



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 26

Commissioner: Honourable Justice Leo Barry

Monday

20 February 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay. We have some preliminary matters do we – briefly, hopefully?

Mr. Kennedy, we were dealing with telephone records. We were going to revisit it this morning. I understand you were speaking with counsel.

MR. KENNEDY: Yes, I had some discussion with counsel. I can indicate, Commissioner, that my client is willing to consent on the terms that were outlined by you last week.

THE COMMISSIONER: Okay. I guess we better put these on the record –

MR. KENNEDY: Yeah.

THE COMMISSIONER: – if not now, sometime during the day.

MR. KENNEDY: I think from our understanding, Commissioner, is that you wanted the – we needed to go back to April 1 to allow for those couple of extra dates that would be outside the consent that had been provided.

THE COMMISSIONER: Back to the 1st of April, is it?

MR. KENNEDY: I think that was the time frame you used the other day. Was that –

THE COMMISSIONER: That's fine. I think I had the 31st of March, but that's – the 1st of April should be okay.

MR. KENNEDY: Yeah, that's fine.

MS. O'BRIEN: What I recall was the month of – to look for relevant information within the month of April and any searching required outside of that period in order recover relevant within the month of April.

THE COMMISSIONER: Okay. Is that the way you understand it?

MR. KENNEDY: That's fine.

THE COMMISSIONER: Thank you.

MR. KENNEDY: Yeah, the terms that you – and I then I think as you indicated, Commissioner, then we would look at the issue of relevance and anything else that came up. So that's fine.

THE COMMISSIONER: Yeah.

MR. KENNEDY: We're agreeable. My client has instructed me to provide that consent.

THE COMMISSIONER: Okay. Thank you.

We'll proceed on that basis.

Is there anything else?

MR. KENNEDY: Yeah, the only other point I'd make, Commissioner, we can discuss this anytime today, over the next couple of days, but my client – we also want to discuss the issue of recalling my client to address the subsequently discovered texts which have been put out.

THE COMMISSIONER: Right.

MR. KENNEDY: So at some point over the next day or two days, whenever Commissioner and counsel are ready to address the issue, I would like to look at timing. Basically, whether there would be any restrictions on the extent of cross-examination and things like that.

THE COMMISSIONER: That's fine.

MR. KENNEDY: But essentially, we'd like to discuss the recall.

THE COMMISSIONER: Okay.

So I'll wait to hear back when you meet with counsel to discuss that and, over the next couple of days, the quicker the better, I guess. Yeah.

MR. KENNEDY: Yeah.

THE COMMISSIONER: Anything else?

Okay. I think we have, is it Constable Cox?

CST. COX: Yes.

THE COMMISSIONER: Okay. You're visiting from Halifax, is it?

CST. COX: Just outside, yes.

THE COMMISSIONER: Just outside Halifax.

Thank you.

MS. O'BRIEN: Yes, thank you, Commissioner.

Although we had started on Friday afternoon with Staff Sergeant Kent Osmond, we are taking a pause in Staff Sergeant Osmond's testimony in order to call Constable Cox so that he'll be able to travel back home today.

THE COMMISSIONER: Okay.

MS. O'BRIEN: And that's been – all counsels are aware of that and are in agreement. So I'd ask Madam Clerk to please swear Constable Cox first.

MADAM CLERK: Do you solemnly affirm that the evidence you shall give shall be the truth the whole truth and nothing but the truth?

CST. COX: I do so swear.

MADAM CLERK: Would you please state your full name.

CST. COX: Constable Adrian Cox.

MADAM CLERK: Thank you.

MS. O'BRIEN: Thank you.

Before we begin with Constable Cox, Commissioner, I'd ask to have the following exhibits entered: P-0374 through to P-0378 inclusive; P-0658 and P-0659.

THE COMMISSIONER: So 374 to 378 inclusive?

MS. O'BRIEN: Yes.

THE COMMISSIONER: Okay.

MS. O'BRIEN: P-0658 and P-0659.

THE COMMISSIONER: Yes. So ordered.

MS. O'BRIEN: Thank you.

All right. Good morning, Constable Cox.

CST. COX: Good morning.

MS. O'BRIEN: I'm Kate O'Brien, one of the co-counsels for the Commission of Inquiry.

