recall if you tried to open or close – tried to open that door?

SGT SAUNDERS: I did not try to open it. There was no doorknob, actually, on the inside, but I did not try to open it.

MS. O’BRIEN: Okay.

The next photograph I’d like to look at is photograph 84. Sergeant Saunders, is this the room that you have identified on your scene map as bedroom number two?

SGT SAUNDERS: Yes, it is.

MS. O’BRIEN: Okay.

Now, you said there was – you mentioned earlier that there was a bed inside the residence but it didn’t seem to be in use. Was that in this room?

SGT SAUNDERS: Yes, that’s – I guess, sort of to the left of that wicker chair and in behind the St. John’s Maple Leafs calendar.

MS. O’BRIEN: Okay. So what I’m indicating here with the mouse, is that, is that the bed?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: Okay.

The next photograph to look at is photograph 90 please. Sergeant Saunders, is this the room that you have identified on your scene map as bedroom number one?

SGT SAUNDERS: Yes, it is. That's correct.

MS. O'BRIEN: Okay.

Now here we're seeing to the right hand of the photograph what appears to be marijuana plants. Is that right?

SGT SAUNDERS: It appears to be, yes.

MS. O'BRIEN: Okay. And then you have again indicated this on your scene map as sort of a larger green mass?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: And it looks like this room, you know, appears to have been set up sort of like a grow, to assist in growing of the plants, like a grow operation. Is this plastic sheeting that we're seeing over the walls here?

SGT SAUNDERS: It's a plastic film. It's common. I've been in marijuana grow operations before and it's common to use this on the walls.

MS. O'BRIEN: Okay. And is it, is it right to say in this area here of the photograph, is that the exterior window? If you look at your scene map there we see a window to the outside, and I'm just wondering, is that the window and has it been covered up?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So it's been completely covered over with the plastic film. Okay.

The next photograph that I want to show you is actually a confidential exhibit. So I'll ask if the televisions can be turned off and if counsel can please either tilt up or turn off their monitors. It's the only confident – no, it's one of only two confidential photos that I'm going to show you. And Sergeant Saunders, what we've done is certain photographs, because of the sensitive nature of the subject of the photographs they haven't been released to the public. It's photograph 124 please, Madam Clerk.

Sergeant Saunders, can you just let me know when you have that photograph up in front of you?

SGT SAUNDERS: It's there.

MS. O'BRIEN: Okay. So what we have here is a photograph of Mr. – well, Mr. Dunphy is there in the room, sitting in his armchair. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

Now, we note there is an injury to Mr. Dunphy's left temple, and there is some blood – certainly what appears to be blood trickling down from that wound. Do you see that there?

SGT SAUNDERS: I do.

MS. O'BRIEN: Okay. Did you note anything with respect to that trickle of blood when you were doing your assessment of the scene?

SGT SAUNDERS: I did. Shortly after arriving on the scene myself and Corporal Lee discussed the flow of blood from the hole on the left temple was inconsistent with the current position of the body.

MS. O'BRIEN: Okay. And when you say inconsistent, what do you mean by that?

SGT SAUNDERS: The blood was flowing back on an approximately 30 degree angle, whereas normally liquids will follow gravity and they'll flow down unless they are obstructed with something. There was nothing really there to obstruct the flow of that blood on the side of his face. So I just noted it as being inconsistent with his current position.

MS. O'BRIEN: Okay.

Other than discussing it with Corporal Lee, did you discuss this or mention this to anyone else?

SGT SAUNDERS: Yes, I mentioned it to Major Crime Investigators, as well as Dr. Avis.

MS. O'BRIEN: Okay.

Do you recall – when you say the Major Crime Investigator, do you recall who it was you had that conversation with?

SGT SAUNDERS: I believe it was Corporal Burke, the following morning at the Major Crime office at headquarters.

MS. O'BRIEN: Okay.

Did he have any comment to make to you on it or any possible reason to give for it?

SGT SAUNDERS: He didn't. I'm not sure if I discussed with him, but I discussed with Corporal Lee at the time, possible causes of it but – and, as well, I discussed it with Dr. Avis.

MS. O'BRIEN: Okay.

So what was your discussion with Dr. Avis? So you just – we'll get there eventually, but I understand you did attend at the Health Sciences Centre and had a meeting with Dr. Avis, who's the chief medical examiner on this file. So I take it that's when you would have discussed it with him. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

What was your discussion with Dr. Avis?

SGT SAUNDERS: I showed him an image of the – what we're seeing here now. I'm not sure if it was the same image but a similar image and just advised that the blood flow was inconsistent with his body position and I believe he just commented, interesting or something along those lines.

MS. O'BRIEN: Okay. So he didn't give you an explanation for it.

SGT SAUNDERS: No, he did not.

MS. O'BRIEN: Okay.

And you say you and Corporal Lee had discussed some possible explanations. What were the explanations that you'd considered?

SGT SAUNDERS: Well, given his current position, he appears to be, I guess, slid down in the chair. His head is approximately level with the top of the back of the chair. Had he been seated in a more upright position, it's reasonable to assume his head may have gone back a little, which would allow for that blood to flow down – sorry, with gravity on the proper angle. And after a person dies, their body tends to go into a position where weight distribution is even and just, it'll stop there. Sometimes it won't move at all, sometimes it will. I thought that was a possible explanation for that.

MS. O'BRIEN: All right.

All right, the next photograph I'd like to see is not a confidential exhibit. It's photograph 45, please. So here we have a picture, Sergeant Saunders, of the photograph that – sorry, of the round table that you have earlier described as being in front of Mr. Dunphy. We see here in this photograph, for example, what looks to be a box cutter on that table. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. As well, as we see some kitchen-type knives. Why would you not have chose to mark those, I guess, potential weapons with a placard?

SGT SAUNDERS: They're common household items. I didn't see them – much like the stapler and the blowtorch that are there and the bottle. It didn't appear that – it didn't, in my mind, compare to the stick which was a homemade item that was fashioned with duct tape on the end. It just – there were tools found throughout the residence, screwdrivers and whatnot. So I didn't think that those items were significant.

MS. O'BRIEN: Okay.

Do you recall where you were standing when this photograph was taken?

SGT SAUNDERS: Standing, basically, directly in front of Mr. Dunphy. Maybe slightly toward the –

MS. O'BRIEN: Wondering, actually, if you could go – Commissioner, just ask the witness if he can just approach the scene map and just indicate, for everyone's benefit, where you were standing.

THE COMMISSIONER: Sure.

SGT SAUNDERS: Approximately right here, say by the "r" in living room. However, the lens we use on our cameras – I'll get back to the microphone there.

MS. O'BRIEN: Yes, please.

Thank you.

SGT SAUNDERS: The lens we use on our cameras has a zoom feature on it. So we can zoom in and out. So I may have been standing further back towards the fireplace in that picture.

MS. O'BRIEN: Okay. Is there any way, from you looking at this photograph now, to tell whether or not you were zooming or not?

SGT SAUNDERS: I could tell by looking at the information that's saved with a photograph. You could tell the level of zoom that was used for that.

MS. O'BRIEN: Okay.

When you gave us your evidence, or we interviewed you prior to your testimony here today, when Ms. Chaytor and I interviewed you I understood your evidence that time was that when you took this photograph you were standing out, sort of in front of the mantelpiece around the centre of the mantelpiece.

SGT SAUNDERS: Yeah.

MS. O'BRIEN: So just then in your giving your testimony, you're putting yourself a little closer to the centre of the room; you put yourself by the letter R in room. Is the difference here because you went back and took a look at the data with the photograph?

SGT SAUNDERS: No, I think it's because the range could have been anywhere in there, anywhere from the front of the fireplace to by the R in room.

MS. O'BRIEN: Okay.

SGT SAUNDERS: I did not go back and check the photograph for the – for that information, no.

MS. O'BRIEN: Okay.

How tall are you Sergeant Saunders?

SGT SAUNDERS: Approximately 5'9 and a half, 5'10.

MS. O'BRIEN: Okay.

And when you take – when you took this photograph, would you have been holding your camera at eye level?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

I'm going to bring up one more photograph just of this area and just get you to confirm where you are. It is, however, the second confidential photograph I want to point you to, so if we could turn off the screens.

And, Madam Clerk, it's photograph – sorry, it's photograph 044, confidential photograph 044. And the screens are off. Thank you.

Sergeant Saunders, when you get this photograph up in front of you, I'd like you to answer the question as to where you believe you were standing when you took this photograph, Scene 044.

And just generally, Commissioner, I know people will be watching, they can't see the photograph. It's of the same, you know, it's of the same general scene; however, you can see the full of Mr. Dunphy in the chair in this photograph.

SGT SAUNDERS: That photograph is more – it's closer to the table. Because it's – I can tell in the photograph that the camera lens is pointing down.

THE COMMISSIONER: Sorry, you mean you were standing closer to the table?

SGT SAUNDERS: Standing closer to the table and the deceased.

MS. O'BRIEN: Okay.

Commissioner, we are, I'm not quite, I do have a couple of more photographs to go through, but we are right at the 12:30 break and we will be continuing on after lunch in any event.

THE COMMISSIONER: Yes, we'll recess for lunch. How are you doing with your – rest of the time? Just for scheduling purposes.

MS. O'BRIEN: Yes, for scheduling purposes I am over – you know, halfway through my questions. We still have to go through with Sergeant Saunders his measurements of the scene and also his bullet trajectory analysis.

THE COMMISSIONER: Uh-huh.

Okay. Thank you.

So we'll break until 1:30.

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry recessed.

Recess

MS. SHEEHAN: All rise.

I declare the Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Continue when you're ready, Ms. O'Brien.

MS. O'BRIEN: Thank you.

The next photograph that I wanted to ask you about, Sergeant Saunders, is photograph 100. And I'll ask Madam Clerk to bring that up, and I'm just going to turn on the screen.

All right, Sergeant Saunders, we're looking at photograph 100 here. We're seeing some – we're seeing a pair of glasses on the table here. And again, it's the round table that was in front of Mr. Dunphy. Did you see those glasses as potentially relevant evidence?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: Did you note the glasses as having been damaged?

SGT SAUNDERS: They appeared to be well-worn glasses. There was tape on both temples, on the one arm where it joins onto the lens, as well as the nose piece. And the actual nose pads were missing from the glasses.

MS. O'BRIEN: Okay.

SGT SAUNDERS: They were slightly bent up, but still, in my opinion, in wearable condition.

MS. O'BRIEN: Okay. So you're saying the nose pads were missing, though?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

Can you just explain to the Commissioner why you would not have seen the damaged glasses as potentially relevant evidence?

SGT SAUNDERS: I've known people to wear glasses like this. I've know many people I've encountered over the years to wear glasses that are taped up, arms missing, nose pieces missing. I didn't see them as being significant to the actual shooting incident. They appeared to be laid down as if one would normally lay down a pair of glasses. They were on the table, not on the floor or anything of that nature.

MS. O'BRIEN: Okay.

One photo, the next photo I want to take you to is photograph 142, and the reason why we're looking at this photograph is just to help us with some evidence I'm going to ask you to give a little later on. Okay, so I understand within the living room you found two areas of damage that at the time you suspected might be bullet damage – is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And you labelled those two areas with A and B.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So we're going to come back to this in a few minutes but just to point out to everyone now, so there's some damage in the chair here – this is the corner of Mr. Dunphy's chair; there's a tear in the fabric you put a label A there. That tear in the fabric, is that exactly how you would have found it on that day?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay, and then also we have a hole in the wall here that you have labelled B.

SGT SAUNDERS: That is correct.

MS. O'BRIEN: Okay. Thank you.

Now, I understand – that's all I need of that one, thank you. I understand that after you done your initial photographing of the scene, that you and Corporal Lee began making measurements of the scene.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And so you would have started with the living room?

SGT SAUNDERS: Yes.

MS. O'BRIEN: All right. I'm going to actually bring up your handwritten notes now and go through some of the measurements that you took. Exhibit P-0548 please, Madam Clerk. And I'd ask you, Madam Clerk, to go to page 3 of that exhibit. When you are measuring a scene, Sergeant Saunders, what measuring tool do you use, or tools?

SGT SAUNDERS: We either use a standard measuring tape or we have an electronic measuring device. It's Ryobi brand. And, basically, you would hold it against – say if I wanted to measure the width of this room, I would hold it against the wall behind me and press the button and aim the laser, much like a laser pointer, on the opposing wall and it would give me the distance from the end of the device to the opposing wall.

MS. O'BRIEN: Okay, so it just calculates the distance that the laser goes before it's interrupted, I take it.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. All right.

So this is a page from your handwritten notes; is that correct?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay, and the page on which you recorded your measurements from the living room.

SGT SAUNDERS: Yes.

MS. O'BRIEN: So I just want to go through some of these in a bit of detail. Now, the first thing I note here that we do see, I believe, you have placed the placard numbers on your sketch here – is that right?

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: Okay. So we see a little 1 here, so that would be the placard by the rifle?

SGT SAUNDERS: Yes.

MS. O'BRIEN: And that's your representation of the Rubbermaid tub and the rifle there; 2 would be with respect to the bullet on the table; 3, the placard with respect to the void and so on.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And it will be helpful for us in a few minutes, but I understand you labelled two corners of the room, corners A and corner B, and so this would be along what I'll call is the northern wall of the room. A, being the side towards the entrance to the room and B, being the corner closest to the mantelpiece; is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

So I think many of your notes, your measurements, here are self-explanatory. It seems to me you're taking your measurements in inches for the most part; is that right?

SGT SAUNDERS: Yes, that's correct. For the most part, there was some that are in metres.

MS. O'BRIEN: Okay, and we can maybe – so, for example, one that was in metres, I take it, for the length of this wall here, you've recorded both a measurement in feet and inches as well as in metres; is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

Now, you did take some measurements of the chair. So I take it what I'm pointing to here, this rectangle is your graphical representation of the chair that Mr. Dunphy was sitting in?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

So you have 37 inches along this measurement of the chair, and I know down here you have a further note, chair 33½ inches wide, times – or by 37. Can you just explain to the Commissioner what that note is meaning?

SGT SAUNDERS: That's referring to the chair that the deceased is sitting in. It's 33½ inches in width; that's from the outer most point of the left and right sides.

MS. O'BRIEN: Okay.

SGT SAUNDERS: And 37 inches is the depth of the chair from the back to the front.

MS. O'BRIEN: Okay. And when you measure that 37 inches, would that be from the – would those be the outer most portions of that dimension as well?

SGT SAUNDERS: Yes, they would because the idea of this drawing and this planned drawing is a bird's eye view. So it's what area of space is taken up by that chair when you look straight down.

MS. O'BRIEN: Okay. So in this case for the chair that would be sort of the outer edge of the back of the chair, which would actually be tipped out a little further than, say, the legs of the chair at the base; is that right?

SGT SAUNDERS: That's correct, yes.

MS. O'BRIEN: Okay.

Did you take any other measurements of the chair, for example the height of the arms or, you know – other than the two measurements that we see here, did you take any other measurements of the chair?

SGT SAUNDERS: I don't believe so, unless it's on the following page. I believe those are the only measurements I took of the chair.

MS. O'BRIEN: Okay. And those are all the ones I found, and when we go to the next page –

SGT SAUNDERS: Yeah.

MS. O'BRIEN: – Sergeant Saunders, if there's more there, you can just say so.

SGT SAUNDERS: Sure.

MS. O'BRIEN: Another measurement that you've taken, not of the chair itself but the chair's placement in the room, is it seems to me is down here. You have a note here: chair – corner, 41 inches. What would that be recording?

SGT SAUNDERS: That would be recording the distance from the – in this image on the screen, from the top right corner of the room, the wall to the edge of the chair, say the top edge of the chair in the way that this image is oriented.

MS. O'BRIEN: Okay, so if you can see where my mouse is moving here, that would be when you say the corner of the wall would be the one that's here. I think you have a note here that says stereo stand?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So it'd be the distance from that corner to the nearest corner of the chair, is it?

SGT SAUNDERS: Yes.

MS. O'BRIEN: So to there?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

And I take it when you're doing measurements, you – when you record something, you're recording from the two nearest or closest corners, is that right?

SGT SAUNDERS: That is correct. Yes.

MS. O'BRIEN: Okay.

Also note here that you've made some note as to the gun length. So it says gun length 30½ – 30½.

THE COMMISSIONER: Thirty-eight.

MS. O'BRIEN: Sorry. Yes, thank you, Commissioner, 38½. Would that be inches?

SGT SAUNDERS: That's inches. Yes.

MS. O'BRIEN: Okay. And then does that say trigger to barrel, 25 –

SGT SAUNDERS: Trigger to barrel, 25 inches. Yes.

MS. O'BRIEN: Okay. So that would have been from the, where the trigger was on the gun to the end of the barrel what – would it have been?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

Then we have some – another note here. Is that deceased head height? Is that what that note means?

SGT SAUNDERS: That – yes, that's the distance from the perpendic – perpendicular distance from the floor to the top of the deceased's head.

MS. O'BRIEN: Okay. And is that 43 inches?

SGT SAUNDERS: Forty-three inches.

MS. O'BRIEN: Okay, and then you have there: floor to top of head. Okay.

Now, I understand that – we're going to go to the next page of your notes now but we're going to get into triangulation measurements. So I understand that you use triangulation to place the objects in a precise location within the room.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And so, and I'll give an explanation here, Sergeant Saunders, and then you can tell me if I have it right or not. And I'll use it with respect to the butt end of the gun which is the first item that you triangulated.

But I understand we'll look at the next page in a moment, but the butt end of the gun was right about here where you're showing here near Mr. Dunphy's foot. And I understand you would have taken a measurement from the butt end of that gun to corner A?

SGT SAUNDERS: Actually that, that would be the barrel end of the gun (inaudible).

MS. O'BRIEN: Oh, sorry, yes, my apologies. Yes, my apologies here. So the butt end of the gun is up here on the Tupperware container. So from this point here to corner A –

SGT SAUNDERS: Yes.

MS. O'BRIEN: – would have been one measurement you took. And then from the butt end of the gun to corner B, would be the second measurement you took.

SGT SAUNDERS: That's correct. Yes.

MS. O'BRIEN: Okay. And so by taking those measurements to the very precise locations of the room you can then, I understand, go back, use your software, computer software that does a trigonometric calculation and then can place that point very precisely within the room.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And then you would do the same thing, I take it, for the barrel end of the gun which is probably the one by Mr. Dunphy's foot. You would have taken the – done the exact same thing, precisely placed that point within the room.

SGT SAUNDERS: Yes.

MS. O'BRIEN: And then by connecting the two points, then you get an exact measurement of how that gun was orientated or placed in the room.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. And, again, this would be from the bird's-eye view perspective, I take it.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

All right, so we see these measurements here. So your triangulation one is the gun butt and so A: 110 inches. That would have been from that point to corner A of the room. And then B would have been from the same point to corner B of the room. Is that correct?

SGT SAUNDERS: That's correct. Yes.

MS. O'BRIEN: Okay.

So you do the same thing for the gun butt, the gun barrel. You would have – you note here that you did the same thing for Mr. Dunphy's left foot and his right foot.

SGT SAUNDERS: Yes.

MS. O'BRIEN: What point of the foot would you be using for the triangulation?

SGT SAUNDERS: The centre point.

MS. O'BRIEN: Okay, so roughly the centre point of his foot?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

Would the same be for the hands? I see you do the left hand and the right hand.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

SGT SAUNDERS: The same goes for that, the centre point.

MS. O'BRIEN: Okay. And then the next one you have noted here is the head. So, again, what point of the head are you triangulating?

SGT SAUNDERS: That would be the centre point looking down, so the centre of the top of the head.

MS. O'BRIEN: Top, the centre of the top of the head. Okay, thank you.

Now, looking at this I understand you would have done the four spent, 40 shell casings –

SGT SAUNDERS: Yes.

MS. O'BRIEN: – .40-calibre shell casings. You did those slightly differently. You didn't triangulate from the corners for those. I understand that you took perpendicular measurements from those to the AB wall, which would be this wall here, the northern wall?

SGT SAUNDERS: Yes.

MS. O'BRIEN: So you would have taken – this with one of the shell casings here, I'm noting here, under the chair. So you would have measured this distance perpendicular?

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: Okay. And then you have another note there – we'll go back to in a moment – but a measurement to the chair wall. You would have took a perpendicular measurement to this wall here, the eastern wall of the room. Is that right?

SGT SAUNDERS: That is right.

MS. O'BRIEN: Okay. And in your notes you refer to that as the chair wall.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

So then we see those measurements here for shell 5, 6 and 7 and 8. And those would be the placard numbers, are they?

SGT SAUNDERS: Yes, they are.

MS. O'BRIEN: Okay, and so that would allow you to place each of those shell casings in a very precise location when you ultimately did your plan drawing.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

I see again you did similarly – you placed hole B, which is the bullet hole or what we now know as the bullet hole in the wall that we looked at a few minutes ago. Is that correct?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And you also took a measurement from Mr. Dunphy's knees to the wall. Where would you have been measuring on his knees and what wall would you have been measuring to?

SGT SAUNDERS: The wall behind him, so straight from his knees straight back to the wall behind him which is the closest wall.

MS. O'BRIEN: Okay. Thank you.

And, again, it seems you took a measurement – the head, would it be to the same wall?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And that's 13 inches there, is it?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. And, again, would that have been from the centre of the head, the top of the head?

SGT SAUNDERS: That one would have been from the back of the head to the wall.

MS. O'BRIEN: Okay then.

SGT SAUNDERS: Because I've already triangulated the center of his head.

MS. O'BRIEN: Okay.

Okay. The next triangulation points you took I think were for the Rubbermaid box.

SGT SAUNDERS: Yes.

MS. O'BRIEN: And you're referring to the bluey-green box that the rifle was found upon. Is that right –

SGT SAUNDERS: That's correct. Yes.

MS. O'BRIEN: – or leaning against?

SGT SAUNDERS: Yeah.

MS. O'BRIEN: Now, am I correct here in understanding that you triangulated two opposite corners of that box?

SGT SAUNDERS: The two corners – when you're looking at that it's sort of on an angle. So from where I'm sitting now, the two far corners of that box.

MS. O'BRIEN: Okay, so where that is now, the two corners of that box that are closest to the Commissioner. Is that right?

SGT SAUNDERS: That's correct. Yes.

MS. O'BRIEN: The corners on the – closest to the right-hand side of your plan drawing.

SGT SAUNDERS: So, yes, the top corner and the right corner as it's oriented there now.

MS. O'BRIEN: Okay. All right.

And so by doing that, when you take that data and put it into the software that you use to generate the scene map, P-0035, then the orientation of that tub that we see in the plan drawing would be very precise as to how you measured it in the room. Is that correct?

SGT SAUNDERS: Yes, together with the two width and depth dimensions.

MS. O'BRIEN: Okay, which you had also recorded we can see. Up here you'd recorded with in depth –

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: – up here. Okay.

Now, again, the last item that your notes show that you triangulated is the round table. And would that be the round table in front of Mr. Dunphy?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. And when you triangulated that, would that have been a measurement from the centre of the table?

SGT SAUNDERS: The center of the table. Yes.

MS. O'BRIEN: Okay. So that table, then, is then fairly precisely captured in your drawing in the room because you took a diameter measurement to that table as well.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

Now, I don't see any triangulation measurements for the stick which you noted at placard number 9.

SGT SAUNDERS: No. The stick was fairly close to the entrance to the living room, so I felt I could place that by photographs of the scene and add that stick into the diagram. The precise – it's not precisely placed as the other objects are; however, from the photographs I was able to place it within the diagram.

MS. O'BRIEN: Okay. So when we see the stick in your plan drawing, it hasn't been triangulated precisely, it's your best estimate of where that stick was, having reviewed the photographs.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. Did you, did you record the length of the stick at any point?

SGT SAUNDERS: I did not, actually. I knew we were going to seize the stick, so I didn't record it at the time. It was, it was an oversight basically on my part. But I knew we could get it later on as it was going to be seized as an exhibit.

MS. O'BRIEN: Okay. And a couple of other things I just want to note that were not triangulated or just get you to confirm they weren't triangulated. You didn't do any triangulation on the cellphone. Is that right?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: And same with the yellow folder?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

And likewise, for this coffee table in front of the couch, you didn't do any triangulation on that. Is that correct?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

So when we see these objects in your plan drawing that's been entered as P-0035, that again would be your best estimate of how they were placed, based on your review of the photographs.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And the last object I just want to point out is because you do show it, the heater that we have seen in the photographs. I understand that you did not triangulate the heater. Is that right?

SGT SAUNDERS: No, I did not, no.

MS. O'BRIEN: Okay.

Now, talking about your scene map, P-0035, which we have here now in the room. Before we broke for lunch you, we – I'd asked you some questions about the positions of the doors. And so I know you took some time over the lunch break to review your photographs, and having done that now, what can you tell us about the position of the doors as they're recorded in your scene map and how you first found them on the day when you entered the house?

SGT SAUNDERS: Basically, in my scene map the doors are as they were first found, with the exception of two doors. The bedroom number two door, it should show as being open. And the actual closet door when you first enter through the front porch to the left, there was no closet door in place there. But on the diagram it's indicated that there's a closed door at that location.

MS. O'BRIEN: Okay. So it's not that there – it wasn't an open door, there was just no door.

SGT SAUNDERS: There was just no door.

MS. O'BRIEN: Okay.

Now, can you just briefly explain to the Commissioner what, how you – what you reviewed in your photographs to be able to give that evidence now?

SGT SAUNDERS: I don't recall the actual photo number –

MS. O'BRIEN: I think I can help you with that. If you bring up, Madam Clerk, please Photo 049. This is actually one I believe I might have showed you earlier Sergeant Saunders.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So what are you able to tell us from that photograph?

SGT SAUNDERS: So as you can see on the left, you'll see a thermostat on the wall and below that you'll see a doorknob. That would be the bathroom door.

MS. O'BRIEN: Okay. So it's here in a closed position that we're seeing.

SGT SAUNDERS: In a closed position, yes.

MS. O'BRIEN: Okay.

SGT SAUNDERS: If you move along that wall further down the image, if you move your cursor down you'll see the doorknob to the bedroom door which was also in a closed position.

MS. O'BRIEN: Am I on it approximately there now?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So that one is showing closed. Okay.

SGT SAUNDERS: The bedroom across the hall with the – you can see the blue in the doorway.

MS. O'BRIEN: Yes.

SGT SAUNDERS: That doorway was open.

MS. O'BRIEN: Okay.

SGT SAUNDERS: And the bedroom to the cat room is over here. You can't really tell in that picture and I don't have an image of that door from that night, but that was also closed because we wouldn't, or I didn't open that door. I didn't open any of these doors that night.

MS. O'BRIEN: Okay. And how is it that you know that this photograph captures these doors as they were when you first entered the house?

SGT SAUNDERS: Well, these are the initial photos that we took when we arrived. Before we make any changes to the scene before we start processing the scene, moving things around. So this would have captured the scene as we found it.

MS. O'BRIEN: Okay.

And, Commissioner, in the book of photos that were provided to us from Sergeant Saunders, the photographs have been identified with both scene numbers as well as CWS numbers, which Mr. Kennedy, I think, was causing him some confusion earlier on. And so if you could just explain for us, Sergeant Saunders; so when we have identified exhibits with photo numbers, Commissioner, we're using the scene number but each photograph also has another number, a CWS, which I take it are your initials.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: A number associated with them. Can you just explain to the Commissioner why the difference in the two numbers and what you can tell us from the CWS number?

SGT SAUNDERS: Certainly. The CWS number, our camera, we can program to put my initials say on any photos that I obtain with my camera. So that number will be the original order of photos as they were taken. So all the photos up to CWS 137 would have been taken on the first

night, and all of the photos from 138 to, I believe, 187 would have been taken on the second evening that I attended the scene.

MS. O'BRIEN: Okay.

SGT SAUNDERS: Now, the scene part of the number is after I've taken the photos and rearranged them for better flow through the residence. This scene in particular, the photos were taken kind of out of sync because we had the cats to deal with and the darkness outside. So I rearranged them in a more logical order through the residence, so that's why I renamed them scene 001, 002, 003, 004, but preserved the original file number.

MS. O'BRIEN: Okay, which tells us the order. So when we're looking at anything with a CWS number of 137 and below, they would have been taken on the night of April 5.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: And when we see doors in those positions, would those doors have been as they were when you entered the house?

SGT SAUNDERS: Yes, on the – yeah, on the initial photos there for sure.

MS. O'BRIEN: Okay. So up to scene 137, or – sorry, CWS 137. And then any, any photographs with a CWS 138 and on, that would be after you and Corporal Lee had moved through the house and the condition of the doors in that case is not necessarily reflective as to how they were when you first entered the house. Am I understanding that correctly?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So looking at your, your – we were just looking at your scene diagram here and you, you noted that there was an error with bedroom number two's door, because here in this photograph we see it open and you've shown it closed on the drawing.

SGT SAUNDERS: Yes.

MS. O'BRIEN: So it was in fact open that night.

What about the laundry room door, because it's the other door of the house that is shown here on your plan diagram as being in an open position, but we don't have, or I haven't found a photograph in the early series of photograph that captures that door?

SGT SAUNDERS: In the open position?

MS. O'BRIEN: Yes, in your – how can you be sure that the laundry room door was open? Is there a photograph you can point me to?

SGT SAUNDERS: I believe there is a photograph there from the first series of photos of the, of the laundry room, just after the kitchen.

MS. O'BRIEN: Okay.

SGT SAUNDERS: As you move into the back porch and there should, should be one there.

MS. O'BRIEN: That, I may have it here. If I can look at, please, scene 055 or Photo 055, please? Or it may be even better – sorry, Photo 057. Sorry, Madam Clerk, it said close, close-up and I think you can see it a bit better.

Okay. So we're looking at Photo 057. Is this the door that you're referring to? Or maybe you can make it a little bit smaller, Madam Clerk, so we can kind of get a better sense of the room. Thank you.

Is that the photograph you're referring to?

SGT SAUNDERS: Yes, that's the laundry room door.

MS. O'BRIEN: Okay. And just for the record, Commissioner, I note that this photograph does have a CWS number of 66, which, according to Sergeant Saunders's testimony, would mean it was taken that night.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. Thank you.

All right. The next thing I want to bring you to is Exhibit P-0537 and that's – we're going to go back to your notes, Sergeant Saunders. Thank you. Okay, the next note I just wanted to take you to here, so this is just 17 minutes past midnight on – well, we've now rolled into April 6; is that correct?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: Okay. So it's – your note here says: "Called the Forensic Assessment Center and left a message on the voicemail for someone to call back. I received a call back from a National Operations Centre (NOC) staff who made attempts to locate someone from the Firearms Section of the Forensic Lab but could not make contact with anyone. Given the holiday it was likely that no one would be available until" April 7.

So can you please explain to the Commissioner why you placed that call, and then what was the result of having placed it?

SGT SAUNDERS: The Forensic Assessment Centre is basically our contact with the lab, all different sections of the lab, which would include firearms, biology, chemistry, et cetera. I was trying to locate someone from the Forensic Assessment Centre who could put me on to someone from firearms section, a firearms expert, because we were about to deal with trajectory and dealing with the bullet hole that was in the wall, and I wanted to ensure that I was going to obtain all the necessary measurements that they would require to make an analysis of that.

I didn't receive a call back until several days later actually, from someone in the firearms section. So we obtained the measurements, as I was trained to do, and from there, they were later submitted to someone from firearms section.

THE COMMISSIONER: Which page is that you're referring to?

MS. O'BRIEN: Sorry, Commissioner, it's page 3 of the exhibit.

THE COMMISSIONER: Two?

MS. O'BRIEN: Three, sorry, 3. And it's just the note that was made there at 17 after midnight. Okay, so you just did your measurements as you best saw fit, given your training and experience?

SGT SAUNDERS: That is correct.

MS. O'BRIEN: Okay. And then you have a note here of another call placed at quarter to 1 that morning, quarter to 1 a.m. It says "I called and spoke to Sgt. Adrian BUTLER who is a Bloodstain Pattern Analyst (BPA) with National Forensic Identification Support Services. I described the scene to him and he advised that a BPA could not add anything to the investigation given the minimal bloodstaining present."

Can you tell the Commissioner why you made that call and what you learned as a result of it?

SGT SAUNDERS: For all officer-involved shooting incidents, we're mandated by policy to contact the bloodstain pattern analyst who's on call to see if they can assist in any way. I called and spoke to Sergeant Adrian Butler who's located in Halifax. I explained the scene to him and the minimal amount of bloodstaining that was present. We discussed it somewhat there and he decided, at the end, that a bloodstain pattern analyst wouldn't be able to provide anything further as far as evidence goes to that scene.

MS. O'BRIEN: And the reason why the bloodstain pattern analyst wouldn't be able to provide anything further?

SGT SAUNDERS: A bloodstain pattern analyst analyzes basically blood patterns, or series of blood patterns. There was one basic area that contained bloodstaining, which was the chair and the wall behind the chair. It was minimal. There was some spray, which is consistent with the area of the head injury. So beyond that, he felt he wouldn't be able to provide any further evidence that would assist in the investigation.

MS. O'BRIEN: Okay.

Your notes then continue at just about 1 a.m. that night, 0058, that you proceeded to collect all of the evidence and turn it over to Constable John Galway. And I think we've already had some testimony from John Galway, but I understand that you and Corporal Lee would have put the exhibits in appropriate containers or bags and then you would have presented them then to Constable Galway already packaged; is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And then I think your notes go on to continue that the body was removed from the scene. And again, we've already had Constable Galway give us some testimony to that. You note in your notes that the body was placed – and again, I'm at your notes here at 1:40 a.m. The body was placed in a bag with a special liner. I understand from some of the information that we have from the chief medical examiner that the usual practice is to place a body's hands in special bags at the time that it is being transported like that. Is that the case consistent with your experience?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay. So why would that normally be done?

SGT SAUNDERS: Normally it's done to preserve any evidence that may be on the hands, such as DNA under the fingernails, gunshot residue, any things of that nature.

MS. O'BRIEN: Okay. And were Mr. Dunphy's hands placed in bags in this case?

SGT SAUNDERS: They were not. It was an oversight on our part and Corporal Lee, the following day, called me from the autopsy shortly after it began and mentioned it to me, and I realized then that we had not done it.

MS. O'BRIEN: Okay.

Your notes continue on and, essentially, it looks like you left the scene around 10 to 2 a.m. that night, or the very wee hours of April 6; is that correct?

SGT SAUNDERS: That's correct, yes.

MS. O'BRIEN: Okay.

Continuing on, your notes then start up again, your first note is at 11 a.m. the morning of April 6 and there you note that you are at the Pathology Unit of Health Science Centre. Did you go anywhere else that morning prior to going to the Health Science Centre.

SGT SAUNDERS: No, I believe I just left from our headquarters and went directly there.

MS. O'BRIEN: Okay. And when we spoke to Corporal Lee, in her prehearing interview, she recalled the meeting at the MCU that morning –

SGT SAUNDERS: Yes, that's correctly actually because the autopsy was first supposed to be at 9 and then we were notified that morning that it was going to be at 11. So I can't say for sure if I attended the MCU office at that time –

MS. O'BRIEN: Okay.

SGT SAUNDERS: I know I attended after, but I don't recall if I attended that time or not.

MS. O'BRIEN: Okay. So it is possible that you were there but you don't have any recollection, can't tell us anything you might have discussed with anyone at that time?

SGT SAUNDERS: No.

MS. O'BRIEN: Okay.

So looking at your notes, then it does put you at the Health Science Centre to attend the autopsy, but I think, as your notes explain there, it turned out that the autopsy did not go ahead that day. I think you note that you are there to – attempting to load scene photographs, photos, onto Dr. Avis's computer but due to the fact that they are NEF format his computer would not process the scene.

Can you just explain what happened at that time?

SGT SAUNDERS: Our cameras obtain photos in NEF format, or a raw image. As close to the 35 millimetre negative as you can get with digital photography. Because Dr. Avis's computer didn't have the proper Kodak, he wasn't able to – I wasn't able to load them on to his computer;

however, he could see them in a smaller format while my camera was hooked up to his computer. So I showed him a few of the images at that time.

MS. O'BRIEN: And is that when you would have had the discussion with him with regard to the blood trickle that you discussed earlier?

SGT SAUNDERS: Yes, it is.

MS. O'BRIEN: Okay.

Your notes then continue on that you attended at the MCU office at headquarters. So I take it that would have been in White Hills here in St. John's?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay, to burn the images on a disc for the chief medical examiner.

Did you have difficulty in doing it at that time, that morning at the MCU?

SGT SAUNDERS: Yes, I did; for the same reason that they wouldn't load on to Dr. Avis's computer.

MS. O'BRIEN: Okay.

And I note that here, I'm just going to go a little bit forward in your notes, but here later on at 1945 that day in your notes you have typed here that you travelled to Clarendville FIS where you loaded all images onto a computer, converted the images to jpg and burned them into a disc. The disc was given to Corporal Lee to present to the CME at the autopsy.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. So that's when you successfully got the photographs put on a disc.

When you went back to the MCU, though, that morning, after having attended at the chief medical examiner's office, did you have any meeting or discussion with any of the investigators from MCU at that time?

SGT SAUNDERS: I did. My main goal in attending there then was to get the images burned on to a disc so I could go back to the scene with Corporal Lee to finish processing the scene; however, I was making attempts to get the photos converted into a jpg format. I wasn't having any success and the IT department was called in to assist. During that time I had conversations with Corporal Burke and I believe Corporal Henstridge, Sergeant Osmond were there, and discussed what we had done so far and what our plan was to do from there, and that was about it.

MS. O'BRIEN: Okay.

Did you give them a copy of the photographs at that time, or did the technical difficulties prevent that?

SGT SAUNDERS: I did provide a disc to them at that time with converted images; however, the images were of low resolution and I wasn't satisfied that Dr. Avis would be satisfied with those images. So that's why I ended up redoing the disc when I arrived back in Clarendville.

MS. O'BRIEN: Okay.

When you were speaking with them and providing them with an update on your work, did you get any further information from them on things that they had learned as a part of their ongoing investigation?

SGT SAUNDERS: Not specifically, no. I believe, or I know at that time that Constable Smyth hadn't yet provided a statement. I believe while I was there he was providing a statement. That was my understanding, but I had left to go back to the scene prior to that being completed.

MS. O'BRIEN: Okay.

And do you recall whether you would have spoken to them, for example, about the void in the garbage that you had noted on the floor of the living room?

SGT SAUNDERS: Yes. Yes.

MS. O'BRIEN: Okay.

Your notes then continue on that you returned to the scene at Mitchells Brook at 1720. So, again, I understand that Corporal Lee had been there for several hours at that point. She'd been finishing her video and also making measurements of other areas in rooms of the house. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

And I'll just get you – I know, I think she ultimately provided those to you but, Madam Clerk, if I could just see Exhibit P-0542, please. Just to get you to identify these, Sergeant Saunders.

So I understand that these were notes that were taken by Corporal Kelly Lee. Sorry, Madam Clerk, that's fine. These were notes taken as she took measurements in other areas of the house and ultimately she would have provided these to you. Is that correct?

SGT SAUNDERS: Yes, that's correct, once we got back at Clarendville.

MS. O'BRIEN: Okay.

And so those measurements are what allowed you to create the rest of the scene map that we have exhibited at P-0035?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. Thank you.

All right. So you arrived back at Mitchells Brook and I understand you took then some more daytime photographs as we've already seen and then what I understand your next major activity to be would be to do an analysis of the bullet holes?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. I understand you could only do a trajectory analysis for one of the bullets?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Can you explain to the Commissioner why that was?

SGT SAUNDERS: One of the bullets travelled into the living room wall, came out the other side of the wall and then went into the wall adjacent to the front door. So we had basically three, three walls that it had gone through. Two sides of one wall and into another wall. So using a trajectory rod we were able get an approximate trajectory on that round.

MS. O'BRIEN: Okay. I'm going to take you through that one in some detail. So we'll go through how, how you did that work on that one. Can you explain why you were unable to do it for any other bullets fired in that room?

SGT SAUNDERS: The other three rounds – two of the three rounds were still inside the deceased, and the third round went in and out of the deceased. So it was obvious that the body had moved since the incident took place, due to the blood trickle. So there was, I couldn't rely on the actual position of the body to garner anything from the actual round that was in the chair, other than maybe the direction of the rip in the chair, but it would give you, you know, a very, a wide directionality on that round.

MS. O'BRIEN: Okay. So insufficient evidence for the other bullets to be able to do any trajectory analysis that you would deem to be reliable, it's fair to say.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

So I'm going to go over these bullets, and the first one I'll take you to is Photo 143, please. So I'm going to just start by going over the four bullet holes that you found, and then we'll go through the work that you did with respect to those holes. So this one we've seen before, but this is bullet hole A, the one in the chair.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And the next one – I'll go through these quickly – is Photograph 144, please, Madam Clerk. And actually I can skip that one, we've already seen it. That's the hole in the wall where you put the B on. The next one, though, that we have not seen, Photo 150, please, Madam Clerk.

Okay. So two more bullet holes that I understand that you identified. One is – both of them shown in this photograph – one is an area of damage here on the wall that you've marked as C.

SGT SAUNDERS: Yes.

MS. O'BRIEN: And the other is on another wall, the corner wall there that you've marked as D.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. And I understand that this corner that we're looking at here where we see C and D is actually in the front porch area of the house. Is that right?

SGT SAUNDERS: It is. In the diagram it's to the right of the front door.

MS. O'BRIEN: Okay. So in the picture that's up, the white that we're – right here what you eventually labelled as damage or bullet hole C, and then over here what you labelled as bullet hole D and we see the door here. But there is some damage on the wall right here, but I

understand that that damage is consistent with where the doorknob lines up when the door is closed. Is that right?

SGT SAUNDERS: Yes. Yes, it is.

MS. O'BRIEN: Okay. So not, you didn't deem that to be related to your –

MR. KENNEDY: Commissioner, I wonder, could I just approach the diagram again for a second?

THE COMMISSIONER: Yeah.

MR. KENNEDY: Thank you.

MS. O'BRIEN: No problem.

Okay, so we won't be doing any further work with that hole there. I want to now look at the work that you did in retrieving the bullet found at A, hole A which is in the chair.

Madam Clerk, can you please bring up Photo 177, please.

Okay. Sergeant Saunders, what are we seeing in this photograph?

SGT SAUNDERS: This is the – when you're looking, I guess, at the chair, standing in front of the chair, this is the left side of the chair. It's the top-left corner of the back headrest of the chair. Corporal Lee cut that open and revealed a dark area here. You'll notice where your cursor is there on the right side of the white batting –

MS. O'BRIEN: Yeah.