I understand that you have been a member of the RCMP since 2008. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay. And your current rank is constable?

CST. COX: Correct.

MS. O'BRIEN: Okay.

What – as of April 5, 2015, to what unit or division were you assigned?

CST. COX: I was posted to the Holyrood detachment, Newfoundland and Labrador.

MS. O'BRIEN: Okay. And I understand there at the Holyrood detachment you were doing patrol duties, general investigations.

CST. COX: Correct.

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

CST. COX: At that time it was Corporal Trevor O'Keefe.

MS. O'BRIEN: Okay. And I understand that prior to April 5, 2015, that you had received basic training similar to what all RCMP officers receive but that you'd received no special training in relation to homicide investigations.

CST. COX: That's correct.

MS. O'BRIEN: Okay. And I also understand that prior to April 5, 2015, you had been a first responder at a shooting incident previously but you are not involved in the subsequent investigation of that matter or in any investigation of a shooting death or use of force by a police officer incident. Is that right?

CST. COX: Correct.

MS. O'BRIEN: Okay. And prior to April 5, 2015, I understand again you did not know Constable Smyth or any member of his family.

CST. COX: That's correct.

MS. O'BRIEN: And you did not know Mr. Donald Dunphy or any member of his family.

CST. COX: That's correct.

MS. O'BRIEN: Okay. I also understand that you've never been on any joint operation or joint task force with a member or members of the RNC?

CST. COX: That's correct.

MS. O'BRIEN: Okay. And you have done some training with the RNC, though. I think you mentioned you'd done a breathalyzer course?

CST. COX: That's correct.

MS. O'BRIEN: Okay. On the morning of April 5, 2015, were you working at the Holyrood detachment that day?

CST. COX: Yes, I was.

MS. O'BRIEN: All right.

And I understand that either – you either received a call from telecoms indicating that Constable Smyth was looking to speak to someone at the Holyrood detachment or you received a call from Constable Smyth. I understand you don't remember which it was but you do recall that somehow you ended up on the phone with Constable Smyth that morning. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay. Do you know what time that was?

CST. COX: Sometime before lunch.

MS. O'BRIEN: Okay. Did you make any notes of that call?

CST. COX: I don't believe I did; not at that time.

MS. O'BRIEN: Okay. Can you tell the Commissioner what you recall of that conversation with Constable Smyth?

CST. COX: I remember being asked to do – if I knew Mr. Dunphy, if we had anything on our PROS system for Mr. Dunphy. I asked him what it was in relation to –

THE COMMISSIONER: So that would be Donald Dunphy –

CST. COX: Sorry, yes.

THE COMMISSIONER: – because we have several others involved.

CST. COX: Donald Dunphy.

MS. O'BRIEN: Yes.

THE COMMISSIONER: Okay. Thank you.

CST. COX: I asked him what it was in relation to and he said threats against the premier and MLAs.

MS. O'BRIEN: Okay. He said he was investigating threats against the premier and MLAs?

CST. COX: That's correct.

MS. O'BRIEN: Okay. Did he say how those threats had come to him or what –

CST. COX: Social media.

MS. O'BRIEN: On social media. Okay.

What else do you recall?

CST. COX: From?

MS. O'BRIEN: From the conversation. I think you said he asked you if you knew Mr. Donald Dunphy.

CST. COX: Yeah, I never met Mr. Dunphy. I would have conveyed that to him.

MS. O'BRIEN: Okay. Did you know at this time, did he say whether or not he was a member of the premier's security unit?

CST. COX: I can't remember if he said he was a member of the premier's security detail or if he was just saying he was a member of the RNC. I can't remember which one it was.

MS. O'BRIEN: Okay. Did he tell you that he was going to visit Mr. Donald Dunphy in Mitchells Brook that day?

CST. COX: I believe he did, yes.

MS. O'BRIEN: Did he say when he was going to visit Mr. Dunphy?

CST. COX: No, he didn't.

MS. O'BRIEN: Okay.

Constable Cox, we are recording here and I understand from our technical people they are having trouble hearing you. So if you can just sort of position the mic and maybe raise your voice as best you can, that would be helpful.

Thank you.

THE COMMISSIONER: You have to be about four to six inches I think away from the mic to get it to pick up properly.

MS. O'BRIEN: Okay, thanks.

Did you know where Constable Smyth was when he called you?

CST. COX: No, I don't.

MS. O'BRIEN: Okay.

All right, and so he asked you if you knew him and he asked you if you had anything on your PROS system. Is that what you just said?

CST. COX: That's correct.

MS. O'BRIEN: Okay. And we have heard lots of evidence about the PROS system so we know that's the RCMP filing system.

Okay. And I understand in a moment we're going to talk about that you did do a search of PROS, right?

CST. COX: That's correct.

MS. O'BRIEN: Okay. Did you offer to go with Constable Smyth on his visit?

CST. COX: Yes, I did.

MS. O'BRIEN: Okay. What was his response?

CST. COX: He didn't think – he said, no, that he felt that a marked police vehicle and a uniform might set Mr. Dunphy off.

MS. O'BRIEN: Okay and that, that wording might set Mr. Dunphy off. Do you remember him using his exact – that exact wording?

CST. COX: Something to that effect.

MS. O'BRIEN: Okay.

CST. COX: Yeah.

MS. O'BRIEN: Do you recall if he gave you Mr. Donald Dunphy's date of birth?

CST. COX: I can't remember if he did or not.

MS. O'BRIEN: Okay, so you did do a search of PROS. And did you do that while Constable Smyth was still present on the telephone line?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

When you were doing that search was anybody else with you?

CST. COX: I don't remember anyone else there with me because I was sitting at my desk.

MS. O'BRIEN: Okay.

I'm going to ask to bring up Exhibit P-0283, please, Madam Clerk.

So, Constable Smyth, what I'm about to bring – or sorry, Constable Cox, what I'm about to bring up is an audit that we had, we requested of the RCMP of the PROS system. And that's fine – actually, if we could just go back to the size it was, it will then help with my vision. Thank you.

Okay, so here is, he– this is what the PROS system is showing that you did on that date. And when we look – this is the date is April 5. We understand that the times here are Eastern Standard Time so we have to go ahead an hour and a half for the Newfound – the local time.

So this is showing that at around approximately 11:30, just before 11:30 Newfoundland time on April 5, that you did a – and I understand that these are the searches that are shown that were conducted by you.

CST. COX: Uh-huh.

MS. O'BRIEN: That you did a Detailed Find Person search, a matter of seconds later you opened a person entity for Donald Dunphy on the PROS system, that, again, a few seconds after that you clicked on the Current Address tab within the person entity.

CST. COX: Uh-huh.

MS. O'BRIEN: Again, shortly thereafter that you opened an occurrence number, 2012352151, and then a few minutes after that you opened an address entity and then an address is given here, Mitchells Brook. And then, again, matter of seconds, really, after that you opened another – the same occurrence again, the 2012 occurrence, the one we saw just up here a few minutes earlier. And then we have some more activity for you on PROS showing here but that's coming later in the afternoon, Constable Cox.

CST. COX: Yes.

MS. O'BRIEN: That would be after the shooting incident –

CST. COX: Correct.

MS. O'BRIEN: – so we won't review that now.

The searches that I just went through there, does that sound – look to you to be correct as to what you would have done that day?

CST. COX: Yeah, I wouldn't argue with the log.

MS. O'BRIEN: Okay.

Now, it does indicate here that you opened the person entity, the Current Address tab and the occurrence, so I'm going to just do a look at those. Do you recall now whether you found any RCMP files as a result of your PROS search?

CST. COX: I would have found at least the one that's on the screen there, plus two others.

MS. O'BRIEN: Okay.

And I'm going to bring up Exhibit P-0141. And this is a PROS search that was run a few days later and I understand this would be a person search so we'll – this was done a few days later.

So this I understand would have been the person search of Donald Dunphy. It is showing four incidents here, Constable Cox, but the first incident on the list was the shooting itself on April 5, 2015, so that wouldn't have been there when you looked that morning obviously.

But this is showing three other entries. In one case – in two case both of them, it appears that Mr. Dunphy was a complainant, in numbers two and four here, and the other one shows him that he was a subject of an arrest but the invest – which had to do with the CDSA marijuana production, but that the investigation was completed and he had a medical permit.

Do you recall if you would have seen that information of those three incidents on April, the morning of April 5?

CST. COX: Those would be the three that I queried.

MS. O'BRIEN: Okay. And did you provide that information to Constable Smyth?