SGT SAUNDERS: – within that batting we located the one spent bullet or damaged bullet.

MS. O'BRIEN: Okay. And that dark area that I'm seeing here now is, if the fabric was over the chair again, would that have been in the same area where we'd seen the tear in the fabric earlier?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And if we look at photograph next, please, 181 (inaudible) where you pulled back some of the cotton batting.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So now you've put a label here, A, over the area again. So I understand to take this photograph you actually pulled away some of the cotton batting over that dark spot. And does this show what you found below that?

SGT SAUNDERS: Yes, it does.

MS. O'BRIEN: Okay. So we have a spent bullet here. Is it fair to say that this bullet wasn't embedded very deeply into the chair? Is that right?

SGT SAUNDERS: That's right. Yes.

MS. O'BRIEN: Okay, so it was still in the cotton batting itself?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay, so it hadn't even gone in as far as the wooden frame of the chair?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. Now I take it that bullet would have been ultimately seized.

SGT SAUNDERS: Yes, it was.

MS. O'BRIEN: Okay.

Okay, we're going to get into the trajectory analysis now that you did on the other – the bullet for which you were able to do a trajectory analysis. Maybe start out by asking you to explain to the Commissioner what a trajectory rod is.

SGT SAUNDERS: We have a trajectory kit.

MS. O'BRIEN: Okay.

SGT SAUNDERS: Within that kit there is four metal rods. They screw together end to end. And they – depending on if you need one, two, three or four, you can use that to put through a bullet hole or a hole in an object that was made by a bullet or projectile.

And once you, I guess, determine – you line up your holes, you put it through say, one hole and then into another, there's a laser pointer that you screw on to the far end of that. And you turn on your laser; it'll shoot a laser basically across the room to a point. And in theory that will give you the – not necessarily the point of origin, however, along that line the area of origin for that projectile.

MS. O'BRIEN: Okay. So in other words the bullet would have had to originate somewhere on that line.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay.

So we'll look at some photographs, Commissioner, to help understand Sergeant Saunders's evidence on this point starting with photograph 161. And I understand the trajectory rod, when you screw together the various pieces of it, it's a rigid rod.

SGT SAUNDERS: Yes, it's a very rigid rod.

MS. O'BRIEN: Okay.

So what we're seeing here is – I think the yellow that we're seeing here is a portion of a trajectory rod that is sticking out of hole B. Is that right?

SGT SAUNDERS: Yes, that is right.

MS. O'BRIEN: Okay. And do I understand you would have taken that yellow rod and you would have actually started in the living room on this side and you would have poked it through hole B –

SGT SAUNDERS: Yes.

MS. O'BRIEN: – and continuing to poke it through. Okay.

And we'll get back to it later on but I understand eventually at the end of – after you've done the work with the laser pointer, you actually attach a string to the end of the trajectory rod. And it's actually the string that we're seeing in this photograph I believe.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

And so you poked the rod through hole B and then I think if we look at photograph 164, Madam Clerk, we'll see what would have happened out in the hallway. Were you able to just poke the rod clearly through?

SGT SAUNDERS: No. There was a stud in the wall and the rod was initially coming up against the stud. And I couldn't find that hole so I cut the hole opening at C as you'll see in this image.

MS. O'BRIEN: So you cut the Gyproc here at C.

SGT SAUNDERS: Yeah. I cut the Gyproc and exposed the stud. And I could see the area and the stud where there was a hole.

MS. O'BRIEN: Okay.

SGT SAUNDERS: And the splintering was such that it was consistent with movement from left to right as you're looking at this wall.

MS. O'BRIEN: Okay. And so there was a hole actually going through that stud?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So were you able then, after you cut the hole in the Gyproc here, were you able to feed the rod through from hole B right out into the front porch area as we can see it here now?

SGT SAUNDERS: Yes, it was – it fit tightly through that hole.

MS. O'BRIEN: Okay and we'll see that. So you were able to feed it through C after you opened up and exposed a bit more of hole C in the Gyproc and then you – it looks like here in this photograph that you were able to put the tip of the rod right in through hole B. Is that right?

SGT SAUNDERS: Yes, that's right.

MS. O'BRIEN: Okay. How deep did that rod go in to hole D?

SGT SAUNDERS: I didn't push it in very deep; I just pushed it just inside the Gyproc. I could feel, feel it coming up against something which I assumed or suspected was insulation.

MS. O'BRIEN: Okay so you could feel it kind of giving against what you thought would be insulation.

SGT SAUNDERS: It had a – yes.

MS. O'BRIEN: Okay.

SGT SAUNDERS: Okay.

And if we can just look at photograph 167, and I think we'll see a close-up there of the stud and the rod going through the stud. So I understand here – we'll just make it a little bit smaller, please, Madam Clerk.

Okay, so this is the hole that you cut in in the area marked as C.

SGT SAUNDERS: Yes.

MS. O'BRIEN: So what we're seeing here is the trajectory rod, I think, passing through this hole in the stud?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And there's some – the trajectory rod is for the most part yellow but we seem to have some metal exposed in this area. What's going on there?

SGT SAUNDERS: The paint was scraped off the trajectory rod.

MS. O'BRIEN: Okay, because of the tight pass through that hole. Is that the idea?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

So this, this stud that's here in the wall, it went past – that rod was passing fully through that stud and projecting right into the living room. Is that right?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

So I understand from what you said earlier, photograph 161, I'd like to see the next one there. And this yellow, you know, this trajectory rod that's going through, you said it's rigid. Would that have been then forming, you know, a straight line all the way through here?

SGT SAUNDERS: Yes.

MS. O'BRIEN: No bends in it at all.

SGT SAUNDERS: No.

MS. O'BRIEN: Okay.

All right, so you said earlier that you put a laser – there was a laser tip that can be attached to the end of the trajectory rod and then you were able to turn that on?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And that shone and hit a point on what we've referred to as the AB wall of just above the couch somewhere. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And I'm going to show it to you in another photograph first but I just didn't want to – with respect to the string I understand once you get that laser shining on that wall you're able to mark that point?

SGT SAUNDERS: Yes.

MS. O'BRIEN: And then you take a string and you tie it to the end of the trajectory rod and then you fix the other end of the string to that point on the wall. Is that right?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. So if we look at photograph 162, okay, so on 162, we don't see the trajectory rod, but we see the string and we see it coming up and it's affixed to a point up here on the AB wall with, it looks like, yellow tape.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. So that's the point that you would have located with the laser?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. So then I understand now you took some measurements of what now this would represent, according to your physical examination, I understand the trajectory or the approximate trajectory of this bullet; is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And so I'm gonna look at – can we look at Sergeant Saunders handwritten notes at page 548, please?

THE COMMISSIONER: Exhibit 162, is it?

MS. SHEEHAN: 548.

THE COMMISSIONER: Sorry –

MS. SHEEHAN: 548.

MS. O'BRIEN: Oh, I'm sorry, 548 – my apologies; I was just responding to a question of Ms. Chaytor.

Exhibit – yeah, P-0548 and it's page 7 that I want to go to of that exhibit. So we've seen this exhibit before. Okay, but now I'm looking at page 7, and so I understand this is where – if we could make just that a little bit smaller, please? Okay. So when we look here, Sergeant Saunders, I take it this is where you recorded your measurements having to do with your trajectory analysis; is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So I take it – from here, again please correct me if I'm wrong, you're measuring from the point that the laser located on the AB wall and you measured that to be 70¼ inches high?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And then it looks – you have a note here: corner to end point, 45½ inches. What's that recording?

SGT SAUNDERS: That's the distance from the northeast corner of the living room to the point on the wall that we marked from the laser on the trajectory kit.

MS. O'BRIEN: Okay. So you would have – here that point is on the wall, on the AB wall, you would have measured over to the nearest corner, which would be the corner where that wall meets the mantel place wall; is that correct?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. And that – you would have taken that measurement, this 45½ inches?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. So that then locates that point on the wall. And then again what I understand you would have done is you measured here – we have a measurement you took here of 172¾ inches. What is that measurement?

SGT SAUNDERS: That's the measurement from the point on the AB wall above the couch to hole B in the chair wall where the projectile we suspect had entered.

MS. O'BRIEN: Hit the chair wall?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

And now you have another note here: 10 degrees. Please explain to us what that 10 degrees is measuring.

SGT SAUNDERS: Corporal Lee – with the kit comes a projector, a sophisticated projector, and it measures the angle from – so 10 degrees was indicating that the line was 10 degrees down from parallel –

MS. O'BRIEN: Okay.

SGT SAUNDERS: To the floor, parallel to the floor that is.

MS. O'BRIEN: Okay. So to remind those of us who haven't held a projector for a while, a projector is an instrument that's used to measure angles.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And so yours is a more sophisticated one than we probably all had in our grade five metal containers, but what it is, in fact, when it is measuring the angle – and as I understand if we can take the lines in your notebook page here as being essentially parallel to the floor –

SGT SAUNDERS: Okay, yes.

MS. O'BRIEN: Okay. Would you have been measuring from one of those lines parallel to the floor down – the angle from that line to the line that represented the trajectory – is that right?

SGT SAUNDERS: Yes, the actual – the projector has a level, so it measures level. So when you hold it down, it will give you the angle down from level, so that was 10 degrees.

MS. O'BRIEN: Okay. So regardless of whether the floor was level or not, this is measuring level from level down.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

I'm going to bring up photograph 171 and were you ultimately able to recover this bullet?

SGT SAUNDERS: Yes, I was.

MS. O'BRIEN: Okay. And I think photograph 171 might assist you in your explanation of how you did that. So again, sorry, smaller, Madam Clerk. Thanks.

So here we're seeing the area that we've already seen previously near the front door but more work has been done. Can you explain what happened here?

SGT SAUNDERS: I cut that channel in the wall to try and locate the bullet, and I was able to locate it on the top of the sill plate which is basically at the floor level just near the insulation.

MS. O'BRIEN: Okay. So approximately in this area that I'm indicating with my mouse?

SGT SAUNDERS: Yes.

MS. O'BRIEN: All right. So on the inside of the wall.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. And I guess if we bring up photograph 175 – is this the bullet that you seized from inside the wall?

SGT SAUNDERS: Yes, it appears so.

MS. O'BRIEN: Okay. And there's a number of photographs of this bullet in the, in the photographs, and I'll go over them again, Commissioner, with some more detail when we have Darryl Barr give his testimony.

All right, thank you. I understand after you finished doing your trajectory analysis, one of the next things that you did was you moved Mr. Dunphy's chair away from the wall.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. And I'm not going to bring up any specific photos, close photos of this, but I understand that you did find some bone fragment sort of – you know in an area adjacent to the chair close to the wall. Is that right?

SGT SAUNDERS: Yes, in front of the stereo in the corner.

MS. O'BRIEN: Okay. And the next photograph that I do want to bring up, actually, is a confidential exhibit. And. Madam Clerk. it's going to be photograph 1 – thank you – photograph 185, please.

Sergeant Saunders, can you tell me when that photograph's there in front of you.

SGT SAUNDERS: That's the photograph when you're looking at the chair, it's to the left of the chair in front of the stereo in the corner, and you can see sort of in the centre of the photograph there's a pink-coloured object. And as well, I believe it's down just to the lower left on a 45 degrees, there's another small piece.

MS. O'BRIEN: Okay. So this is, what we're looking at here it looks like some sort of a piece of clothing and may be a grey sweatshirt or something like that that's there on the floor?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Is this the way you would have found that sweatshirt on the day of?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Nothing's been moved here?

SGT SAUNDERS: No.

MS. O'BRIEN: And the, the piece of glass here that's kind of somewhat looks like to be over a portion of the sweatshirt, what glass is – what is that a part of I guess is the best way to say it?

SGT SAUNDERS: That would be the door to the stereo cabinet, I believe.

MS. O'BRIEN: Okay. So when you found it on that day that door was partially open and out over that sweatshirt?

SGT SAUNDERS: I'd have to go back in my photos to confirm that for sure.

MS. O'BRIEN: Can you – you can't confirm it from this photograph?

SGT SAUNDERS: I can't confirm that this is – that that wasn't opened prior to this photograph, no. Not that stereo cabinet.

MS. O'BRIEN: Okay, but it looked in this photograph like that that door was partially open, and maybe if I bring up another exhibit for you, which would be, you can – just to clarify that. When I looked at this photograph it looked like that glass door was partially opened? And how it opened and over the sweatshirt.

SGT SAUNDERS: Yes. That's what it appears here but I'm not sure if that's how it was when we first arrived. I'd have to see the first overall photos to confirm that. If that's what you're asking.

MS. O'BRIEN: Okay. So maybe what we'll do is we'll have a break before we finish with your evidence today and give you a chance to look at that in the earlier photographs.

Okay. Once you were finished, and I think was that all the, sort of the substantive work that you did at the scene. Have we covered –?

SGT SAUNDERS: I believe we covered it, yes.

MS. O'BRIEN: Okay. And would you have done, prior to leaving the scene, would you have done a thorough examination of the floor in the living room?

SGT SAUNDERS: Yes. We searched, we moved items, searched the living room area and porch area, the walkway say from the doorway into the living room, and the living room, and that's all we located.

MS. O'BRIEN: Okay. So would you have moved out other furniture in the living room? For example, would you have moved the couch, the rocking chair, those other things in the, in the room?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay. If you had found any other ammunition in the living room, would you have recorded that?

SGT SAUNDERS: At that time, yes.

MS. O'BRIEN: Okay. Now in some photographs we have seen, some of the photographs that we've looked at today have recorded where some plugs were in the wall, both I think on the power bar that was near the chair and also in the wall next to the chair which was one we just looked at. At any time did you do any moving or unplugging, plugging in of any items in that room?

SGT SAUNDERS: We moved the heater at one point and unplugged it I believe because we moved it sort of to the corner where the four rounds were located. That's depicted in one of the photos actually where the heater was moved.

MS. O'BRIEN: So you moved the heater. Okay.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Other than that, did you do anything; did you change the plugs at all?

SGT SAUNDERS: Not that I recall.

MS. O'BRIEN: Okay. Now, we understand that the vehicles, the motor vehicles that we saw earlier this morning in one of the first photographs that I showed you, those were not processed by the ident team. Is that right?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. Whose decision would that have been?

SGT SAUNDERS: At the time, it would have been myself and Corporal Lee's decision. I did look in the outermost vehicle with a flashlight. I didn't see anything that stood out as being out of the ordinary. I didn't enter the vehicle. I felt that if the vehicle was to be processed that a judicial authorization would have to be considered. So I didn't enter the vehicle at that time.

MS. O'BRIEN: Okay.

SGT SAUNDERS: However, I didn't see anything inside that I thought at that time would be of any evidentiary value.

MS. O'BRIEN: Did you make any notes of what you did see in the vehicle?

SGT SAUNDERS: No, I didn't, no.

MS. O'BRIEN: Okay. Do you have any recall today of what you did see?

SGT SAUNDERS: No.

MS. O'BRIEN: Okay. And we'll get to it a bit later on, but I understand you never did go back and do any processing of those vehicles. Is that right?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

In your notes, did you even record the fact that you had looked into the vehicle?

SGT SAUNDERS: I don't believe so, no.

MS. O'BRIEN: Did you, in the measurements of the room, did you take any measurements that would capture any slant or tilt in the floor of the living room?

SGT SAUNDERS: No, I didn't.

MS. O'BRIEN: Okay.

I'd like to go back now to P-0037 which are your typed notes. Sorry, P-0537, Madam Clerk. It was there, and I lost it again. Here we go.

All right. So we're on – these notes that I have here, we're on April 6, Sergeant Saunders. Okay. Yes, you can make it bigger. That was good. Thank you.

Okay. All right. So here it seems to me that – you recorded at 1945 on the 6th, you did a final search of the living room, did another walk through and departed the scene. Would that be the last time you were at this scene?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

We know that Constable Smyth was interviewed by the MCU team on that same day, April 6, from approximately 3 to 5:30 or so in that afternoon. I don't have the exact times. Did you review Constable Smyth's statement or were you given a synopsis of his statement prior to your finishing with the scene?

SGT SAUNDERS: No, I was not.

MS. O'BRIEN: Okay.

All right. In our interview that we had, prior to you giving evidence here today, you talked about often having a formal debrief-type session with MCU, the Major Crimes Unit, before you finish with a scene of a major crime. What is a formal debrief?

SGT SAUNDERS: A formal debrief is when basically all parties to the investigation, statement takers, the team of three in the MCU triangle, ident, it could be the dog person. Anybody who was involved basically would sit around a table and everybody would basically tell what they learned through their part of the investigation.

MS. O'BRIEN: Okay. And is that – in your experience, is that usual for a major crime?

SGT SAUNDERS: It doesn't always happen. Sometimes due to logistics, you know, phone calls are made instead of having a sit down meeting; however, you know I've been on major crimes where it has happened and I've been on major crimes where it hasn't happened so.

MS. O'BRIEN: Okay. Did a formal debrief take place in this case that you were involved in?

SGT SAUNDERS: Not that I was involved in. When we left the scene it was my understanding that the scene would be held pending the autopsy. So Corporal Lee was going to the autopsy, and it was my understanding MCU would have been involved in that part of it. So Corporal Lee was at the scene with me and could relate what we did at the scene.

MS. O'BRIEN: Okay. So do you know if she attended a formal debrief?

SGT SAUNDERS: I wouldn't be able to speak for her, no.

MS. O'BRIEN: Okay, that's fine. We'll hear from her.

After your initial – after your assessment of the scene and when you left that day, were you ever directed by MCU to go back and do anything that you did not do in your initial processing of the scene?

SGT SAUNDERS: No, we were not.

MS. O'BRIEN: Okay. Did you find a pen on the scene?

SGT SAUNDERS: A writing pen?

MS. O'BRIEN: Yes.

SGT SAUNDERS: There were pens there; however, I didn't note any to be out of the ordinary or.

MS. O'BRIEN: Okay. Were you ever advised, I mean prior to having come here now – I've been involved with in the inquiry process 'cause I know you and I did discuss it before.

Were you ever advised, though – at the time of your activities on the Mr. Dunphy case, were you ever advised that Constable Smyth had given a statement of having used a pen or writing during his attendance at Mr. Dunphy's house?

SGT SAUNDERS: Not that I recall, no.

MS. O'BRIEN: Okay.

Other than the living room, which we understand you did a, you described your efforts in searching the living room. How thorough was your search of the rest of the house?

SGT SAUNDERS: The rest of the house was mainly photography and video and measurements for documentation purposes. We did do several walk-throughs through the other areas of the house; however, didn't locate anything that we felt was of evidentiary value.

MS. O'BRIEN: Okay.

SGT SAUNDERS: And when I say we, I mean myself and Corporal Lee.

MS. O'BRIEN: Corporal Lee.

And I understand when you're giving your testimony here – thank you. When you're giving your testimony here today, when you say we, it's always Corporal Lee that you're referring to in that context.

So you wouldn't have opened up other cabinets or dressers or anything else in the rest of the house as you were searching, is that – going through. Is that correct?

SGT SAUNDERS: Yeah. That's correct.

MS. O'BRIEN: Okay.

Did you seize any medications?

SGT SAUNDERS: No.

MS. O'BRIEN: Okay. Is that usual that you would not seize medications?

SGT SAUNDERS: Normally, in all sudden deaths, medications are provided to the medical examiner, specifically when death is not of – or the cause of death is not obvious. In this situation, the general duty member that goes with the body normally would fill out the toe tag, fill out the ME1 form and take any medications. Medications weren't requested so we didn't search the residence for them.

MS. O'BRIEN: Okay. And we do know that an officer did go back and take some medications, so they did ultimately get to the chief medical examiner.

I understand you did not photograph Constable Smyth's weapon. Is that correct?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Is that something that you would normally do in a shooting incident when a weapon is seized or is that something that the FIS team would not normally do?

SGT SAUNDERS: We would do it if we were requested. When we arrived at the scene it was six hours after we were called so his weapon – it was my understanding his weapon was locked up at Holyrood detachment or somewhere, or headquarters and no request was ever made for us to photograph it.

MS. O'BRIEN: Okay.

Who decided what objects from the scene should be tested for fingerprints?

SGT SAUNDERS: Basically the investigative team in conjunction with FIS would do that.

MS. O'BRIEN: Okay.

SGT SAUNDERS: The gun being, I guess, the main object that we would test; however, the condition of the gun was not, did not make it very susceptible to fingerprints.

MS. O'BRIEN: Okay. And when you are referring to the gun you're referring to the rifle, the .22-calibre rifle. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So that was one item that was decided to be tested for fingerprints. And I understand what you're saying there is that fingerprints couldn't be successfully obtained from the rifle.

SGT SAUNDERS: That was, yes, my understanding from Corporal Lee.

MS. O'BRIEN: From Corporal Lee. And we'll hear from Corporal Lee on that.

Was there any discussion about testing anything else for fingerprints?

SGT SAUNDERS: Not that I'm aware of. No.

MS. O'BRIEN: Okay.

What about that bat or stick? Do you recall any discussion or consideration being given to doing fingerprint testing on that?

SGT SAUNDERS: I don't recall. However, given Corporal Lee's proximity to St. John's, Holyrood where exhibits are being held, she would be the one who would best be able to answer that because she would be the one who would be doing the testing for fingerprints.

MS. O'BRIEN: Okay. What about the .22 unspent bullet that was found in the rifle. Was there any consideration given of fingerprinting that?

SGT SAUNDERS: .22 rounds, as you probably know from the photographs, are very small. I've had opportunity over the last 12 years to examine .22 rounds for fingerprints. I've conducted experiments in placing my fingers on .22 rounds and developing them to try and develop suitable fingerprints.

As well, I've referred to research of other, other people in the forensic field who have also done the same and the results are always – have always been negative, that even when I placed perfectly placed fingerprints on the rounds, I developed friction ridges using the prescribed means; however, not in sufficient quantity or quality to make them identifiable or suitable for comparison.

MS. O'BRIEN: Okay.

Do you recall any discussion with the investigators, the MCU team about, about whether the .22-calibre bullet was suitable for fingerprints in this case?

SGT SAUNDERS: Again, I don't recall. And Corporal Lee may have had a conversation on that.

MS. O'BRIEN: Okay.

Going back to your typed notes, the next note I want to take you to is – it's not, it's sometime later, April 9. And I understand you would have gone back to Grand Falls-Windsor on April 7. Is that right?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

This is when you began creating the plan diagram using (inaudible) software. So that is what we've been looking at and referring to this morning as or – and this afternoon as P-0035.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

On that same day, April 9 you – there's a note here that you've made at 1708 or 8 minutes past 5 p.m.: Email received from Sergeant Kent Burke requesting Corporal Lee take certain steps in attempting to recover the video of the re-enactment. I learned earlier this date that Corporal Lee had lost video she recorded of the video re-enactment with the RCMP member. It was lost in the process of loading the video on to the computer from the video camera and she was taking steps to recover same which were unsuccessful up to now. I provided her some direction – some direction to her regarding this and suggested she contact tech crime and national forensic imaging video unit.

Can you just briefly tell us the event that, about the event that you're describing in that note?

SGT SAUNDERS: Basically, Sergeant Osmond called me and advised that – sorry, sent me an email and advised of what had taken place. I believe Corporal Lee may have called me around the same time and advised what had taken place.

MS. O'BRIEN: Okay, so this was the first – the video the first re-enactment.

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

SGT SAUNDERS: As she was – it was a new video camera that we had purchased for each unit and as she loaded the video on to her computer thinking that it was there, she formatted the card and the video wasn't on the computer and it was lost.

MS. O'BRIEN: Okay, so it hadn't successfully transferred.

SGT SAUNDERS: Yes.

MS. O'BRIEN: And I know there were some efforts made to see if you could recover the video. And am I correct in saying that ultimately you could not?

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay.

And, again, we have a note here again as some of these are not – you know, I think we’ve already discussed them to the extent we need to. On April 17 we have a note here; again, this is regarding the glasses. Can you just review that note and explain to the Commissioner what your note on April 17 is referring to?

SGT SAUNDERS: It’s an email I received from Sergeant Kent Osmond. Advised that he received a letter from lawyer, Erin Breen, and basically citing tunnel vision on the part of the investigation team. And advised that a critical piece of evidence, namely the pair of glasses, had been – or was questioning why they weren’t seized at the scene, excuse me.

I recall the glasses. Actually, I was in Ottawa when I got this call. I believe I was at the airport waiting to fly home. And I recalled the glasses on the table. I recall them being taped up and in the condition they were in in the photographs. I didn’t see any relevance to the investigation and I advised him of that.

MS. O’BRIEN: Okay.

The next note that begins and it starts here on April 20. And you note in here that you received an email from Sergeant Kent Osmond of major crimes unit – East requesting you pursue the possibility of having a re-creation of the scene done.

And there’s an email to that effect. Commissioner, for your information, it has been entered into evidence as P-0559 from Sergeant Osmond; I don’t need to bring it up.

But I’m just going to see if I can – you did a fair bit of work on this topic, Sergeant Saunders, and I really don’t think there’s any need to get into all the work that you did. But I’m hoping that I can maybe summarize it and you can just let me know if I’ve accurately summarized it.

SGT SAUNDERS: Sure.

MS. O’BRIEN: So at this point, Sergeant Osmond was wondering whether some kind of a 3-D reconstruction could be done at the scene to assist with the investigation and he asked you to do a little research to see if there were people out there who could do that type of work and who was available and collect information on those individuals – is that, am I right so far?

SGT SAUNDERS: Yes.

MS. O’BRIEN: Okay. And so you did do some research and you proposed a number of individuals to Sergeant Osmond of people who worked in that area and a bit about their background and experience and the type of product that they produced, and I understand that one of the people on your list was Darryl Barr who was with the firearms unit of the Calgary Police Service?

SGT SAUNDERS: Yes, that’s correct.

MS. O’BRIEN: Okay. And we know that Darryl Barr was ultimately retained by the RCMP in this matter and he did some work and he’s going to come and explain that at the inquiry. In looking, reviewing the various emails and your notes on this matter, summarizing it I understand that Mr. Barr was your preferred candidate to do this work; is that right?

SGT SAUNDERS: Yes, he was.

MS. O’BRIEN: And again if I try to distill down your reasons, for why you preferred Mr. Barr, and please let me know if I’ve got it accurately, Mr. Barr did a static 3-D reconstruction of the

scene, so it wasn't an animation, it was a static reconstruction and his work did not require him to actually attend at the scene.

SGT SAUNDERS: That's correct.

MS. O'BRIEN: Okay. So he actually used your measurements and the work that you and Corporal Lee had done to do his 3-D recreation; is that right?

SGT SAUNDERS: That's right.

MS. O'BRIEN: Okay. And I understood that some, you know at least one or more of the other individuals being considered sort of required the scene to be recreated for their work?

SGT SAUNDERS: Yes.

MS. O'BRIEN: And you had concerns, if I'm understanding your emails correctly, you had concerns as the scene had been released for some time, objects had been moved, there had been no continuity of the scene, you had concerns and questions about the value of trying to recreate the scene accurately at that stage.

SGT SAUNDERS: Yes, that is correct.

MS. O'BRIEN: Okay. So that was one of your reasons for preferring Mr. Barr. And I also understand, again, summarizing from your emails and such that Mr. Barr had ballistics and firearms expertise?

SGT SAUNDERS: Yes.

MS. O'BRIEN: That some of the other individuals that you looked at did not have.

SGT SAUNDERS: That is correct, yes.

MS. O'BRIEN: Okay, and so you consider that his background in ballistics, firearms was essentially an important value add that he brought to the analysis over some of the other candidates.

SGT SAUNDERS: Yes, that's correct.

MS. O'BRIEN: Okay. So –

THE COMMISSIONER: It's almost 3 o'clock, so when you're ready to take a break.

MS. O'BRIEN: Yes, actually I am just about done with Sergeant Saunders, a few more questions, but I did want him to check that with respect to the door. So we can take a break now and then we'll finish up very shortly after the break.

THE COMMISSIONER: Sure. Okay. Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Okay. Go ahead when you're ready.

MS. O'BRIEN: Thank you.

Okay. Just before the break, Sergeant Saunders, I had been asking you about Mr. Barr. I understand that you would have sent Mr. Barr all your FIS records, your measurements that you took and he made use of those. Did you ever review Mr. Barr's final report?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: Okay.

And if we could go to Exhibit P-0560, please, Madam Clerk. Thank you.

So what we're seeing here, Sergeant Saunders, is an email from Kent Osmond to you, Steve Burke and Kelly Lee. And he indicates he's been trying – he's tried to reach you with no luck.

“Inps Cahill just called me and advised that Erin Breen is looking to speak with the C.O. about the fact that Meghan Dunphy found a bullet at the scene recently. They are stating that this will be embarrassing for the RCMP if they release it to the media.

I told Insp Cahill that I remember FIS noted and documented at least one, and I believe more, unspent .22 caliber rounds at the scene.

Please advise Cpl Burke if those rounds were documented or seized and if you have any need for the round that was found. If this is one of the rounds we saw, documented and didn't seize, please advise.

Steve, please follow Insp Cahill's direction just received by email.

Please tend to this immediately.”

So do you recall getting that email?

SGT SAUNDERS: Yes, I do.

MS. O'BRIEN: Okay. And now I'm going to bring you up a second email now, P-0562.

Okay. So these are emails on the same topic, Sergeant Saunders. I'm just going to the bottom of the email chain and it's Pat Cahill to Corporal Osmond and – sorry, Osmond and Burke, telling them to please reply courteously to Ms. Breen.

Then the email I do want to ask you about is one from Kent Osmond, and it says: “Sir, I couldn't reach Cpl Burke so I called Sgt Saunders. Sgt Saunders states that FIS located all rounds and casings from Cst Smyth's weapon. Given there is no evidence that Mr. Dunphy fired his weapon and there was one round located and seized from the chamber of his single shot rifle, he sees no

relevance to any unspent rounds located in the room. He did document an unspent round on the coffee table directly in front of Mr. Dunphy, but didn't seize it for the same reason."

Okay. So that's what Sergeant Osmond wrote. And I'm just going to take you up to your reply. So you come back then to the group and you say: "Gents...just to clarify...I did seize the round from the coffee table."

So, had you found – you're recalling the incident that's being spoken about here or written about here, this was when Meghan Dunphy found an unspent .22 cartridge in the living room. Do you recall that?

SGT SAUNDERS: Yes, I do.

MS. O'BRIEN: Okay. Had you found that unspent cartridge in the living room on April 5 or April 6, would you have seized it?

SGT SAUNDERS: At that time, yeah, we would have seized it. Not for anything other than for safekeeping, just like the one on the table. That was it.

MS. O'BRIEN: Okay.

So when you say for safekeeping, just like the one on the table. If you could just explain what you mean by that?

SGT SAUNDERS: Well, we located the gun. We located a live round in the chamber of the gun. There was one on the table directly in front of the deceased, and we seized that. I'm not sure how long after, I guess it was in June –

MS. O'BRIEN: This is in June.

SGT SAUNDERS: In June, another round was located. At that point, I didn't see any relevance to seize another .22-calibre round. I mean, I wasn't advised where it was found specifically or anything, but I didn't see any relevance at that time given what I know about fingerprints on bullets and touch DNA on bullets. I didn't see any evidentiary value at that time.

MS. O'BRIEN: Okay.

So just – if I'm understanding what you're saying correctly. If you had found it on April 5 or 6th, you would have seized it just like you seized the one on the coffee table.

SGT SAUNDERS: Yes.

MS. O'BRIEN: But when the issue comes to your attention in June, you didn't see any need to go back and seize it at that time. Am I summarizing what you said there correctly?

SGT SAUNDERS: Yes.

MS. O'BRIEN: Okay.

All right. I understand on September 8 of 2015, from other notes that I've seen in the file, that you had a meeting with Judge Riche. Is that right?

SGT SAUNDERS: Yes, I did. I attended a meeting that he was present at, yes.

MS. O'BRIEN: Okay. Where did the meeting take place?

SGT SAUNDERS: At headquarters in St. John's.

MS. O'BRIEN: Okay. Do you know who else was there?

SGT SAUNDERS: Yes. Corporal Steve Burke was there, Sergeant Kent Osmond, Pat Cahill, Inspector Pat Cahill and Sergeant Sue Efford.

MS. O'BRIEN: Okay.

THE COMMISSIONER: What was the last you mentioned?

SGT SAUNDERS: Sorry. Sergeant Sue Efford.

THE COMMISSIONER: Okay.

MS. O'BRIEN: Commissioner, I think we'll have evidence that Kent Osmond left the position at some point – left his position at some point during this investigation and Sue Efford replaced him in his role.

Did you take any notes at that meeting?

SGT SAUNDERS: I didn't. I was there to answer any questions that Justice Riche would have had for me. I don't even think I brought my notebook to that meeting. It was kind of a meeting where I was just going to be there and answer any questions that he may have regarding the investigation.

MS. O'BRIEN: Okay. So no notes?

SGT SAUNDERS: No, I didn't make a note.

MS. O'BRIEN: Okay. What do you recall that was discussed at that meeting?

SGT SAUNDERS: His – I guess his role was brought up. He did ask me a question, if I remember correctly, about the gun and why there was no fingerprints found on the gun. And I explained to him the reason for that.

THE COMMISSIONER: Why there were no fingerprints found or not tested – that was tested, was it, the – ?

SGT SAUNDERS: The gun was tested for fingerprints, yes.

THE COMMISSIONER: The 22, okay, yeah. I knew that. I had forgotten it.

MS. O'BRIEN: Okay. What else do you recall of the discussions at that meeting?

SGT SAUNDERS: That's about all, really, that I recall that pertained to the reason I was there at the meeting. After Justice Riche left, we just briefly had a – just a brief discussion and, you know, talked about things other than this investigation, and I departed.

MS. O'BRIEN: Okay.

I think you mentioned, just a few minutes ago, that you said talking about his role.

SGT SAUNDERS: His role.

MS. O'BRIEN: Yes.

SGT SAUNDERS: Yes.

MS. O'BRIEN: But what did you mean when you said that? What were you referring to?

SGT SAUNDERS: Prior to him arriving, his role was being discussed. I wasn't really a part of that because I had no – that was my first encounter with Justice Riche. I had no involvement with his involvement prior to that.

And the MCU members were just talking about his role and how they felt he was going beyond what he was hired to do.

MS. O'BRIEN: Okay.

And when Justice Riche then joined the meeting, do you recall any discussions about his role then with him present?

SGT SAUNDERS: No, I don't. I know when he left the meeting, Inspector Cahill walked him out, and it was my understanding that that discussion was going to take place then. But I have no knowledge of that.

MS. O'BRIEN: Okay. So you didn't witness it?

SGT SAUNDERS: No, I did not.

MS. O'BRIEN: Okay. All right.

I'm going to bring up a confidential photograph again. It's one we looked at earlier. And if – it's confidential photograph 185. Thank you.

Sergeant Saunders, is that on your screen there?

SGT SAUNDERS: No, it's not.

MS. O'BRIEN: Okay. You just let me know when it's there.

SGT SAUNDERS: It's there now.

MS. O'BRIEN: Okay.

So my question with respect to this photograph – and you have already described what we're seeing in it, with respect to the bone fragments. But my question to you – the question I wanted to answer was if whether or not you could confirm that the items that we're seeing in this photograph – so the grey piece of clothing and what appears to be the glass door of the stereo cabinet, whether they are in the position that they would have been when you first saw this scene that day.

And I understood when we had our earlier – when you were giving evidence earlier that, to confirm that, you needed to look at some other photographs. During the break, we did that. Are you now able to answer that question?

SGT SAUNDERS: Yes. What we see in this photo is how it appeared when we arrived that day.

MS. O'BRIEN: Okay.

And is that glass indeed the door of the stereo cabinet?

SGT SAUNDERS: It is, yes.

MS. O'BRIEN: Okay. Thank you.

Commissioner, those are all the questions I have for this witness. Sergeant Saunders, other counsel may have questions as well as the Commissioner may have some further questions himself.

Thank you.

THE COMMISSIONER: Okay.

Ms. Breen.

MS. BREEN: Thank you, Mr. Commissioner.

Sergeant Saunders, I'm Erin Breen Counsel for Meghan Dunphy. Sergeant Saunders, when you arrived in Mitchells Brook on April 5, I understand you had some brief conversations with Corporal Henstridge and Corporal Burke. Is that correct?

SGT SAUNDERS: Yes, that's correct.

MS. BREEN: And at that time, were you aware that there had been eight people who had entered the scene before you had arrived?

SGT SAUNDERS: No, I was not.

MS. BREEN: Okay. And in terms of best practice how does that fact – does that cause you a concern when you find that out?

SGT SAUNDERS: It's always best to have the minimum number of people in a scene prior to us arriving so that we can capture the scene as it was.

MS. BREEN: And the number eight, eight different people entering into a scene before the ident arrives, that seems to me to be an unusually high number. I'm wondering if you could comment on that.

SGT SAUNDERS: I guess it depends on the situation. In this situation, my understanding was that there was one or two members initially attended and then the ambulance attendants. So there likely would have been two of those. Beyond that, that's all I was aware of.

MS. BREEN: Okay. So the additional four people arriving after, you weren't aware of that?

SGT SAUNDERS: I wasn't aware of that, no.

MS. BREEN: Okay. Now, sorry –

THE COMMISSIONER: Before now or when you first arrived?

SGT SAUNDERS: Before now.

THE COMMISSIONER: By the way, are you going to go through who the eight are?

MS. BREEN: I certainly can, Mr. Commissioner. My understanding –

THE COMMISSIONER: Just for to refresh my memory, if nothing else. Go ahead.

MS. BREEN: Corporal O’Keefe, Constable Cox, the two ambulance attendants –

THE COMMISSIONER: Right.

MS. O’BRIEN: Oh, sorry. Corporal O’Keefe, Constable Cox, the two ambulance attendants, Corporal Foote, Corporal Henstridge, Corporal Burke and Sergeant Conohan.

THE COMMISSIONER: So Sergeant Conohan went through before forensics – now he was the marijuana concern. We had testimony of that previously. I had the impression that he came in afterwards.

MS. O’BRIEN: I believe, Commissioner, he did come in – the evidence is that he came in for a brief period. It is recorded in the scene log, which has been put into evidence when Conohan, Burke and Henstridge enter the scene –

THE COMMISSIONER: Okay.

MS. O’BRIEN: – and I believe Corporal Foote was still in the house –

THE COMMISSIONER: Right.

MS. O’BRIEN: – and he covered that in his testimony, them coming in while he was on guard.

THE COMMISSIONER: Okay (inaudible).

Go ahead, Ms. Breen.

MS. BREEN: Thank you, Mr. Commissioner.

Now, Sergeant, you have testified today and as well I think you explained it in your interview with Commission counsel as well, when you arrived you were aware that this was, what you say, it was an officer-related shooting scene.

SGT SAUNDERS: Yes.

MS. BREEN: And that you distinguished that in your interview certainly – and I think again today you said at the time, you did not understand it to be a homicide scene.

SGT SAUNDERS: It wasn’t spelled out to me that it was a homicide scene. It was just an officer-involved shooting.

MS. BREEN: Okay.

And you knew, though, that the person who had been shot was dead.

SGT SAUNDERS: Yes, I did.

MS. BREEN: Okay. So you would have known at that point that that would be a homicide. Is that correct?

SGT SAUNDERS: Yes, but it wasn't spelled out – nobody actually came out and said that to me.

MS. BREEN: But you would know that from your experience as a police officer.

SGT SAUNDERS: Yes.

MS. BREEN: Okay.

We understand as well that during your time at the scene you did follow at least one, I guess, special protocol, which you knew to be in place for officer-related shootings and that related to your call to Sergeant Butler. Is that correct?

SGT SAUNDERS: Yes, that's correct.

MS. BREEN: Was there any – did you have a protocol or did you have a special policy as an RNC officer doing identification work when you were responding to an officer-related shooting as opposed to any other, I guess, kind of homicide?

SGT SAUNDERS: No, not specifically, no.

MS. BREEN: Okay. So this special policy, which I think was referred to, you said when you were dealing with an officer-related shooting you had to follow a policy whereby you called in to your national headquarters. Is that correct?

SGT SAUNDERS: Yes.

MS. BREEN: Has that been in place for a long time? Like, is that something you've received special training on?

SGT SAUNDERS: Training on to ...?

MS. BREEN: On what to do uniquely when you're dealing with an officer-related shooting.

SGT SAUNDERS: No, it's in our written policy.

MS. BREEN: Okay, which is accessible to all RCMP officers, is that right, or just for –

SGT SAUNDERS: Yes, it's actually in the identification policy, so it's specific to identification personnel but it's accessible to everyone.

MS. BREEN: Okay.

And is there any other policy that relates specifically to officer-involved shootings as far as you know, or is that the only one?

SGT SAUNDERS: That's the only one that specifically states regarding officer-involved shooting that I recall.

MS. BREEN: Okay.

Now, you have also –

THE COMMISSIONER: Sorry, Ms. Breen, are you moving on from that point?

MS. BREEN: Yes, go ahead, Mr. Commissioner.

THE COMMISSIONER: I just want to make clear; I received the two documents or extracts from policy manuals I guess. One was for regional B Division and the other was for national in terms of this issue of criminal versus non-criminal investigation I guess. I want to make sure, first of all, did that go in as an exhibit? Did those two documents go in – do we have them?

MS. O'BRIEN: Yes, they did, Commissioner.

THE COMMISSIONER: Do we know what the numbers are on those? No need to check it now, but as long – okay.

Okay, so you say you're aware of the national policy manual that deals – that deals with the officer-involved shootings? Do you know about the B Division one? I confess I've forgotten what it says now.

MS. O'BRIEN: I believe, and Sergeant Saunders can confirm, but I believe what he is talking about is not the policies that we have entered into evidence. I believe he is speaking of a policy specific to Forensic Identification sections. Is that correct, Sergeant –

THE COMMISSIONER: Is that –

SGT SAUNDERS: That's correct. Yes.

THE COMMISSIONER: Okay. All right.

Okay. Sorry, Ms. Breen. Go ahead.

MS. BREEN: That's okay.

Sergeant – and just to be clear, in terms of you have testified as to your experience in investigating various shootings where they're – which are homicides. I think you made reference specifically in your interview to murder suicides; you had been involved in a number of murder-suicide investigations. Have you ever been involved in an officer-related shooting where a person was killed?

SGT SAUNDERS: No, I have not.