CST. COX: I should have provided it to him, yes.

MS. O'BRIEN: Okay.

When you say you should have you –

CST. COX: Sorry, if it's there, then I would have gave it to him.

MS. O'BRIEN: Okay.

And, again, we did note a few minutes ago, if you recall, that you had opened the address entity on the PROS system when we saw the audit search. Do you recall whether or not – and we do see here that there's some address information given in the file for Mr. Dunphy. Do you recall whether or not you gave that information to Constable Smyth?

CST. COX: I would have, yes. But there's no actual civic address listed there for Mr. Dunphy.

MS. O'BRIEN: Okay.

CST. COX: It's just the road number.

MS. O'BRIEN: Okay.

Now, we had an interview together prior to giving evidence here at the inquiry. And you may recall that at the interview I asked you whether or not you recalled telling Constable Smyth that Mr. Dunphy had an uttering threats charge. Do you recall that?

CST. COX: Yes.

MS. O'BRIEN: Okay. And at the time, you did not recall giving that information to Constable Smyth.

CST. COX: That's correct.

MS. O'BRIEN: Okay. And there were a couple of documents that led us to pose that question to you that day and I just want to take you to those very quickly. The first one is P-0378. And this is actually the case summary that Constable Smyth himself prepared for his, for the RNC, his RNC General Occurrence report after the incident took place.

So there, we note here – he makes a note there at 1122 hours that morning. He “contacted the RCMP communications and requested to speak to an officer with the Holyrood Detachment. Cst Adrian Cox returned my call and I advised him that I would be driving to Chapels Cove in an effort to speak to Mr. Donald Dunphy in relation to concerning comments he made towards Premier Davis and Minister Collins. Cst Cox conducted some queries on PROS and advised that they have had limited contact with him; that he had been charged with Uttering Threats in 2005 but that it was withdrawn. He also noted that he was a complainant on a file.”

So 1122 hours, would you agree that looks to be consistent with about the time you were conducting the PROS searches? It looks like your PROS searches were a few minutes after that that morning.

CST. COX: That's correct.

MS. O'BRIEN: Okay. And so at the time he had made this note of uttering threats but you did not recall seeing that information and it wasn't on the PROS document that you and I just looked at?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And the next reason why I had asked you that question has to do with exhibit P-0144. And this is a transcript of your communication with the RCMP Communications Centre that day. And I'm not going to go through the entire transcript but I'm going to take you through some parts of it. And we do not have – this was – recording was provided to us by the RCMP and we had it transcribed, but we didn't have – they didn't give us an exact date, or sorry, an exact time. Well, we do know the date. It was April 5.

But the Comm Center says: “OCC, Cathy.” Then you say: “Cathy, its Adrian.” And Cathy replies: “Yes.” You say: “The RNC officer, what's his name?” And she says: “Joe Smyth.” And you check the spelling of that and she says: “Yes, yeah.” You say: “Okay, no, I just wanted to make sure because I left his name and everything at the office there, right.” And she says: “Yeah.” And you say: “I was talking to him earlier. When he was coming down here, he called to see if we had anything on him, like, man, we got one uttering threats and that's it, like, from year and years ago.” And she says: “Yeah.” And you said: “I said, man, do you need me to come down with you? He's, like, no, we don't want a marked unit to, you know, to set him off.” Cathy replied: “What was he going down for then, just –” And you say: “Threats against the Premier.”

And she says: “Oh!” And you say: “Yeah, I guess that happens a lot now, right, so –” And I think that’s all I really need to review at this time.

So at this point here, when you’re – I take it you would have been at site at Mitchells Brook when you made this call, is that right?

CST. COX: I believe so, and after reviewing the rest of the conversation that’s what it appears, yes.

MS. O’BRIEN: Okay, because you, we’re going to get to it in your testimony, but you were actually the first person on the scene after, after the shooting, the first RCMP officer to arrive.

CST. COX: That’s correct.

MS. O’BRIEN: So you’re down there that afternoon.

So here when you are talking back to your communications you do talk about the uttering threat charge. So that is what had led us to ask you those questions at your interview. And at the time during the interview, I assured you that the uttering threats file was not on the PROS system. I don’t know if you recall that. So since then further information has come to light from the RCMP. And the first piece of information that we got from the RCMP then is from the PROS, is the PROS audit and we just looked at that a few minutes ago and if you recall that it showed that you opened the occurrence number 2012-352151?