MS. BREEN: You have also testified today that with respect to an officer-related shooting where a person has been killed, I believe – and tell me if I've misquoted you, Sergeant – you said: It's a different scene. We are not looking for who shot the person. And you said: In this case, the officer had advised what had taken place. That gave us an indication of what had taken place, so we weren't trying to place someone in the residence.

SGT SAUNDERS: Correct.

MS. BREEN: So in terms of the scene examination that follows – and I understand what the ident team wants to do is to allow the scene to speak for itself. So you do not want to become apprised with too many details before your initial entry into the scene. Is that correct?

SGT SAUNDERS: That is correct.

MS. BREEN: However, the situation and the knowledge that you do have at the time would certainly frame what you're doing inside the scene. Is that fair to say, Sergeant?

SGT SAUNDERS: I'm not sure what you're asking me there.

MS. BREEN: Well, for example, I believe when Ms. O'Brien asked you in your interview with Commission counsel, she had questioned you about why you had not seized, for example, a box cutter, that appeared to be on the table. And you had replied to her – and for the benefit of counsel and you, Mr. Commissioner, this is at page 133, lines 4 to 6 of the interview. I believe your response, Sergeant, was that given the situation and my knowledge of it at the time it didn't seem important.

SGT SAUNDERS: Yes (inaudible).

MS. BREEN: So despite having to, or, you know, despite trying not to get too many details in order to colour your view, you still, you're there, you have the basic details, you know what kind of a scene. And as you have previously testified, it's a different situation than a whodunit or a homicide where you're trying to determine what happened. You already have a version of what happened from the officer who had been at the scene. Is that correct?

SGT SAUNDERS: From, well, from the Major Crime officers that relayed it to me, yes, they gave us a version of what happened, the basics.

MS. BREEN: Okay. And when you arrived, Sergeant, you observed a house that was cluttered, damaged and in poor condition, is that. Is that right?

SGT SAUNDERS: Yes.

MS. BREEN: And is it true that in your training when you are looking – or sorry, when you are doing your initial entry into a scene, you are looking for items that look out of place in the context of that scene?

SGT SAUNDERS: Yes, that's correct.

MS. BREEN: So I think what you, how you described it on direct, you said anything out of the ordinary.

SGT SAUNDERS: Yes, with respect to that scene.

MS. BREEN: And I anticipate when Corporal Lee testifies she – she gave some further detail on this in her interview. She talked about looking for items that appear to be inconsistent with other things at that scene.

SGT SAUNDERS: Yes.

MS. BREEN: And, Sergeant, the first item I just want to ask you a few questions on would be the stick that you have testified about. And if Madam Clerk could bring up photo 119, please.

Thank you.

So, Sergeant, this is the stick that you saw. And I believe in your direct testimony you said it was the first item that you had come across. Is that correct?

SGT SAUNDERS: Yes, walking into the living room.

MS. BREEN: And you also said the first thing that I observed in the doorway to the residence as I entered – I believe what you meant then was going into the living room. Is that right?

SGT SAUNDERS: Yes, that's correct.

MS. BREEN: And that it seemed out of place and in the way.

SGT SAUNDERS: Yes.

MS. BREEN: You didn't measure it at the time but you have the capability to measure that at any time because it was seized as an exhibit. Correct?

SGT SAUNDERS: That's correct.

MS. BREEN: Were you ever asked to measure the stick?

SGT SAUNDERS: No, I was not.

MS. BREEN: Did the investigators – Corporal Burke, Sergeant Osmond, Corporal Henstridge – did they ever ask you or talk to you about the stick?

SGT SAUNDERS: Not that I recall.

MS. BREEN: Did they ever ask you or suggest any kind of further testing to be done on the stick?

SGT SAUNDERS: Not that I recall. However, like I said before, Corporal Lee would have been the one to do anything with that stick, given her proximity.

MS. BREEN: Okay, but no investigator ever brought it to your attention or followed up with you or gave you any information that they have may have received – or may have received from witnesses about that stick.

SGT SAUNDERS: That's correct.

MS. BREEN: The next item I want to ask you about, Sergeant, is the file folder that was seized. I'm not certain of a – in fact I don't think we need to bring up the photo. But Sergeant, the file folder that you did see at the scene, I anticipate that Corporal Lee is going to testify that she felt it looked out of place in the context of the living room. Do you have any comment on that?

She felt it looked like it didn't belong. I'm assuming what she meant by that was that it was very clean looking, it was different than the other papers that were kind of strewn about the living room and it stood out, I guess, for its colour too. Do you recall that?

SGT SAUNDERS: I don't recall that, no. However, I do recall having a conversation with her about it; however, I don't recall her specifically saying that.

MS. BREEN: Okay. Did you feel that it looked out of place in the living room?

SGT SAUNDERS: I guess it looked out of place enough for me to open it up and see what was inside. I don't recall making that judgement at that time.

MS. BREEN: Okay.

Were there any other items in the living room? And I'll ask you specifically, you know, because the house and the living room in particular, has been described as being dirty, very dirty. Did it seem out of place or unusual to you that there was a broom in the living room next to the mantelpiece or that there was a vacuum cleaner plugged in in the corner of the room, into the wall.

SGT SAUNDERS: No.

MS. BREEN: Were they – was that just considered at the time by you to be more clutter in a cluttered room?

SGT SAUNDERS: Just normal household items in a house.

MS. BREEN: Okay.

And items that don't look out of place, with the information that you have when you do your initial entry, because we're still talking about the initial entry. And I'm going to get to – I understand that after you do your initial entry, then we anticipate that there's going to be some kind of interaction between the identification team and the investigators to kind of meld those, what they may be getting with what you've seen.

SGT SAUNDERS: That's correct.

MS. BREEN: Okay.

But at the time when you do your initial entry you have very little information. Correct?

SGT SAUNDERS: Yes.

MS. BREEN: So you're making your judgement simply based on your observations of what you see in that moment without any kind of details or without any kind of other information to either ground your assumptions or rebut them. Is that right?

SGT SAUNDERS: Yes.

MS. BREEN: Okay.

So, for example, the glasses – you would agree that the glasses are in poor condition?

SGT SAUNDERS: Yes.

MS. BREEN: And that they were beat up, but they appear to have been damaged at some point?

SGT SAUNDERS: Yes.

MS. BREEN: Okay. But also in that living room, most everything was in poor condition, was it not?

SGT SAUNDERS: Yes, it was.

MS. BREEN: So they didn't look out of place in terms of your initial entry?

SGT SAUNDERS: Correct.

MS. BREEN: You've also – we've been talking about also, whether or not you found a pen in the living room. And I believe in your interview you say that you didn't recall locating any pen?

SGT SAUNDERS: I do recall seeing pens; however, I don't recall seeing a pen that looked out of place.

MS. BREEN: And I believe in your interview, Sergeant, you said – this is at page 233. You said: A pen just would not have stood out to you at that time. Is that correct?

SGT SAUNDERS: That's correct.

MS. BREEN: And Corporal Lee, I anticipate, will also testify that as a pen was never mentioned to her by the Major Crimes Unit, she would not have known about its significance at that time. You had never, no one had come back to you to say why a pen would be significant or not. So seeing a regular household item, like a pen, would not have stood out to you on your initial entry.

SGT SAUNDERS: Correct.

MS. BREEN: And what we understand to be the second part, I'll call it, after your initial entry, when you have your scene photos and when there's supposed to be some kind of debriefing with the MCU, what I would consider to be the combining of the information from the investigative team with the forensics identification team, we anticipate that that would happen before the scene was released. Do you agree?

SGT SAUNDERS: Yes, I agree.

MS. BREEN: And that that would be an important thing to do because, obviously, once the scene is released the evidentiary value of anything that's left in that scene is reduced because continuity is lost.

SGT SAUNDERS: Yes, correct.

MS. BREEN: Okay. It's the Major Crimes Unit that makes the decision to release the scene. Is that correct?

SGT SAUNDERS: In major crimes, yes.

MS. BREEN: And at this time, were you treating this as a Major Crimes investigation?

SGT SAUNDERS: Yes.

MS. BREEN: And in this case there was no formal debriefing?

SGT SAUNDERS: Not that I'm aware.

MS. BREEN: And there's certainly no indication in your notes that you've taken, either handwritten or typed, that there was any formal debriefing.

SGT SAUNDERS: Correct.

MS. BREEN: And I had understood you to say in the interview that you gave with Ms. O'Brien that for a major crime there is normally a formal debrief.

SGT SAUNDERS: Normally. Not in 100 per cent of the cases; however, normally, yes.

MS. BREEN: And Sergeant, the reason why the formal debrief is so important is because you, as an ident officer, may find out witness information, may get something from the investigators in their interviews that they're supposed to be conducting about a particular object at the scene. Is that correct?

SGT SAUNDERS: Yes.

MS. BREEN: And whether it belongs or doesn't belong, and that you wouldn't be equipped with that knowledge, you wouldn't know those things as people who aren't familiar with the scene before the incident happens.

SGT SAUNDERS: That's correct.

MS. BREEN: And that you expect the Major Crimes Unit to be carrying on these interviews with people who may have that kind of knowledge. Is that correct?

SGT SAUNDERS: Yes.

MS. BREEN: And that any information that's garnered from them you expect would be brought to your attention.

SGT SAUNDERS: Anything that would be relevant to our scene examination.

MS. BREEN: And that follow up, if required, would then be requested from you.

SGT SAUNDERS: That's correct, yes.

MS. BREEN: So a person who is familiar with the scene, a person who has a familiarity, who has knowledge of it and the way it looked before the incident happened, they would be a very valuable resource to an investigator. Would they not?

SGT SAUNDERS: I guess. It depends on the scene certainly.

MS. BREEN: And would you agree, Sergeant, that as an ident officer to best assess a scene, if you had a source of knowledge, a person who was familiar with that scene, you would expect that that knowledge would have been garnered from them, and at least queried or questioned and then determine what value it would have had?

SGT SAUNDERS: I can agree to that, yeah.

MS. BREEN: But to get that information, the investigators would have to be asking relevant questions?

SGT SAUNDERS: Of course.

MS. BREEN: I believe in your interview, Sergeant, Ms. O'Brien asked you a question which we could really relate to most of the items in this case that have come up. And this is at page 305, lines 19 to 22. She asked you: Do you think you're able to draw an opinion, or draw a conclusion as to the relevance of a piece of evidence when you haven't read statements related to the investigation? And you quite plainly answered: no. Is that correct?

SGT SAUNDERS: Yes.

MS. BREEN: Now, in this case what we've seen is that you go back on April 6 to headquarters and you have some technical difficulty with your camera. Is that right?

SGT SAUNDERS: Yes, that's right.

MS. BREEN: And you said you call in – they called in IT to try and assist you and, ultimately, I think you did say that you were able to burn off a disk to leave with Major Crimes. Is that right, on that day?

SGT SAUNDERS: Yes. It was reduced resolution images. The images were reduced resolution. So I wasn't really happy with the product, and I didn't think Dr. Avis would be happy with the product as well.

MS. BREEN: Okay.

So to your knowledge on April 6, did Corporal Burke, Sergeant Osmond, any of the main investigators, did they sit down and go through with you the photos that you had taken at the crime scene?

SGT SAUNDERS: No. I don't recall, because initially I couldn't get the photos onto the computer. Whether they looked at them on my camera, I don't recall.

MS. BREEN: Okay. And according to your notes and to your typed report, there's no indication that that occurred.

SGT SAUNDERS: Other than the fact that when I did leave there, I did leave a disk with all the photos on it.

MS. BREEN: Yes. And Sergeant, I understood that from your interview that the purpose of that was to make sure that Corporal Lee could bring those to the autopsy for Dr. Avis. Do you remember that?

SGT SAUNDERS: But the purpose of that, I left them for Corporal Burke, I believe it was, to bring to the medical examiner so he could have them prior to. But given the reduced quality of the images, we decided I was gonna go back to Clarendville that night when Corporal Lee decided – or we decided that Corporal Lee would be attending the autopsy. So I was gonna give her a better copy which had high resolution images for Dr. Avis.

MS. BREEN: And that occurs, I believe, the following morning. Corporal Lee does have a disk to provide to Dr. Avis?

SGT SAUNDERS: That's correct, yes.

MS. BREEN: Okay. But to your knowledge, up until the autopsy, did you have any notations in your notes or in your report that Corporal Burke or Sergeant Osmond had reviewed the photos from the crime scene and discussed same with you.

SGT SAUNDERS: Not that I recall. I agree we did have some conversation as I was tasked with dealing with the technical issues, but I mean nothing specific in my notes.

MS. BREEN: Okay. And in the same time frame – and what I'm interested in, Sergeant, is up until April 7, because we understand that on April 7 the scene gets released. Are you aware of that date?

SGT SAUNDERS: I was aware that it was released sometime after the autopsy; however, the exact date I don't know.

MS. BREEN: Okay. And in terms of the scene being released, you had no involvement in that. That was a Major Crimes Unit, that was either Sergeant Osmond or – well, we know it's not Corporal Burke according to his testimony, but someone from Major Crimes Unit made that decision as to when to release the scene?

SGT SAUNDERS: I can't say that for sure, but I wasn't involved in it.

MS. BREEN: Okay. And you weren't consulted? It doesn't appear from your notes or from your typed report that you were consulted on that decision.

SGT SAUNDERS: No, I don't recall being consulted.

MS. BREEN: Okay.

Now, in the same time frame, did anyone from major crimes request that you return to the scene to take any additional photographs?

SGT SAUNDERS: No, not that I recall.

MS. BREEN: Did anyone from major crimes ask you to return to the scene to make any additional measurements?

SGT SAUNDERS: No.

MS. BREEN: Were you asked to forensically test anything additional to corroborate Constable Smyth's statement?

SGT SAUNDERS: I wasn't, no.

MS. BREEN: Did anyone from major crimes request that you search any vehicle?

SGT SAUNDERS: No.

MS. BREEN: Sergeant, I want to ask you now – perhaps if we could bring up Photo 038, Madam Clerk, please. Thank you very much.

Sergeant, I understand this is the photo that you took of the living room as you saw it on April 5.

SGT SAUNDERS: Yes.

MS. BREEN: And I'm just – I'm wondering, the bluish tub, Rubbermaid tub that is there that the gun is resting on, did you look or open up that tub?

SGT SAUNDERS: I did at some point. I don't recall what was inside, but I did open it up.

MS. BREEN: Okay. And would you have recorded in your notes what was it is you saw when you opened up or searched any kind of, you know, storage bin or anything like that?

SGT SAUNDERS: I didn't, no.

MS. BREEN: Okay. And if was to suggest to you that you had told other officers on the scene that this was family pictures, there was pictures and that kind of thing in that rubber tub, does that refresh your memory?

SGT SAUNDERS: It doesn't, but I may have. I don't recall.

MS. BREEN: Okay.

Similarly, the ice cream tub that is on the table, did you open up the ice cream container and search what was inside that?

SGT SAUNDERS: I don't recall opening that. I don't want to say Corporal Lee did, but I believe that's the reason I didn't do it is that Corporal Lee had done that.

MS. BREEN: Okay.

So you feel it was – do you know, do you recall her telling you what was inside the tub? Or do you recall knowing what was inside the tub?

SGT SAUNDERS: No, I don't.

MS. BREEN: Okay. And I understand we're going to have some evidence from Constable Cox. He'll be testifying that what was found in that tub were Mr. Dunphy's medications. Do you recall that?

SGT SAUNDERS: No, I don't.

MS. BREEN: Now, we don't have – I don't know if I have a picture number for the next item I wanted to show you, but it was the right-hand side of the chair where you can see the white garbage bin. I don't know if Commission counsel can provide me with a photo number for that?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. BREEN: 45? Thank you.

And, Sergeant, I'm wondering about the Rubbermaid container to the left, our left, in that picture there. Did you look inside that Rubbermaid container?

SGT SAUNDERS: I did.

MS. BREEN: And what was in that container?

SGT SAUNDERS: If memory serves correct, I believe it was empty.

THE COMMISSIONER: Sorry, I couldn't hear?

SGT SAUNDERS: If memory serves correct, I believe it was empty.

MS. BREEN: It was empty?

THE COMMISSIONER: Sorry, which container are we talking about?

MS. BREEN: Sorry, Mr. Commissioner, I'm referring to the white garbage bin –

THE COMMISSIONER: Right.

MS. BREEN: – that is being circled there with the mouse.

THE COMMISSIONER: Right. So what was in that white bin –

MS. BREEN: In the white container. It was completely empty?

SGT SAUNDERS: I believe it was. I recall opening it up and having a conversation with Corporal Lee that I couldn't believe it was empty or maybe virtually empty and all the garbage was still on the floor.

MS. BREEN: Because there appears to be a lot of garbage right in front of it and around it. Did you take notes, Sergeant, of doing that, or did you – you didn't take a photograph?

SGT SAUNDERS: No, I didn't see it as being significant.

MS. BREEN: But you do have a specific recollection of that?

SGT SAUNDERS: Yes.

MS. BREEN: Now, we know, Sergeant, that you, ultimately you moved the chair out from the wall and that you searched underneath the chair on the floor in that area and that's when we see that you found the skull fragments that we have in the photographs.

SGT SAUNDERS: Yes.

MS. BREEN: Did – you also mentioned in your interview that you had moved some other furniture in the room and searched beneath it. I believe it in the interview what you had articulated was that you had moved the couch to look underneath the couch.

SGT SAUNDERS: Yes.

MS. BREEN: Okay. Did you – do you recall moving other furniture in the room other than the couch and the chair that Mr. Dunphy was seated in?

SGT SAUNDERS: Yes.

MS. BREEN: And what other furniture did you move?

SGT SAUNDERS: If you could put up a picture of sort of an overall of the living room, I could –

MS. BREEN: Oh, sure. Madam Clerk, I think that was Photo 038?

SGT SAUNDERS: We moved the couch out, moved the items that were on the floor: newspapers, broom, vacuum, the corner, I guess, curio cabinet – I recall lifting that up to the side and looking underneath it and putting it back – the rocking chair. To the right there's almost like a TV stand on wheels, we pulled that out.

I think the only piece of furniture we didn't move was the stereo stand in the corner because it was in such a way that we could see in around it and behind it with flashlights and there was nothing – like, nothing could get underneath it.

MS. BREEN: Okay.

So you attempted to do the most thorough search you could at that time?

SGT SAUNDERS: Yes.

MS. BREEN: Okay.

Sergeant, when you arrived at the scene, do you recall the first responders or anyone passing on information from the first responders about the doors that they had opened or closed when they first arrived?

SGT SAUNDERS: I recall Corporal Foote was the only one that passed that on to me that he had closed the cat – well, what we called the cat room door and the bathroom door to keep cats inside.

MS. BREEN: Okay.

So did you understand from Corporal Foote that when he had arrived, the cat room door was open?

SGT SAUNDERS: No, I didn't understand that. He had, I guess, rallied the cats into those rooms and ensured that the door was closed. He didn't indicate if it was open or closed beforehand.

MS. BREEN: Okay.

And I anticipate that Corporal Lee, when she testifies, she will be testifying about certain recollections she has of what was conveyed to her about which doors were open and closed by the first responders, but you don't have those kinds of notes, do you, Sergeant?

SGT SAUNDERS: No, I don't.

MS. BREEN: And do you recall today specifically what was told to you at that time about what the first responders had changed in terms of the doors?

SGT SAUNDERS: No, I don't.

MS. BREEN: Okay.

Sergeant, finally, I want to ask you a few questions about the chair. You have said that you did examine the chair – and this comes from your interview, I don't think you got into it today in your direct testimony – but that you had looked at the chair, examined it for damage, in particular the bullet that you found in the chair and it was opened up. Did you check the functionality of the chair at that time?

SGT SAUNDERS: No, we did not.

MS. BREEN: Okay.

Did you check to see what kind of a chair it was, whether it was a lift chair, whether it was a reclining chair? Do you have that information?

SGT SAUNDERS: No.

MS. BREEN: Okay.

Did anyone from the investigative team ask you to perform any kind of further, I guess, testing or search of the chair or examination of the chair?

SGT SAUNDERS: No.

MS. BREEN: So, Sergeant, from what I can tell, beyond the – I guess the sending away of the rifle as well as the – ultimately, I believe it was a 3-D static shot that was created in this case, are you aware of any other further testing or expert examination of the exhibits that you were asked to do by the major crimes unit?

SGT SAUNDERS: No, I wasn't. Personally, I wasn't asked anything beyond that. Actually – and the firearm itself, Corporal Lee would have been the one to deal with that.

And as far as sending it away, that would have been the Major Crime Unit or the exhibit custodian on the file to send that away. We don't, we don't send exhibits to the lab, the investigative team does.

MS. BREEN: Okay.

Thank you very much. Those are all my questions.

THE COMMISSIONER: Mr. Kennedy, you're next.

MR. KENNEDY: Thank you.

Staff Sergeant Saunders, my name is Jerome Kennedy. I'm counsel for Constable Smyth and I have a few questions for you.

It's my understanding, Sir, that you have a lot of experience in examining crime scenes in general and that you've examined hundreds of them. Is that correct?

SGT SAUNDERS: That's correct.

MR. KENNEDY: And in terms of homicide or murder scenes, you've examined how many of them?

SGT SAUNDERS: About seven murder scenes, several sudden death scenes, suicide scenes and about six involving firearms.