CST. COX: That’s correct.

MS. O’BRIEN: Okay.

So I’m going to bring up Exhibit P-0302. So we understand from the RCMP that this here is the occurrence report in the PROS system for that file number 2012-352151 and we understand that this was the document you would have accessed that day?

CST. COX: Correct.

MS. O’BRIEN: Okay. Do you recall seeing it now? When you see it, do you recall ...?

CST. COX: I don’t but if the log says I reviewed it, then I did.

MS. O’BRIEN: Okay.

And so if we go down here – and this was created by now Corporal Lush who we have heard testimony from – and in creating his occurrence report in PROS, Corporal Lush cut and pasted information from the CPIC system into his PROS report. So the first thing we say here now, there’s a Caution V. Do you know what that means?

CST. COX: Caution Victor, stands for violence.

MS. O’BRIEN: Okay. And then a little further down, we see a note here for violence, drugs on the file. So you would have seen that information when you were speaking to Constable Smyth on the phone that day. Did you communicate that information, the flag for violence and the caution? Did you communicate that information to Constable Smyth?

CST. COX: I don’t recall if I did.

MS. O'BRIEN: Is that information you should have communicated to Constable Smyth, had –

CST. COX: Well, it's an important piece of information.

MS. O'BRIEN: It is an important piece of information, is that what you're saying? Okay.

And we do note here that it does say that a CR query is recommended. And I'll just scroll through this document here. So we see those two and then we see further down here some more information of Mr. Dunphy's criminal record was also cut and paste into the file by – into the PROS file including the uttering threats charge in 2005 that was withdrawn.

We note here that there was this CR which I understand to be criminal record query recommended. Would you agree with that?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

The second piece of information that has come to light from the RCMP since we interviewed you is – if I can bring up P-0658, please?

So this came to light, I think we asked the RCMP if they could just do some audits searches for us to see who'd accessed what records, when.

Thank you.

So this is showing, Constable Cox, that on April 5, 2015 at 9:59 a.m. – again, I would understand this to be Eastern Standard Time. That's the information we've been given. So that would've been at 11:29 a.m. that morning. So that would've been just immediately in time after those PROS searches we just looked at the audit trail showing that you did. This shows that you did a criminal records search on the CPIC system.

Do you recall now – does this refresh your memory – do you recall now doing that search that day?

CST. COX: I don't remember doing the search, but I'm not going to argue with what's on the screen.

MS. O'BRIEN: Okay. And, again, we understand what you would've seen in conducting that search and the record you would've accessed is – we have at now P-0659.

MR. KENNEDY: Commissioner, I wonder if I could just get some clarification.

I went into the kiteworks last night and I printed off, I thought I printed off all the references that would've been – the exhibits that were under Constable Cox's name. I don't have copies of 0658 of 0659. Were they under kiteworks and I missed them, or ...?

MS. O'BRIEN: They might've been added first thing – I don't know when Diane added them, whether she added them last night or first thing this morning, but –

MR. KENNEDY: Okay, so they are – yeah. No, it's not a big issue.

MS. O'BRIEN: They are there and we can get you two copies of them.

MR. KENNEDY: Okay.

MS. O'BRIEN: And they're fairly short. We're going to go over them. They would've been provided to you previously, I think they just weren't ...

So we understand again from the RCMP that when you did that CPIC search on April, the morning of April 5, this is the document that you would've seen which is Mr. Dunphy's criminal record, which again would have shown a 2001 conviction for two controlled drugs and substances charges, section 4 and section 7, so production and possession, and also the 2005 uttering threats charge that was withdrawn and replaced with a peace bond.

CST. COX: Correct.

MS. O'BRIEN: So I understand that you today have no recall of looking at that document. Okay. And you're unable to confirm yes or no whether or not you provided that information to Constable Smyth.

CST. COX: I can't say.

MS. O'BRIEN: Okay.

And again, just for completion, Commissioner, we note that this criminal record search does not have the caution V for violence flag. But that was in the PROS document that Constable Cox accessed.

Okay. Do you recall anyone else being present with you when you were speaking with Constable Smyth that morning?

CST. COX: No, I don't.