MR. KENNEDY: And I would assume that you have to approach the examination of a sudden death scene as if it was a homicide because you've got to make sure you get all the evidence you can. Correct?

SGT SAUNDERS: That's correct.

MR. KENNEDY: So oftentimes you'll enter a crime scene, you don't know what's gone on, you just know that you got to try to make sure that the scene is protected and you get as much relevant evidence as possible.

SGT SAUNDERS: That's correct.

MR. KENNEDY: And over a period of time you can be directed to get, to search for certain items, but generally the examination of a crime scene has standard practices and procedures. Correct?

SGT SAUNDERS: Yes.

MR. KENNEDY: Yeah. So in this particular case you indicated that yourself and Corporal Lee entered not having a lot of knowledge about what occurred, but that's not necessarily a bad thing because you keep an open mind and approach the scene without bias. Is that a fair, fair comment?

SGT SAUNDERS: It is, yes.

MR. KENNEDY: So, Sir, that day, the fact that there was a police officer involved, did that cause you to be careful, extra careful, or not as careful as you normally would be?

SGT SAUNDERS: I would say extra careful.

MR. KENNEDY: Because you know that this scene is going to be – everything you do, you know is going to be very closely examined. Correct?

SGT SAUNDERS: That's correct. Yes.

MR. KENNEDY: And why, Sir, would you expect that?

SGT SAUNDERS: It's an officer-involved shooting. It's an RNC member shooting in an RCMP jurisdiction. It's going to be, I guess, high profile for lack of a better word.

MR. KENNEDY: So you know right from the beginning here that this is an investigation where you have to do everything as well as you can.

SGT SAUNDERS: That's correct.

MR. KENNEDY: Okay.

Now, having the experience that you had, did you feel equipped that day, both with equipment and experience, to examine that crime scene?

SGT SAUNDERS: Yes

MR. KENNEDY: But the crime scene, Sir, was complicated somewhat by the state of disrepair of the house and what you found inside the house. Correct?

SGT SAUNDERS: It was. Yes.

MR. KENNEDY: Because when you're looking for things out of the ordinary, if you have a pristine environment they're easier to identify than if you have a very messy or dirty environment. Correct?

SGT SAUNDERS: That is correct.

MR. KENNEDY: So you can't control what you find in terms of what's in that particular residence or any residence you go to. Correct?

SGT SAUNDERS: Yes.

MR. KENNEDY: Now you've described, Sir, this house – and I think if you remember in your pre-interview examination with Ms. O'Brien, it wasn't brought out today. But you described it as probably one of the worst houses I've seen where people have been living or where someone was living. Correct?

SGT SAUNDERS: Yes, that's correct.

MR. KENNEDY: There was an overpowering odour of cat urine – cat urine, excuse me.

SGT SAUNDERS: Yes.

MR. KENNEDY: Now, do you remember that?

SGT SAUNDERS: Absolutely.

MR. KENNEDY: When you use the word “overpowering,” is that an accurate description of what that smell when you went into that house?

SGT SAUNDERS: It is. Yes.

MR. KENNEDY: There was reference, you said there was cat feces or feces, I assume it was cat, throughout the residence, cat food all over the floor. Was that in the living room area also?

SGT SAUNDERS: There was some cat food in the living room. The majority of it was in the hallway and all throughout the hallway.

MR. KENNEDY: And you indicated in your interview that this was the worst house you've seen in this province.

SGT SAUNDERS: In this province, yes.

MR. KENNEDY: So essentially the – how long have you been working in this province, Sir?

SGT SAUNDERS: For 20 – oh, sorry, for 12 years.

MR. KENNEDY: So does that complicate the examination of the scene somewhat?

SGT SAUNDERS: It does.

MR. KENNEDY: Okay.

Now when you're putting on a – and people entering a residence wearing the outfits or the white suits, you're trying to prevent contamination. Is that correct?

SGT SAUNDERS: Yes. Well, it's twofold; we're trying to prevent contamination of the scene from us and we're trying to prevent contamination of us from the scene.

MR. KENNEDY: Yeah. And in this particular state it's not unfair to say that you were entering a contaminated scene.

SGT SAUNDERS: Yes.

MR. KENNEDY: I wonder if we could have Photo 103 brought up first, please. I don't know, is this a confidential photo? Just one second, please.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: It's 103.

THE COMMISSIONER: No, it's not.

MR. KENNEDY: Okay. Thank you.

Yes, okay. No, that one's not.

Okay, so – yeah, okay, smaller, please, or the regular size, whatever.

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. KENNEDY: Okay.

Yeah, there you go.

So you describe, Sir, as there being a void in the floor.

SGT SAUNDERS: Yes.

MR. KENNEDY: Did that void in the floor seem to correspond to you to a potential place for the rifle came from or was held or stored?

SGT SAUNDERS: It was possible.

MR. KENNEDY: So that's why you marked it, I assume?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

SGT SAUNDERS: It was out of the ordinary, out of place.

MR. KENNEDY: If we could now go to Scene 043, please. I'm going to come back to that –

THE COMMISSIONER: Just – yeah just before that because really we're talking about a void in the garbage on the floor, are we not?

SGT SAUNDERS: Not the floor itself, a void in what was on the floor.

THE COMMISSIONER: Yeah.

MR. KENNEDY: Yeah.

Okay, go back to – if we could go back to Scene 103, Madam Clerk, I'm sorry. Okay, if could just go down to the 100 per cent again. We're showing the placard 3. No, it's probably got to be a bit – okay.

So when you say there's a void in it, do I see an imprint there that appears to go back from that placard 3, like there appears to be an actual imprint on the floor? Is that an imprint on the – you know just a void in the garbage so we get that clear.

SGT SAUNDERS: I don't see an imprint there.

MR. KENNEDY: Okay.

SGT SAUNDERS: I think it was just a void in the garbage.

MR. KENNEDY: Okay, good.

If we could now just scan down – Clerk, could you reduce the size of that photo, please. Because I was going to ask you this question, but since I have this here, we can do it now.

Now, there's reference to – you looked in the white garbage bucket and it was either empty or virtually empty even though you didn't make a note in relation to that.

SGT SAUNDERS: Correct.

MR. KENNEDY: So you see there's papers and a Gatorade bottle on top of the white bucket.

SGT SAUNDERS: Yes.

MR. KENNEDY: Is that the way you found the bucket? Is this the scene when you came into it?

SGT SAUNDERS: Yes.

MR. KENNEDY: So if someone had dumped the garbage out of the bucket, they would then have to put the papers and the Gatorade bottle back on top of it. Correct?

SGT SAUNDERS: That's correct. Yes.

MR. KENNEDY: Yeah.

In terms of those papers, did you look at them?

SGT SAUNDERS: I did. I just looked and saw what it was.

MR. KENNEDY: What is it? Do you know that?

SGT SAUNDERS: It's something to do with Workers' Compensation.

MR. KENNEDY: So something to do with Workers' Compensation. Are they letters? Are they papers? Are they relevant in –

SGT SAUNDERS: Yes, it was –

MR. KENNEDY: If we could now go to Scene 043, please. 'Cause there appear to be two tables in this house: one in front of – the table in front of Mr. Dunphy where there's the blow torch and drug paraphernalia.

SGT SAUNDERS: Yes.

MR. KENNEDY: Among other things. And then there's a longer table right here where we see there appear to be an oat – I don't know if they are oat cookies or something like that. Is that what they are?

SGT SAUNDERS: Rice cakes, I believe.

MR. KENNEDY: Okay, rice cakes, yeah. And you see there's a TV remote?

SGT SAUNDERS: Yes.

MR. KENNEDY: Correct?

SGT SAUNDERS: Yes.

MR. KENNEDY: And then there's a phone?

SGT SAUNDERS: Yes.

MR. KENNEDY: Is that the only phone you found in the residence?

SGT SAUNDERS: The only cellphone, yes.

MR. KENNEDY: Did it strike you at all unusual that that cellphone is on that table as opposed to the table in front of Mr. Dunphy?

SGT SAUNDERS: No.

MR. KENNEDY: There's a cellphone on the table. You know, you have a general idea of what's going on here in terms of there's social media or tweets or something going on, so you're looking for a cellphone.

SGT SAUNDERS: Yes.

MR. KENNEDY: The fact that it's on this table as opposed to the other table doesn't strike you as unusual, does it?

SGT SAUNDERS: No.

MR. KENNEDY: If we could now go to photo – excuse me – 123.

So you indicated that the yellow folder, which we've seen in the previous picture we just talked – you open the yellow folder –

SGT SAUNDERS: Yeah.

MR. KENNEDY: – and you – 'cause obviously it stuck out to you enough to wonder, like, what is it doing there, so you –

SGT SAUNDERS: Yeah.

MR. KENNEDY: – just, you had no reason to – you had no knowledge that Constable Smyth had a folder with him of any sort?

SGT SAUNDERS: No.

MR. KENNEDY: No one told you that?

SGT SAUNDERS: No.

MR. KENNEDY: So you open the yellow folder and then I'm assuming that you're familiar enough with social media to know you're looking at a bunch of tweets or you're looking at something?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

And you take a picture of it?

SGT SAUNDERS: Yes.

MR. KENNEDY: Did you move the folder in any way?

SGT SAUNDERS: At one point the folder was falling off the table, so I pushed it back onto the table –

MR. KENNEDY: Okay.

SGT SAUNDERS: – but other than that, no.

MR. KENNEDY: So at one point the folder was actually falling off the table, but you pushed it back in?

SGT SAUNDERS: Yes.

MR. KENNEDY: But obviously if you're going to take a picture of it, you had to open the folder, didn't you, there was no –

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

Sir, we've talked about the – and again, perhaps Scene 049 – let's try Scene 049 first, it might – Photo 90, whichever one is the best pictures. We start with Scene 049? Okay – no, if you could just reduce it Madam Clerk, please.

So there's two bedrooms here, is that correct, Sir?

SGT SAUNDERS: One that actually had a bed.

MR. KENNEDY: And where, which one had a bed in it?

SGT SAUNDERS: The one where the cursor is now, you would see on the right, you'll see the blue inside the room.

MR. KENNEDY: So is that where Mr. Dunphy or did someone appear to sleep?

SGT SAUNDERS: It didn't appear; there was a number of items on the bed.

MR. KENNEDY: So was there a bed in this house where someone appeared to sleep, or that someone could sleep in?

SGT SAUNDERS: If you removed everything from the bed, you could sleep in it; however, it didn't appear as though anybody was sleeping in it at the time.

MR. KENNEDY: So is there a photo, Sir, that you know of that would have pictures inside these rooms? I know we saw them earlier and I didn't –

SGT SAUNDERS: Yes, I don't recall the numbers –

MR. KENNEDY: – I didn't mark them. Let's see if we can find them. Okay. I see photo –

MS. O'BRIEN: Photo 084 is of bedroom number two, which would be the bedroom that has the bed in it.

MR. KENNEDY: So photo number – yeah, let's look at, if we have Photo 084 first, please? Okay, where is there – do you see a bed there anywhere, Sir?

SGT SAUNDERS: There is, actually. It's beyond the wicker chair. The wicker chair is sort of at the right corner of the end of the bed. You can actually see the headboard on the left wall.

MR. KENNEDY: Okay.

SGT SAUNDERS: And then there's a bag and some garbage bags, some pictures on it.

MR. KENNEDY: Okay. So all that material, this is the way you found this room.

SGT SAUNDERS: Yes.

MR. KENNEDY: All that material's in front of that bed.

SGT SAUNDERS: Yes.

MR. KENNEDY: All of that bags and everything are on top of the bed.

SGT SAUNDERS: That's correct.

MR. KENNEDY: Did you see any bed clothing or any blankets or comforters or anything like that?

SGT SAUNDERS: Unless it was mixed in with all that sort of underneath things.

MR. KENNEDY: Did it appear to you, Sir, that anyone slept in that bed?

SGT SAUNDERS: It did not.

MR. KENNEDY: Did you find a bed anywhere else in that house that someone – looked like they slept in?

SGT SAUNDERS: No, I did not.

MR. KENNEDY: Did you find that unusual?

SGT SAUNDERS: Yes.

MR. KENNEDY: You knew that Mr. Dunphy lived in the house.

SGT SAUNDERS: Yes.

MR. KENNEDY: Was there any indication as to where he slept?

SGT SAUNDERS: I guess the only other place possible, if I may speculate, would be the couch.

MR. KENNEDY: Yeah. And speaking of that couch, now if we can go – one second here – Scene 043. Okay, so this is – is that the couch you're talking about?

SGT SAUNDERS: Yes, it is.

MR. KENNEDY: Now, Sir, do you remember examining that couch and seeing if there was any cat hair on the couch?

SGT SAUNDERS: There was – yes, there was cat hair on the couch. There was cat hair on most surfaces in the –

MR. KENNEDY: Was it obvious to you, though, that on that couch, with that blanket, there was cat hair on that blanket and on that couch?

SGT SAUNDERS: I can't say for sure. I don't recall exactly if there was cat hair on that blanket.

MR. KENNEDY: Okay. But your recollection is there was cat hair on most surfaces throughout the house.

SGT SAUNDERS: Yes.

MR. KENNEDY: So if Mr. Dunphy didn't sleep in a bed that's the only – either he slept in the chair or on that couch?

SGT SAUNDERS: Correct.

MR. KENNEDY: If we could go to Photo 100, please.

Sir – and before we go to that, you were in that house at 6 or 8 o'clock that night, approximately 8 o'clock I think you were in that house?

SGT SAUNDERS: Yes, 20 to 9, I believe.

MR. KENNEDY: Would it surprise you that the two paramedics who were in that house around 3 o'clock that day said that they did not smell any cat urine?

SGT SAUNDERS: I'd be very surprised, yes.

MR. KENNEDY: Yeah. Because you can even smell it outside the house, couldn't you?

SGT SAUNDERS: You could.

MR. KENNEDY: Yeah. So this is not something that simply it was outside the house and you come in the house and then it's overpowering?

SGT SAUNDERS: Correct.

MR. KENNEDY: Yeah.

Photo 100, we're looking at the glasses there. Now you indicate that the nose pads are missing from the glasses.

SGT SAUNDERS: It appears so, yes.

MR. KENNEDY: Yeah. That when you looked at the glasses, they're in rough shape, but they're wearable.

SGT SAUNDERS: Yes.

MR. KENNEDY: One of the reasons that you didn't think they had any relevance is because they looked like they were taken off and laid down in a position if someone was wearing them.

SGT SAUNDERS: That's correct.

MR. KENNEDY: Okay.

Sir, anywhere in this house – now, you found lots of marijuana growing or marijuana growing – it looks to be lots. There's a number of plants growing.

SGT SAUNDERS: Yes.

MR. KENNEDY: Did you find any dried marijuana in the house? Again, marijuana that would be ready to smoke? Do see the distinction I'm making?

SGT SAUNDERS: I do. In bedroom number one, where the large marijuana plant was, there was dried leaves all over the floor there. However, I don't recall finding any, I guess, that was ready to smoke, bagged or what have you.

MR. KENNEDY: Yeah, in terms of what I'd be referring to, and you know what I'm talking about, there would be marijuana that's dried, crumbled up and could be ready to be smoked.

SGT SAUNDERS: Yes.

MR. KENNEDY: On that table there, was there any dried marijuana or marijuana that appeared to be ready to be smoked?

SGT SAUNDERS: Not that I recall, no.

MR. KENNEDY: Do you remember being in the house when Sergeant Conohan was there?

SGT SAUNDERS: He was outside when I was in the house.

MR. KENNEDY: Okay.

So you weren't in the house when Sergeant Conohan was there?

SGT SAUNDERS: No, I was not.

MR. KENNEDY: What was your understanding of Sergeant Conohan's role in that residence, Sir?

SGT SAUNDERS: To deal with the marijuana that was there.

MR. KENNEDY: And was it your understanding that Sergeant Conohan had examined the marijuana grow operation?

SGT SAUNDERS: No, I wasn't aware of that when I arrived.

MR. KENNEDY: Did you have any knowledge, Sir, whether one of the reasons that Sergeant Conohan was there is that to ensure that it was safe or did you have any knowledge of that?

SGT SAUNDERS: I didn't have any knowledge of that.

MR. KENNEDY: Okay.

When you were in that room did you see any plugs or lights which had to be plugged in for to grow the marijuana grow operation?

SGT SAUNDERS: Yes, I believe in bedroom number one there was.

MR. KENNEDY: And they were unplugged when you were there.

SGT SAUNDERS: Yes, I don't recall them being plugged in.

MR. KENNEDY: Okay.

Sir, the security cameras that you referred to earlier, did they look like they worked or didn't work? Were they obviously not in use? Could you tell?

SGT SAUNDERS: I couldn't really tell on the one on the outside right – or driveway side of the house. The other two didn't appear to be working but I didn't really want to make that judgement. I wanted to leave that up to someone who has expertise in surveillance video.

MR. KENNEDY: Okay.

I'm going to next ask you to go to Photo 162, Madam Clerk, please.

THE COMMISSIONER: Mr. Kennedy, just for scheduling, how do you feel you're doing there?

MR. KENNEDY: I will finish before. I don't know if anyone else has questions. I'll finish before 5.

THE COMMISSIONER: All right. If we go over a bit, anybody have a problem there?

MR. KENNEDY: Yeah.

THE COMMISSIONER: Just so we can finish with the witness. Do you think – unless he wants to stay for the snowstorm?

MR. KENNEDY: Okay.

I'm not interested in looking, Sir, at this point in terms of your trajectory analysis, but down by the couch there you'll see there's a box. What is that purple or purplish thing? Is it a blanket? Can you tell?

SGT SAUNDERS: I don't recall what that was actually.

MR. KENNEDY: Okay.

It's there covering, it appears to block the getting to the back of the couch.

MS. BREEN: Mr. Commissioner, I believe this photo was taken well after a lot of things are moved. The heater has been moved, there's a clock, there's a cat.

THE COMMISSIONER: Yes, that's correct. The heater has been moved and –

MR. KENNEDY: Okay, so this is what – when –

MS. BREEN: This is after.

MR. KENNEDY: Okay so, this is – what – when –

THE COMMISSIONER: The chair has been moved.

MR. KENNEDY: Okay, so I don't make this mistake again, what pictures – when are things moved? What are the photographs after they're moved?

SGT SAUNDERS: Well, they'd be after 138.

MR. KENNEDY: Okay.

SGT SAUNDERS: But not all of those ones after 138 are ones.

MR. KENNEDY: This is one of the ones, is it?

SGT SAUNDERS: Yeah, this is one of the last photographs there.

MR. KENNEDY: Okay. Well, let's try it this way.

MS. O'BRIEN: We do have photograph 042.

MR. KENNEDY: Yeah, that's what I was going to do Ms. O'Brien. Thank you.

If you look at photos – let's use 043; Scene 043. So there appears to be something, either a blanket, a comforter, something, down by the couch.

SGT SAUNDERS: Yes.

MR. KENNEDY: Correct?

SGT SAUNDERS: Yes.

MR. KENNEDY: There appears to be a box of some sort.

SGT SAUNDERS: Yes.

MR. KENNEDY: Could you see, from where you're going around that room, behind the couch. Was it obvious what would be behind the couch?

SGT SAUNDERS: No.

MR. KENNEDY: Do you know if the couch was back against the wall?

SGT SAUNDERS: Yes, I believe it was tight against the wall.

MR. KENNEDY: If you now go back to Scene 042, Madam Clerk, please.

You'll see that the piece of furniture that's in – do you see that, Sir? There's a piece of furniture in the back there. Did you move that, do you know?

THE COMMISSIONER: That's the upper right-hand corner.

MR. KENNEDY: The upper right-hand corner, Commissioner. Yes, thank you.

SGT SAUNDERS: Yes, I did.

MR. KENNEDY: Okay.

And was there anything – did you find anything there?

SGT SAUNDERS: No, I did not.

MR. KENNEDY: Find any bullets anywhere in the house other than the one that we've – the one in the gun and the one in the – on the table, the small table from Mr. Dunphy?

SGT SAUNDERS: No.

MR. KENNEDY: Did you find any bullets behind that couch anywhere?

SGT SAUNDERS: No.

MR. KENNEDY: Sir, you've indicated that when you went – before we do that, of course, could we go now to Scene 041, please. I'm going to – my next question will be to that in a second.

So you indicated when you left the house that night, I think it was around 1 o'clock, is it? Is that when you were leaving? Approximately, it was late.

SGT SAUNDERS: Approximately.

MR. KENNEDY: Yeah.

SGT SAUNDERS: It was late, yeah.

MR. KENNEDY: You're passing by the second vehicle. That's the Yukon. Correct?

SGT SAUNDERS: Yes.

MR. KENNEDY: Did you know that that was the vehicle that was driven by Constable Smyth?

SGT SAUNDERS: Yes.

MR. KENNEDY: So you looked inside that vehicle.

SGT SAUNDERS: I don't believe it was when we were leaving; I think it was earlier –

MR. KENNEDY: Okay.

SGT SAUNDERS: – in in the evening.

MR. KENNEDY: Okay. When did you look inside the vehicle, let me ask you that one. I assumed wrongly.

SGT SAUNDERS: Oh, sorry. It was when we were still outside, before we gone into the residence.

MR. KENNEDY: So you looked inside that vehicle, you used a flashlight.

SGT SAUNDERS: Yes.

MR. KENNEDY: You looked in the front seat.

SGT SAUNDERS: Yes.

MR. KENNEDY: You didn't see anything out of the way.