MS. O'BRIEN: Okay. Do you recall any further details of the conversation other than what you've already told the Commissioner this morning?

CST. COX: Not that I recall.

MS. O'BRIEN: Okay.

Now when we – we've heard from Corporal O'Keefe and he does recall you speaking to him that morning about, about Constable Smyth's call. Do you recall speaking to Corporal O'Keefe that morning?

CST. COX: No, I don't.

MS. O'BRIEN: Okay.

Can we have up again, please, Exhibit P-0283. Corporal O'Keefe, you said earlier, was your immediate supervisor.

CST. COX: That's correct.

MS. O'BRIEN: And do you recall whether or not he was working on that day as well?

CST. COX: He was on duty, yes.

MS. O'BRIEN: Okay.

So when we look at the – this is the PROS audit we just saw – we looked at your entries, but we see here your last entry that morning was at 10:01 Eastern Standard Time, so 11:31, then at 11:34 Newfoundland Time we see a number of searches being done related to Donald Dunphy from Trevor O'Keefe – by Trevor O'Keefe, on that day.

CST. COX: Correct.

MS. O'BRIEN: So Corporal O'Keefe's testimony is that he recalls you coming to his office and doing those searches together with you; do you have any memory of that?

CST. COX: I don't remember.

MS. O'BRIEN: Okay.

And I understand you did not take any notes of what happened that morning until after the shooting occurred when you put some limited notes in place.

CST. COX: That's correct.

MS. O'BRIEN: Okay. All right.

Again, it looks like two different occurrences were opened there with Trevor O'Keefe; one being the one we looked at already and another being one in 2013. Okay. Now before we leave this document, I just want to go back to some of your – the later searches. We're not quite there in terms of the timeline of your evidence that day but while we have the document open. It shows here that at 1446, so again that would be an hour and a half later in Newfoundland that you did some further activity on PROS, it says activity from PAT.

Do you know where you would have done these searches and entered the information indicated here on the PROS system?

CST. COX: PAT is the operating system in the mobile work station in the police cruiser.

MS. O'BRIEN: Okay. And would you have had that police cruiser with you when you were on site in Mitchells Brook that afternoon?

CST. COX: That's correct.

MS. O'BRIEN: Okay. All right.

So here it indicates that you entered here that you linked the person, Mr. Dunphy, to an occurrence as deceased; subject of complaint. Do you recall doing that that afternoon?

CST. COX: I don't, but it's there so I'm not going to argue with the document.

MS. O'BRIEN: Okay.

Do you recall having the computer in the patrol car there and actually using it on the PROS system that afternoon when you were in Mitchells Brook?

CST. COX: Yes, I used it all day.

MS. O'BRIEN: Okay.

So I'd like to go back to a few questions about – we talked earlier about Constable Smyth asking you if you would – or you asking Constable Smyth if he wanted you to accompany him. Do you normally work in uniform?

CST. COX: Yes, I do.

MS. O'BRIEN: Okay. And so would you have been uniformed on that day?

CST. COX: Yes, I would have.

MS. O'BRIEN: Given – you said that Constable Smyth was concerned that a marked car and a police uniform might set Mr. Dunphy off. Was it an option for you to attend with Constable Smyth not in uniform?

CST. COX: No, it was not.

MS. O'BRIEN: Okay. So when you work, you're in uniform and that's what you get?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And when you were there in the office or in the detachment at Holyrood that day were there any other officers working who are plainclothes officers?

CST. COX: I don't recall, no.

MS. O'BRIEN: Okay.

It would have been an Easter Sunday. Is it possible that plainclothes officers would have been working on an Easter Sunday?

CST. COX: The GIS unit typically works Monday to Friday.

MS. O'BRIEN: And were they the only plainclothes officers in –

CST. COX: Yes,

MS. O'BRIEN: – that detachment?

CST. COX: Yes.

MS. O'BRIEN: Okay.

And if you had accompanied Constable Smyth that day, was it an option for you to go in an unmarked police unit?

CST. COX: I probably wouldn't have gone in an unmarked unit. I would have driven my own vehicle.

MS. O'BRIEN: And your own vehicle was a marked unit.

CST. COX: That's correct.

MS. O'BRIEN: Are you permitted to use an unmarked vehicle if you, you know, deem it necessary or you wish to?

CST. COX: The only unmarked vehicle at that detachment is the traffic services unit and I would have had to have prior authorization from the corporal for traffic services in order to use that vehicle.

MS. O'BRIEN: Okay. All right.

Why did you offer your assistance to Constable Smyth that morning?

CST. COX: Basically because I would expect the same if I asked for information. I would expect to be courteous and help out in any way I could.

MS. O'BRIEN: Okay.

Did you know if Constable Smyth had anyone else travelling with him?

CST. COX: No, I didn't.

MS. O'BRIEN: Okay.

Would you offering your help have anything to do with you having some concerns about his safety during an alone home visit?

CST. COX: I don't recall. I don't like doing them myself, but it very well could have. I don't know.

MS. O'BRIEN: Okay. So you just don't recall now.

CST. COX: No.

MS. O'BRIEN: Okay.

As this was an Easter Sunday and Constable Smyth was making the visit that day, did that suggest to you that there was any urgency to the matter that he was investigating?

CST. COX: I only had very limited information, basically what he was investigating, so I don't know what the priority was of his investigation.

MS. O'BRIEN: Okay.

Now, I understand you later on got notice of the shooting. What were you doing or where were you when you got that notice?

CST. COX: I was in the Holyrood detachment.

MS. O'BRIEN: Okay. And so would you have received that information over the police radio?

CST. COX: That's correct.

MS. O'BRIEN: Okay. What information do you recall getting initially?

CST. COX: We hear there was a call for the Holyrood members; there had been a police involved shooting – shots fired by police in Mitchells Brook.

MS. O'BRIEN: Did you associate that information over the radio with the call you had earlier that morning with Constable Smyth?

CST. COX: I assumed it was him because I wasn't down in Mitchells Brook and I knew he was going there.

MS. O'BRIEN: Okay.

So I understand that in your immediate response – that you immediately responded and you took a shotgun and a rifle and some hard body armour from the detachment, and you immediately headed to Mitchells Brook. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

Did you get any further information while you were on route?

CST. COX: I believe that we found out that it wasn't Constable Smyth that was shot; it was Mr. Dunphy.

MS. O'BRIEN: Okay.

Did you know if you got the information that Mr. Dunphy had passed away?

CST. COX: I believe so, yes.

MS. O'BRIEN: Okay.

And did you know whether there were any other officers responding?

CST. COX: With me?

MS. O'BRIEN: At the same time?

CST. COX: I was assuming that Corporal O'Keefe and Constable Downey were en route as well.

MS. O'BRIEN: Okay.

And when you responded, though, you were alone; is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And we understand that Constable Downey and Corporal O'Keefe were both in their police units out doing patrol work at that time when they first got the call.

CST. COX: Correct.

MS. O'BRIEN: Okay.

So I understand from the Communications Centre transcript that we just looked at that you drove very fast on way to Mitchells Brook.

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And would you have had you lights and sirens going?

CST. COX: That's correct.

MS. O'BRIEN: All right.

And again, you would have been in your marked police unit?

CST. COX: Correct.

MS. O'BRIEN: Okay.

Now, on the transcript there, and we bring it up again if you want, but I don't need it to go up, do you recall making a statement to Cathy at the Telecoms: When one of your own, when one of your own calls, you got to do, you got to go, right? Do you remember that?

CST. COX: If it's in the transcript, I said it, but I don't remember that part.

MS. O'BRIEN: Okay.

So I think the note was "when one of your own calls, you got to go, right?"

So when you said that, one of your own, what would you have been referring to?

CST. COX: A police officer.

MS. O'BRIEN: Okay.

So you were referencing that you were responding to a call from a fellow police officer.

CST. COX: Correct.

MS. O'BRIEN: Okay.

And were you the first RCMP officer to arrive?

CST. COX: Yes, I was.

MS. O'BRIEN: Okay.

Did you have any trouble finding the house?

CST. COX: I overshot it by a few feet and had to stop and back up.

MS. O'BRIEN: How did you recognize it?

CST. COX: I actually saw the black SUV in the driveway with the red and blue lights in the back window flashing.

MS. O'BRIEN: Okay.

And where did you park?

CST. COX: Right across the bottom of the driveway.

MS. O'BRIEN: Okay. And so what did you do immediately upon stopping your vehicle?