SGT SAUNDERS: No.

MR. KENNEDY: You looked in the back seat.

SGT SAUNDERS: Yes.

MR. KENNEDY: There was nothing unusual that stuck out to you.

SGT SAUNDERS: No.

MR. KENNEDY: How long would you have looked into the vehicle, Sir?

SGT SAUNDERS: Long enough to get a good look in the areas I could see.

MR. KENNEDY: So you got a good look?

SGT SAUNDERS: Yes.

MR. KENNEDY: So if there were any bloody clothes or gloves or anything like that on the, on the seat you would have seen them?

SGT SAUNDERS: I should hope so.

MR. KENNEDY: Yeah.

If there were any file folders on the seat you would have seen them.

SGT SAUNDERS: Yes.

MR. KENNEDY: Did you also use your flashlight to look on the floor of the vehicle?

SGT SAUNDERS: I couldn't see the whole floor but the areas that I could see with the flashlight. Yes.

MR. KENNEDY: And absolutely nothing stood out to you, did it?

SGT SAUNDERS: Nothing.

MR. KENNEDY: Now, in terms of – again, Ms. Breen asked you this. In terms of pens, there were pens in the house but you didn't know what to look for in terms of a pen.

SGT SAUNDERS: No, I did not.

MR. KENNEDY: So you did find pens in the house, did you?

SGT SAUNDERS: There were two pens, actually, on the round table in front of the deceased.

MR. KENNEDY: Okay.

Sir, in terms of then the Photo 041 – I'm looking now. I want you to come to Photo 041. Is there anything in that that's moved before you went there?

SGT SAUNDERS: I wouldn't be able to say.

MR. KENNEDY: No, is that – no, excuse me, let me rephrase that. I didn't do it properly. Is that photograph depict what you saw when you get there?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

So was there anything unusual about a vacuum cleaner over in the corner like that? Would that jump out at you for any reason?

SGT SAUNDERS: No.

MR. KENNEDY: Sir, the Photo 102, please, and I'm just – I know, Commissioner, there's a couple of confidential photos and I'm trying to – I don't have them marked very well, I'm just want to make sure that I don't refer to one.

No, I think we're okay; Scene 102. Okay. Thank you.

Now, I'm assuming you don't have any special expertise in bullets other than scene examination; if you find bullets you know what, you know what they are. Or do you have any expertise in bullets?

SGT SAUNDERS: No, I do not.

MR. KENNEDY: Okay.

Did you do an examination or compare the bullet that's in the rifle, compared to the bullet that's on the, on the table there?

SGT SAUNDERS: As far as being the same calibre?

MR. KENNEDY: Yeah, the same calibre first.

SGT SAUNDERS: They were the same calibre.

MR. KENNEDY: Yeah.

SGT SAUNDERS: Both .22 calibre.

MR. KENNEDY: This one looks to be a fairly old— again, I shouldn't say that. Does it look to you to be an old bullet in terms of the markings and the composition of it?

SGT SAUNDERS: It appears to be dirty. And, actually, the lead on the top, there's a couple of rings just where the brass joins on to the lead.

MR. KENNEDY: Yeah.

SGT SAUNDERS: It appears to be scuffed.

MR. KENNEDY: Okay.

Was there any comparison done or were you asked to do any comparison to the bullet that was in the gun to see if they were similar age, make, whatever?

SGT SAUNDERS: No, I wasn't. I wasn't asked that.

MR. KENNEDY: Now, Sir, you mentioned earlier – and the question wasn't followed up on – that in terms of touch DNA on bullets.

SGT SAUNDERS: Yes.

MR. KENNEDY: First, what is touch DNA?

SGT SAUNDERS: Touch DNA –

MR. KENNEDY: To the best of your knowledge.

SGT SAUNDERS: To the best of my knowledge, and I've consulted the lab for various cases I've been involved in, touch DNA can have two forms. It's a brief touch. For example, if someone enters someone else's home, grabs something and lets go, compared to if someone brings something to that home that they own or they have possession of. Two different types of DNA, the way the lab looks at it. The brief touch DNA has a very low success rate of finding anything –

MR. KENNEDY: Is there – have you heard of a principle of transference in terms of DNA? In terms of touch DNA?

SGT SAUNDERS: I'm not sure what you're referring to.

MR. KENNEDY: Okay. So you haven't heard that term?

SGT SAUNDERS: Not that term, no.

MR. KENNEDY: Okay. So you continue then.

SGT SAUNDERS: Yeah. So basically, what I was informed by the lab was that – now, I’m talking break and enter scenes that I attended.

MR. KENNEDY: Yeah.

SGT SAUNDERS: To give you an example. Any exhibits that are briefly touched, they wouldn’t accept for a touch DNA. Anything that’s handler DNA, that someone owns or someone has handled for a period of time, then there’s more of a likelihood of getting touch DNA from that.

MR. KENNEDY: Okay.

Sir, when you moved the – again, let’s find the photograph here that’s of help. Let’s use Scene 045. Is that our confidential photo? No, Scene 045 is okay. Let’s actually use Scene 044, which is actually a confidential photo.

The chair that Mr. Dunphy is sitting in there, Sir.

SGT SAUNDERS: Yes.

MR. KENNEDY: When you – I think you indicated that after Mr. Dunphy’s body was moved, was taken away, that you looked behind the chair.

SGT SAUNDERS: Yes.

MR. KENNEDY: And so you moved the chair?

SGT SAUNDERS: That’s correct.

MR. KENNEDY: Was the chair up against the wall, out from the wall when you moved it, do you know?

SGT SAUNDERS: It was out from the wall.

MR. KENNEDY: And how far was it out from the wall?

SGT SAUNDERS: I’m not sure. If I could perhaps refer to my notes. I may have noted that in the plan drawing.

MR. KENNEDY: Okay. So your notes would be – that would be P-0537, I think are your typed notes.

SGT SAUNDERS: No, my handwritten notes.

MR. KENNEDY: Handwritten notes would be –?

SGT SAUNDERS: Yes.

UNIDENTIFIED FEMALE SPEAKER: 548.

MR. KENNEDY: 548. Could we have P-0548, please?

Are those the notes you're looking for, Sir?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

SGT SAUNDERS: If we could scroll down to where my diagram is, I had measurements.

MR. KENNEDY: Okay. I was going to show you – yeah, your diagram is on page 3.

SGT SAUNDERS: And keep going down. Stop. Just back up a little bit there.

MR. KENNEDY: And page 3 is the diagram. That's the diagram you're looking for, is it?

SGT SAUNDERS: Yes, but I was just looking for any extra measurements I had down toward the bottom.

MR. KENNEDY: Okay.

SGT SAUNDERS: If you could scroll to the next page and stop there. Okay. No, I didn't note the actual distance from the chair to the wall; however, I noted Mr. Dunphy's knees, his head positioning and the size of the chair.

MR. KENNEDY: Okay.

SGT SAUNDERS: So if you look on the diagram there – no, actually on the diagram it is tight to the wall. So it would have been tight or relatively small distance from the wall.

MR. KENNEDY: Okay. So when you say relatively small distance, do you know how far that would be when you moved it?

SGT SAUNDERS: I can't say for sure. I don't have a record –

MR. KENNEDY: Do you remember there being a space between the chair and the wall when you moved the chair?

SGT SAUNDERS: I remember there being a space, yes.

MR. KENNEDY: Yeah. Can you say whether that space would have been a couple of inches or six inches, a foot, or do you have any specific recollection of that?

SGT SAUNDERS: I don't have a recollection of it. I'm not sure if it was captured in any of the photos from the scene.

MS. O'BRIEN: It might be captured. It's in a confidential photo, but in scene – Photo 125, it is confidential.

THE COMMISSIONER: What is it, 425?

MS. O'BRIEN: 125.

THE COMMISSIONER: 125.

MS. BREEN: Mr. Commissioner, there's also the photos taken by Corporal Foote. I think he had a good side view of the chair versus the wall. I know that those are confidential as well.

MR. KENNEDY: Does that help you, scene – oh, do you have it yet, Sir?

SGT SAUNDERS: Not yet, sorry.

MR. KENNEDY: Okay.

Do you remember, Ms. Breen, what the number of his photos would be?

MS. BREEN: No, I just tried to check but they're confidential. And they were a series of five photos that went in under corporal –

MR. KENNEDY: I do, I remember the photos going in. Anything that can help us Commissioner, I –

SGT SAUNDERS: Actually, from that photo it appears to be tight to the wall.

THE COMMISSIONER: That's 125, Mr. Kennedy. That just came up.

MR. KENNEDY: Yeah, that's 125. When you say it's tight to the wall, you see, though, down towards the bottom there appears to be some space, isn't there?

SGT SAUNDERS: Yes, certainly.

MR. KENNEDY: So we don't have the – or do you know, Ms. O'Brien and Ms. Chaytor, if we have a photo on the other side?

MS. O'BRIEN: There's no photo on the other side, to my knowledge.

MR. KENNEDY: Can we bring up the photos taken by Corporal Foote to see if they're of assistance to us. Does anyone know the number? Ms. Chaytor has all that on her iPhone, Commissioner. That's pretty organized. Okay.

MS. CHAYTOR: (Inaudible.)

MR. KENNEDY: Okay, I'll keep going Commissioner when we, we –

THE COMMISSIONER: We can come back to that, yeah.

MR. KENNEDY: Yeah, I'll make a note. I'll leave that aside and make a note. I don't want to waste any time. Okay.

Now, I want to refer you now to Exhibit P-0537, those are your typed notes. And if we go to page 6. No, if you – yes, okay. No, scroll down a little bit please, Madam Clerk. Okay, right here.

So you'll see that on April 17, 2015, at approximately 9:49 there's an email from Sergeant Kent Osmond in relation to the letter from the Dunphy family lawyer, Ms. Breen, citing tunnel vision on part of the investigation team. She advised of a "critical piece of evidence" from the scene that police didn't seize, namely a pair of glasses.

Now did you at that point, were you surprised with the reference to these glasses as a critical piece of evidence?

SGT SAUNDERS: Yes, I was.

MR. KENNEDY: Did you think that that might have been over-exaggerating somewhat the nature of that piece of evidence?

SGT SAUNDERS: In my opinion, yes.

MR. KENNEDY: Yeah. Was there any explanation – and Ms. O’Brien, remember, showed you a number of the emails. Was there any explanation given as to why it would be a critical piece of evidence?

SGT SAUNDERS: To this day, I don’t know.

MR. KENNEDY: Well, it appears to be suggested that it would be a critical piece of evidence because the glasses could have been knocked off in a scuffle or confrontation. Does that help you in any way understand why the glasses could be a critical piece of evidence?

SGT SAUNDERS: They didn’t appear to me to be damaged other than through normal wear –

MR. KENNEDY: Yeah.

SGT SAUNDERS: – and hard wearing.

MR. KENNEDY: Yeah.

And then there seemed to be they – I think you indicated they appeared to you to be laid in a way where someone took them off?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

You go on to state that you viewed the scene photos and located the eyeglasses in several images. You see that in the next paragraph?

SGT SAUNDERS: Yes.

MR. KENNEDY: They appear to be bent out of shape with white tape on the ear piece and one of the arms where it joins the lens frame. So there was tape on them?

SGT SAUNDERS: There was.

MR. KENNEDY: Bent out of shape. There did not appear to be any damages “any damage to the glasses related to this incident and the position is consistent with them being placed there in a controlled manner.”

That was your – what you said in your report.

SGT SAUNDERS: Yes.

MR. KENNEDY: Is that still your testimony today?

SGT SAUNDERS: Yes.

MR. KENNEDY: So as of April 17 you were aware of these glasses, the importance at least to Ms. Dunphy and that she wanted to ...

SGT SAUNDERS: Yes.

MR. KENNEDY: She saw them as a critical piece of evidence. Have you learned of anything since that date which would make these glasses a critical piece of evidence in your opinion?

SGT SAUNDERS: I have not. No.

MR. KENNEDY: Sir, if I could ask you now – if, Madam Clerk, if we could go to page 5 of this report, please.

At the second paragraph: I moved the rocker/recliner out from the wall. Is that the chair that Mr. Dunphy had been sitting in?

SGT SAUNDERS: Yes.

MR. KENNEDY: "... and examined the floor under and next to it, moving the garbage items that littered the floor."

SGT SAUNDERS: Yes.

MR. KENNEDY: But I'm assuming that the pictures that we have seen here depict the picture or the scene prior to anything being moved by yourself.

SGT SAUNDERS: That's correct.

MR. KENNEDY: So we have good pictures of the scene prior to you moving anything.

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

Then, Sir, we get into the issue of the grey hooded sweatshirt. And if I could refer to, let's start with Scene 1 – I think it's Scene 185 and then we'll go back to 044, 045. In 185, again, if I understand correctly, that's taken –

MS. O'BRIEN: (Inaudible) in 185?

MR. KENNEDY: Yeah, is that taken –

MS. O'BRIEN: That is a confidential exhibit.

MR. KENNEDY: Yes, okay.

And Scene 185 is taken later or is it, because it'd be – 130.

SGT SAUNDERS: Not up there yet.

MR. KENNEDY: Okay, let's wait.

MS. O'BRIEN: Okay, thank you. It's okay.

UNIDENTIFIED FEMALE SPEAKER: Oh, sorry.

MR. KENNEDY: Okay, so Scene 185

MS. O'BRIEN: And we have the exhibit numbers of the photographs you were looking for –

MR. KENNEDY: Okay.

MS. O'BRIEN: – for Corporal Foote. They're C-0008 to C-0012.

MR. KENNEDY: Okay, we'll come back to those in a second. Let's finish this area first.

So this is Photo 185. That appears to be a piece of clothing, a hoodie or something, does it?

SGT SAUNDERS: Yes.

MR. KENNEDY: And then you'll see that there is the stereo door.

SGT SAUNDERS: Yes, that's correct.

MR. KENNEDY: Okay.

You've been asked whether or not you could tell that stereo door had been moved prior to, I'm trying to remember now how or when – if the stereo door was open when you – you found the scene that way.

SGT SAUNDERS: Yes.

MR. KENNEDY: I think that's the way it was put to you.

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

Now, to use the words of another witness, Sir, I don't want to start playing Columbo but let's have a look at scene – if you can – I don't know how we're going to do this. I need you to get a look at a couple of pictures at the same time so I guess I'll have to show you mine.

MS. O'BRIEN: Sergeant Saunders may have with him his book of photos.

MR. KENNEDY: Do you have your photos, Sir?

SGT SAUNDERS: I do, yes.

MR. KENNEDY: Okay, so if we could bring up Scene 185, Madam Clerk. And if I could ask you, Staff Sergeant Saunders, to go to Scene 044 which is a confidential picture, Mr. Commissioner. And Scene 045 might be also of assistance to you.

SGT SAUNDERS: Yes.

MR. KENNEDY: If you look at Scene 044 – and, again, this could be the angle taken, I don't know, but it appears to me that the wires below that piece of clothing appear to be a little bit differently shaped or moved than in photo – Scene 185. Can you offer any comment on that?

SGT SAUNDERS: The wires on the floor you mean?

MR. KENNEDY: Yeah. If you look at the wires on the floor in Scene 044, they do not appear to have the same composition to me as outlined in 185. Can you offer any comment on that? In other words, they appear to be moved.

SGT SAUNDERS: It's hard to tell from that picture and the angle as well because I think we're missing some from the – in Scene 044 behind the white garbage can.

MR. KENNEDY: Okay, just try Scene 045. Does that help you at all? Because I'm seeing a sort of H-shaped wire composition in Scene 044 and 045 that I don't see in Scene 185.

THE COMMISSIONER: Could I see that, Mr. Kennedy? Because I don't –

MR. KENNEDY: Yeah, I could be – this, as I said –

THE COMMISSIONER: Or maybe the Clerk could bring up 044 and 045.

SGT SAUNDERS: Umm – sorry. The photo just disappeared there.

THE COMMISSIONER: Okay, so we have 044 –

MR. KENNEDY: Yeah. No, we need 185 on the screen, Madam Clerk.

THE COMMISSIONER: Okay, we got 145 back. Yeah.

MR. KENNEDY: It could just be the angle, Staff Sergeant, I don't know, but I'm just posing the question to you.

SGT SAUNDERS: So looking at the, where that bag of dried leaves are, the brown leaves –

MR. KENNEDY: Is that marijuana?

SGT SAUNDERS: I don't know.

MR. KENNEDY: Okay.

SGT SAUNDERS: You can see it in Scene 045.

THE COMMISSIONER: Scene 045, where –

SGT SAUNDERS: Where you're seeing that H shape.

THE COMMISSIONER: All right, where am I supposed to be looking here now?

SGT SAUNDERS: Yeah, 045.

MR. KENNEDY: In Scene 044, Commissioner, what I'm suggesting is that –

THE COMMISSIONER: Scene 044, okay.

MR. KENNEDY: Yeah, if you look at the wires there, I don't see that bag that's being referred to, but the wires seem to be in a little bit of different shape, almost like an H shape.

THE COMMISSIONER: Okay.

SGT SAUNDERS: The bag is actually there, just sort of down from the H shape.

THE COMMISSIONER: 044. So where am I supposed to be seeing the wire, to the right of the chair there?

MR. KENNEDY: To the left of the chair, Commissioner, there's a grey piece of clothing.

THE COMMISSIONER: Oh yeah, the grey. Okay.

MR. KENNEDY: You'll see there's a bunch of wires there.

THE COMMISSIONER: Yes, underneath the clothes –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – coming out from the orange container.

MR. KENNEDY: Right.

SGT SAUNDERS: Yes. I see the H shape you're referring to but I think we're in the scene at the time – or the image that's on the screen, we're not seeing the full, the full –

THE COMMISSIONER: Right.

SGT SAUNDERS: Because you see the bag on the screen. I can see the bag in the photo just adjacent to that.

THE COMMISSIONER: Yeah, the left side of the hoodie seems to be cut off in 044 on mine. I can't see it.

MR. KENNEDY: Okay, let's try 045.

THE COMMISSIONER: 045 and we don't see that – is that a paper bag, is it, in 185?

MR. KENNEDY: It could be the missing marijuana, Commissioner, I don't know.

THE COMMISSIONER: (Inaudible.)

SGT SAUNDERS: On the screen, if you look at that baggie and you see the, I guess, the zip seal on the baggie.

THE COMMISSIONER: Oh yeah.

SGT SAUNDERS: Just below that you can see some wire. And I think that's what you're referring to as the H, as the centre part of the H.

MR. KENNEDY: Yeah.

THE COMMISSIONER: All right, let me see now. We've got 045 there.

MR. KENNEDY: The position that seems to be suggested, Commissioner, is that – or at least put forward by implication by Commission counsel is that if the stereo door was open, then the clothing could not have been used to cover the gun.

And what I'm suggesting here, it's not clear that that picture, that that stereo door is open in these other pictures as it is in 185.

THE COMMISSIONER: 184.

MR. KENNEDY: And that the wires demonstrate that. In other words, that something was – the stereo door could have been opened after the original pictures were taken.

THE COMMISSIONER: I don't see. I don't –

SGT SAUNDERS: In Scene 044 –

THE COMMISSIONER: 044.

SGT SAUNDERS: – where the door is clearly open there, this would have been one of the –

MR. KENNEDY: Scene 044 is clearly open?

SGT SAUNDERS: You see the black –

THE COMMISSIONER: All right

SGT SAUNDERS: – plastic tab that goes on sort of the top corner of the glass door, Scene 044?

THE COMMISSIONER: That's, you can't see the – it doesn't photograph very well because it's transparent but you're saying there right above there's a place with – the wallpaper is torn.

SGT SAUNDERS: Yes, that's correct.

THE COMMISSIONER: And that black spot, you're saying that that's the tab from the stereo. Okay.

SGT SAUNDERS: The tab on the – down around the door that would adhere to the magnet that's common on those types of stereo cabinets.

THE COMMISSIONER: I don't know if I've imagined it or not but I seem to be able to see a line coming down.

SGT SAUNDERS: Yes, I think if Scene 044 is –

THE COMMISSIONER: A slightly darker area there. Mr. Kennedy, can you see it?

SGT SAUNDERS: Yes.

MR. KENNEDY: I see the black that's referred to by the officer and I see the top part of what appears to be glass but, no, I can't say, Commissioner.

SGT SAUNDERS: I think if Scene 044 was perhaps put on screen you'd be able to zoom in on that and see.

MR. KENNEDY: Okay. Let's put Scene 044 up.

MS. O'BRIEN: That is confidential – that is a confidential exhibit so we'll keep our monitors off.

THE COMMISSIONER: Okay. We'll zoom in on that.

Yeah, I think that's the edge there. You see just above and to the right that little black spot there. Is that the curved edge of the stereo or ...?

SGT SAUNDERS: Yes, and you can see the top –

THE COMMISSIONER: Yeah.

SGT SAUNDERS: – top of glass door that –

THE COMMISSIONER: Yeah.

SGT SAUNDERS: – appears to come out on an angle indicating that it's in the open position.

MR. KENNEDY: I see the black in the top. Yes, I do.

So that – so you're saying that that picture corresponds with Photo 185?

SGT SAUNDERS: Yes.

MR. KENNEDY: Okay.

Now, we were going to bring up the photos taken by Corporal Foote.

MS. CHAYTOR: I think it's C-0009.

MR. KENNEDY: Okay C –

MS. CHAYTOR: C-0009 (inaudible) both being helpful to you.

MS. O'BRIEN: C-0009 seems to be the better.

MR. KENNEDY: They're confidential. Correct?

MS. O'BRIEN: They are. Yes.

MR. KENNEDY: Okay.

MS. CHAYTOR: You might (inaudible).

MR. KENNEDY: (Inaudible) to the right.

MS. CHAYTOR: What's that?

MR. KENNEDY: (Inaudible) there, on that side over there.

MS. CHAYTOR: Yeah, there's nothing over there.

MR. KENNEDY: Okay.

MS. CHAYTOR: Just go right here (inaudible).

MR. KENNEDY: Don't (inaudible) alone because the chair seems to be –

MS. CHAYTOR: (Inaudible.)

MR. KENNEDY: Okay, if we could just look at this.

THE COMMISSIONER: That's Corporal Foote's photo?

MR. KENNEDY: Corporal Foote's photo. And you'll see on the right-hand side – could you make it a little bit smaller. Is that as small as it goes? That's – okay, yeah.

So what we see is that the top of the chair looking at it from the left – I guess it would be Mr. Dunphy's left side – appears to be tight to the wall. Is there any picture that shows down below that and more particularly to the right-hand side?

Because if I remember your testimony, Staff Sergeant – please correct me if I'm wrong – is that there appeared to be, even though it could be tight to the wall at top, down below there could be some room between the chair on the wall. Is that correct?

SGT SAUNDERS: That is correct. Yes.

MR. KENNEDY: Yeah. Does either one of the photos taken by Corporal Foote show either the bottom part of the chair or especially to the right-hand side where the gun came from?

MS. O'BRIEN: Not that I'm aware of, Mr. Kennedy.

MR. KENNEDY: Okay.

So I guess on that point then I'll have to conclude, Staff Sergeant Saunders, that even if the top part of the chair is tight to the wall, the chair is tapered in such a way that there could still – there was space down below between the chair and the wall. Is that correct?

SGT SAUNDERS: Yes, that's correct.

MR. KENNEDY: You just can't tell us how much there was.

SGT SAUNDERS: Yeah, I can't tell you how much there was.

MR. KENNEDY: Okay. Those would be my questions.

Thank you, Staff Sergeant.

THE COMMISSIONER: Thank you, Mr. Kennedy.

Mr. Avis?

Does counsels follow?

MR. AVIS: Yes, I think.

Sergeant Saunders, my name is Nick Avis. I represent the Royal Newfoundland Constabulary.

I believe I only have a handful of questions, some follow-up questions in light of what has transpired.

Yes, I'd like to go back to 044 and 045; they're both confidential. We'll start with 044.

It doesn't matter, 044 is good.

MS. O'BRIEN: (Inaudible.)

THE COMMISSIONER: One of them was taken out I think, 045.

MR. AVIS: 045 is – sorry, 044 is better, I believe. Okay.

No, I just want to talk about the void. Is it fair to say you have no idea when that void was created?

SGT SAUNDERS: That's correct.

MR. AVIS: So even if we are making some kind of an assumption – and I'm going to call it an assumption – that the weapon, the rifle may possibly have been in that area at some point in time, is it fair to say you have no idea when?

SGT SAUNDERS: That's fair to say. Yes.

MR. AVIS: (Inaudible.)

Sorry, I'm having to skip things here not to ask.

Okay, if we go to – sorry, that's covered too.

Okay, with respect to things that weren't checked, you were mentioning a few oversights; one of them was the fingernails. Correct?

SGT SAUNDERS: Yes, the bagging of the hands.

MR. AVIS: Right, the bagging of the hands. So generally what you'd be looking for there to see if there was any, I don't know, DNA from somebody else, bits of flesh, whether he might have scratched somebody.

SGT SAUNDERS: Yes.

MR. AVIS: That's the principal aim for that. Gunshot residue; we know Mr. Dunphy doesn't shoot the gun so there's no consequence to that either. Am I correct?

SGT SAUNDERS: Yes. And he was actually shot at four times so I would expect there would be gunshot residue on him from that.

MR. AVIS: On him, yes, but I – I mean his own hands, for example.

SGT SAUNDERS: Okay, yes.

MR. AVIS: And as you say, since he was shot four times, you're bound to find gunshot residue there.

SGT SAUNDERS: Yes

MR. AVIS: When you saw Mr. Dunphy, did you see anything that looked like scratches or marks that could indicate any kind of assault on him?

SGT SAUNDERS: No, I did not.

MR. AVIS: Similarly, with the ammunition you didn't find, that would have no consequence on anything you did. Correct?

SGT SAUNDERS: Not in my opinion, no.

MR. AVIS: And you could have got – fingerprint analysis would not have meant anything, would it?

SGT SAUNDERS: Not from my experience, no.

MR. AVIS: With respect to Justice Riche and overstepping his role, this meeting that you had with the group just before meeting with him, what was the view – what were the views expressed of overstepping his role?

SGT SAUNDERS: Nothing specific, just that they felt he was conducting his own investigation.

MR. AVIS: Yeah. Was that discussed with him directly?

SGT SAUNDERS: Not in my presence.

MR. AVIS: So fair to say you had nothing to do with retaining him in this matter.

SGT SAUNDERS: Nothing.

MR. AVIS: Now, I'd like to get some clarification on: Knew what had taken place when you got there. If I understood it, you knew that Mr. Dunphy had been shot by a police officer. Correct?

SGT SAUNDERS: Correct.

MR. AVIS: So you knew the identity of the shooter.

SGT SAUNDERS: Yes.

MR. AVIS: You had the weapon of the shooter.

SGT SAUNDERS: I didn't but –

MR. AVIS: Well, okay, sorry.

SGT SAUNDERS: – I knew it was ...

MR. AVIS: It was available to everyone.

SGT SAUNDERS: Yes.

MR. AVIS: And you also had the shooter himself. Correct?

SGT SAUNDERS: Yes.

MR. AVIS: So you, did you – were you also – brought to your attention that self-defence may be an issue?

SGT SAUNDERS: It wasn't brought to my attention but it's always a consideration.

MR. AVIS: Right. But knowing the identity of the shooter and so forth, would that, in any way, alter the rest of your examination of the scene?

SGT SAUNDERS: Yes.

MR. AVIS: In what way?

SGT SAUNDERS: If it was a, for example, a found body, and we didn't know who the shooter was, a full fingerprint examination of the scene, footwear impressions, to try and determine who was in the residence. Or in this case, we knew two people were in the residence, so those examinations would have – wouldn't have been of any value in my opinion at the time.

MR. AVIS: Okay. So knowing the identity of the shooter and the kind of analysis that would follow, was your investigation from that point onwards in any way influenced by anything that had been said to you?

SGT SAUNDERS: I don't feel it was. No.

MR. AVIS: If we could go to 125, that is – I'm going to find it – sorry. Is it confidential? Yes, it is confidential.

Is it up on your screen?

SGT SAUNDERS: Not yet.

MR. AVIS: Okay.

SGT SAUNDERS: It is now.

MR. AVIS: Okay.

Now, I'm just wondering about his position in the chair because that seems to be – have you any idea of the distance between the small of his back and the back of the chair?

SGT SAUNDERS: No.

MR. AVIS: Does it appear to you or did it appear to you at the time that the placement of his buttocks in relation to the back of the chair, that distance, did it give you any cause for reflection?

SGT SAUNDERS: It didn't – it didn't appear to be a normal sitting position.

MR. AVIS: Okay.

That's probably all I can get from that. Thank you.

Just one moment.

Now, I just want to go back and it, you know, could be my eyesight. But if – and the trouble is we need here two pictures, so if you could look at 185 at the same time as you look at, say, 044.

MS. O'BRIEN: And both of these are confidential.

MR. AVIS: Right. Both are confidential so I guess we want one on the screen and – so, Madam Clerk, you pick which one on the scene and we'll find the other one.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) 184.

MR. AVIS: Number 044 or 185 and we'll look at the other one. If you're having difficulty I can proceed without it. Oh, there we go.

Okay, so we've got number 044 up there. Well, if you go to 1 – I see the door open, wasn't my issue. If you look at 185, if you look at the left – go along the bottom of the picture to where the Baggie is with the tie piece that's pink and – purple and blue or pink and blue.

SGT SAUNDERS: Yes.

MR. AVIS: Now, do I see coming out of the bottom of that a wire, as if the wire is actually going along the bag, actually following the thing that you close it with, the Ziploc®?

SGT SAUNDERS: That's correct.

MR. AVIS: Can you see that in 044 or 045 because I can't.

SGT SAUNDERS: No.

MR. AVIS: To me, the wires seem to have been moved. Is that correct?

SGT SAUNDERS: Yes.

THE COMMISSIONER: No, the angle is different, isn't it?

MR. AVIS: Oh no, but you see the – if you look at the one in 185 –

THE COMMISSIONER: If I look –

MR. AVIS: – the wire is underneath it and comes out from the bottom of it.

THE COMMISSIONER: I see that. Okay.

MR. AVIS: And in 184 –

THE COMMISSIONER: No, no (inaudible).

MR. AVIS: – angle or not –

THE COMMISSIONER: Wait now. When you say the bottom, the bottom of what?

MR. AVIS: Okay, well, if you go to the bottom left-hand corner.

THE COMMISSIONER: This is one of these Ziploc® plastic containers, right?

MR. AVIS: Right. Between the Ziploc® bag and the bottom of the picture –

THE COMMISSIONER: Yeah.

MR. AVIS: – is a piece of wire which suggests the wire is underneath the bag and coming out from underneath the bag.

THE COMMISSIONER: Right.

MR. AVIS: If you go to 1 – to 044, that’s just not there at all. It’s just not – I know it’s hard to see.

THE COMMISSIONER: Well, the reason it’s not there, I think, from what I’m looking at is that in 044 you’re cut off from part of 185.

MR. AVIS: Right.

THE COMMISSIONER: The left part where the Baggie is – sorry, where the Ziploc® –

MR. AVIS: Right. But I’m referring to the right-hand side of the Ziploc® bag which is visible in 044 and 185. And in 185 there appears to be a wire coming out in exactly the same location that is not there. And maybe it’s something for everyone to take a long look at.

THE COMMISSIONER: Well, we’ll take a look at it on a sober day.

MR. AVIS: On a sober day, maybe not at the end of a long day.

THE COMMISSIONER: Not at this hour in the evening.

MR. AVIS: I believe the officer had one more –

THE COMMISSIONER: Sure, yeah.

MR. AVIS: You’d like to make a comment, Sir?

SGT SAUNDERS: It appears to be from that, that the bag is actually moved.

MR. AVIS: Okay, something’s moved. That’s all I’m trying to –

SGT SAUNDERS: Yes.

MR. AVIS: The relationship between the Baggie and the wires has changed in some way.

SGT SAUNDERS: And, actually, if you look at the picture on the screen you’ll see there’s a white cord plugged into the outlet.

THE COMMISSIONER: That’s 80 – 185?

SGT SAUNDERS: 044 –

MR. AVIS: No.

SGT SAUNDERS: – on the screen.

THE COMMISSIONER: Oh, 044. Okay.

SGT SAUNDERS: It's not plugged in in 185 –

MR. AVIS: Right.

SGT SAUNDERS: – because the power bar that's to the right of the chair has been unplugged because the fan was moved and whatnot.

THE COMMISSIONER: Okay, just let me see there now because we actually had, I think, an email come in during the break pointing that out as an irregularity from some – some anonymous viewer who appears to have picked up something. So who knows, maybe all trials should be inquiries.

Okay. So where is the plug you're talking about there?

SGT SAUNDERS: Right here, the white plug in the bottom.

THE COMMISSIONER: The white plug at the bottom is in – that's in 044. And in 0185 you say it's not there?

SGT SAUNDERS: It's not there because it's unplugged.

THE COMMISSIONER: 0185, it had been unplugged because, as you know, that you moved the heater?

SGT SAUNDERS: Yeah. Well, I moved the chair and I moved –

THE COMMISSIONER: That you moved –

SGT SAUNDERS: – a couple of things out of the way there.

THE COMMISSIONER: 0185; let me see now. Before we let you go, I want to make sure I got everything. 0185, okay, so that's just a shadow of the wire. Yeah, the plug is out there so that's – number 0185, so that's one of the photos that was taken after you'd moved things around.

SGT SAUNDERS: That's actually the second last photo I took.

THE COMMISSIONER: Right.

SGT SAUNDERS: Because it says –

THE COMMISSIONER: Anything over Photo 0134 does not show the way the scene was when you went in there. It shows what the scene was after you'd moved certain things around.

SGT SAUNDERS: The next day, yes.

THE COMMISSIONER: Yeah. Okay, that's helpful.

All right. Ms. Rasmussen and Mr. Freeman, did you get any emails that could help us solve this?

MS. RASMUSSEN: Sergeant Saunders, you said earlier that a best practice in securing a scene would be to post a guard at the back of the house to watch the entry door. Is that correct?

SGT SAUNDERS: Yes.

MS. RASMUSSEN: Can you comment on why that may not always be done?

SGT SAUNDERS: If the assessment of the scene determined that it needn't be done. If the members are the first responders that attend the scene and perform that securing of the scene, they may determine that for some reason – I mean, I can't surmise what the reason might be but some reason for there not to have that necessity to post a guard.

MS. RASMUSSEN: And what if there are only two or three members on the scene?

SGT SAUNDERS: I know on that scene, at least one member was dedicated to traffic because it was a very narrow road and there was a lot of traffic going back and forth. So if there's only one or two members on a scene, they may decide to not post a guard at the back after an assessment of that.

MS. RASMUSSEN: And when you arrived Corporal Foote was already inside the house, but did you have any reason to think that anyone had entered the house at any time through the back door before you arrived?

SGT SAUNDERS: No.

MS. RASMUSSEN: I think you said photos are not normally taken by first responders to the scene.

SGT SAUNDERS: That's correct.

MS. RASMUSSEN: And we know there were numerous cats at the scene, so Corporal Foote decided to take a few photos since he was one of the first people in the house. Can you comment on whether that was a good idea or a bad idea?

SGT SAUNDERS: I can't say it's a bad idea. I don't think anything detrimental was done –

THE COMMISSIONER: He gave a fairly realistic explanation. He said he was concerned about the number of cats and whether he could control them all and was concerned that something was going to get knocked down, whether it be the rifle or something else. That makes sense, doesn't it?

SGT SAUNDERS: It's certainly a good reason.

THE COMMISSIONER: Yeah.

MS. RASMUSSEN: Because you're not always confronted with 30-some odd cats in a crime scene. Is that right?

SGT SAUNDERS: That is correct.

MS. RASMUSSEN: Does it ever happen that when you attend a scene, someone like a first responder tells you something was moved?

SGT SAUNDERS: Yes, I've had that happen before.

MS. RASMUSSEN: And did anyone tell you anything like that had happened at this scene?

SGT SAUNDERS: Other than the cats being sort of pushed into the rooms, and I don't know if the doors were closed prior to or after, but that's the only thing that comes to mind right now.

MS. RASMUSSEN: You mentioned that in and around the home there were – there was evidence of cat feces and cat vomit, right?

SGT SAUNDERS: Yes.

MS. RASMUSSEN: Are you able to comment on whether that, that material looked fresh or was it old? Had it ...?

SGT SAUNDERS: Some of it appeared to be dried.

MS. RASMUSSEN: Okay.

Those are my questions.

THE COMMISSIONER: Thank you.

Oh, sorry, Ms. O'Brien has one.

MS. O'BRIEN: Sorry, Commissioner, I do have one question arising. Madam Clerk, if we could please see photograph 042.

Sergeant Saunders, in your cross-examination by Mr. Kennedy you mentioned at one point you – the folder was about to fall off the table or you had to give it a push in.

SGT SAUNDERS: Yes.

MS. O'BRIEN: I'm just wondering, so this photograph which is scene 042, which has a CW number of 51, so it's in the initial sections. Can you tell us, was this before or after you had to give the folder a push?

SGT SAUNDERS: This was before.

MS. O'BRIEN: Okay.

Thank you.

THE COMMISSIONER: Nothing further?

MS. BREEN: Mr. Commissioner, I just have one comment. It's in response to a line of questioning by Mr. Kennedy regarding Meghan Dunphy's exaggeration of an issue.

I'd just like to refer the Commission to the actual correspondence that was sent that was referenced in the phone conversation by Sergeant Osmond is already exhibited at the inquiry as Exhibit P-0043. And at page 4 in the fifth paragraph you will see that the phrase that was actually used is "piece of potentially relevant evidence"

THE COMMISSIONER: Piece of ...?

MS. BREEN: Potentially relevant evidence.

THE COMMISSIONER: Well, it's worded differently in another one. In the one I have here it's – there's language similar to Mr. Kennedy's, I think.

MS. BREEN: That's on the notes from the sergeant that we put up on the screen, but I understood that was based on a phone call from Sergeant Osmond while you were in Ottawa. Is that correct?

SGT SAUNDERS: That's correct. Yes.

MS. BREEN: The letter that the –

THE COMMISSIONER: The letter that you sent –

MS. BREEN: – is actually exhibited at the inquiry with the phrasing is right there.

THE COMMISSIONER: Okay. Thank you.

MS. BREEN: Thank you.

MR. KENNEDY: I don't think I used the word "exaggeration."

THE COMMISSIONER: Hmm?

MR. KENNEDY: I don't think I used the word "exaggeration."

THE COMMISSIONER: Someone did because I recall –

MS. BREEN: I believe you did.

THE COMMISSIONER: I'm not sure if it was you. I recall when it was used Mr. Kennedy. I'm not saying it was you but at some point, at some point –

MR. KENNEDY: It's not a word that I wouldn't use (inaudible).

THE COMMISSIONER: Yeah. No, it wouldn't be your first exaggeration.

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: My recollection is that there was something about an exaggerated depiction or something of that nature Mr. – anyhow thank you for that, Ms. Breen. We'll note that, I mean the language used. Okay.

I see you have it on your phone and you carry it around with you at all times. Okay.

All right, well tomorrow it looks like we're going to get a snow day so watch just in case something happens. If government closes tomorrow, we'll close; if they open, we'll open. And –

MR. KENNEDY: Who will be the witnesses, though, if we –

THE COMMISSIONER: Sorry, what?

MR. KENNEDY: If we open tomorrow and that chance, who will be the witnesses? Because what we have now is a schedule for Wednesday.

THE COMMISSIONER: Do we not – we still have the two witnesses on standby, I believe. Don't we?

MS. CHAYTOR: Yes. Do you want to speak to that?

MS. O'BRIEN: So I understand because Corporal Kelly Lee is coming in from out of town, she's in Clarendville –

THE COMMISSIONER: Yeah, we're going to switch someone.

MS. O'BRIEN: She's going to go to Wednesday for now and what it will be begin with tomorrow, if we do begin, with Jason Sheppard.

THE COMMISSIONER: Okay.

Is that all right, Mr. Kennedy?

MR. KENNEDY: Oh, that's fine.

THE COMMISSIONER: Now, you know, the odds are, from what I've seen, is that it's doubtful but – and I'll try not to do anything that is going to get us all trapped here tomorrow for two or three days, which happened to me while I was at university, but we didn't mind too much in those days.

Sorry, you were going to say, Ms. Chaytor?

MS. CHAYTOR: No, that's fine. I'll just mention Mr. Avis was good with the (inaudible).

THE COMMISSIONER: Okay. Go ahead.

MS. CHAYTOR: Mr. Avis looked a little surprised about his witness being moved up to the morning, so we want to make sure that it's okay with him and his witness, if that were to happen.

THE COMMISSIONER: All right.

MS. CHAYTOR: His witness is Jason Sheppard.

MR. AVIS: I'm okay any time tomorrow. I just didn't get the time. Sorry.

MS. CHAYTOR: Yeah, he wasn't due –

MR. AVIS: He's due tomorrow –

MS. CHAYTOR: – until tomorrow afternoon.

MR. AVIS: – afternoon.

MS. CHAYTOR: That's right.

MR. AVIS: Okay.

So do I – I prepare him for the morning? Tell him he may have to come in the morning?

THE COMMISSIONER: Well –

MR. AVIS: It doesn't matter to me.

THE COMMISSIONER: – it depends on the weather.

MR. AVIS: Whatever you want.

THE COMMISSIONER: If we're able to do it, we're going to go ahead.

MR. AVIS: Okay.

THE COMMISSIONER: We can't afford to lose –

MR. AVIS: Okay. So if it goes ahead in the morning, Inspector Sheppard has to be here. No problem.

THE COMMISSIONER: That all right?

MR. AVIS: Okay.

THE COMMISSIONER: Okay, fine.

MR. AVIS: And if it goes ahead in the afternoon, he's got to keep – just so he keeps watch.

MS. CHAYTOR: Yeah.

THE COMMISSIONER: Yeah, we'll have it up on the website, I presume, and we'll also –

MS. CHAYTOR: Yeah, we've also distributed a revised schedule, so that if it is a storm day tomorrow there's a revised schedule. And all the counsel should now have that.

THE COMMISSIONER: Right.

MS. CHAYTOR: But tomorrow, whatever time we start, it will be Jason Sheppard.

THE COMMISSIONER: Okay. Thank you.

Don't forget this is your package of photos there, I think, Ms. Chaytor.

MS. CHAYTOR: Thank you.

THE COMMISSIONER: Okay. Thank you, Sergeant.

We'll adjourn now until 9:30 tomorrow morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.