CST. COX: I exited the vehicle and approached the person in the driveway that was dressed in dark. And he identified himself as Constable Smyth; he showed me his badge.

MS. O'BRIEN: That would have been the badge on his hip?

CST. COX: Correct.

MS. O'BRIEN: Did you have any concerns for your safety as you were getting out of the vehicle?

CST. COX: Not from Constable Smyth, no.

MS. O'BRIEN: Okay, so why not? Can you explain that?

CST. COX: He wasn't threatening in any way, he was just standing there. He'd identified himself but at that time we had already known that Mr. Dunphy was deceased, so I was confident it was Constable Smyth that was standing there.

MS. O'BRIEN: Okay.

And I take it you'd had never seen Constable Smyth before, so ...

CST. COX: That's correct.

MS. O'BRIEN: Okay.

So you approached Constable Smyth. What do you recall?

CST. COX: Asked him if he was all right.

MS. O'BRIEN: Okay. And what did he reply?

CST. COX: He was uninjured.

MS. O'BRIEN: He was uninjured?

CST. COX: Yeah.

MS. O'BRIEN: Okay. Did you get any further – did you have any further conversation at that time?

CST. COX: Asked him: What happened?

MS. O'BRIEN: Okay and what did he say?

CST. COX: He said he was in the residence talking with Mr. Dunphy. The conversation became – Mr. Dunphy became agitated during the conversation, pulled a firearm on him, pointed –

MS. O'BRIEN: Sorry?

CST. COX: Pulled a firearm on him, pointed it at him and he shot Mr. Dunphy.

MS. O'BRIEN: Do you recall him giving you any other details?

CST. COX: I'd have to refer to my report.

MS. O'BRIEN: For your – okay, and we can look at your report. And we'll bring that up at P-0376.

While we're bringing that up, what did you do next after you had that initial conversation with Constable Smyth?

CST. COX: I went to the front picture window of Mr. Dunphy's residence and I looked inside.

MS. O'BRIEN: Okay. And what did you see when you looked inside that window?

CST. COX: I saw a male who I believed to be Mr. Dunphy sitting in like a recliner rocker chair. So if I'm looking in the window, it would have been on the left-hand side.

He's sitting full back in his chair with his head just resting on the backrest. There was an apparent wound to his right forehead and there was what appeared to be a barrel of a rifle on the floor pointing back towards his left leg.

MS. O'BRIEN: So you could see that from the window.

CST. COX: Yes.

MS. O'BRIEN: Okay. Could you see any of the rest of a rifle from the window or just the barrel?

CST. COX: I remember seeing the barrel.

MS. O'BRIEN: Okay.

All right and just going here, these – this is your Supplementary Occurrence Report. And in terms of your discussion with Constable Smyth, you report here that you spoke to him – and then I think here you spoke to him initially, then you looked in the front window and then you came back to him is how you record it here.

But you note that Constable Smyth informed "Cst. COX that he was standing in the living room speaking to DUNPHY and DUNPHY was becoming increasingly agitated while speaking to him. He said that DUNPHY reached down alongside" his chair and picked up a firearm and started to point it at Constable Smyth.

"He said that he kept saying to DUNPHY, 'NO NO NO.'" Constable or Serg or your – no, "Sgt. SMYTH proceeded to move and while doing so discharged his service pistol at DUNPHY as he moved because DUNPHY was following Cst. SMYTH with his firearm."

Those details there, having reviewed those now, does that refresh your memory as to the conversation you had with Constable Smyth on that day?

CST. COX: Yes, it does.

MS. O'BRIEN: So do you recall him saying that he'd reached, that Mr. Dunphy had reached down along the side of his chair and picked up a firearm?

CST. COX: Correct.

MS. O'BRIEN: Okay and also that he had said no, no, no to Mr. Dunphy.

CST. COX: Correct.

MS. O'BRIEN: Okay.

Did Constable Smyth tell you whether or not he had cleared the house?

CST. COX: Later on he explained to me that he hadn't fully cleared the house.

MS. O'BRIEN: He had not fully cleared the house?

CST. COX: No, he had not.

MS. O'BRIEN: And when we say clear the house we understand that would have been doing a search through to make sure it was safe, that there was nobody else in the residence. Is that ...?

CST. COX: Correct.

MS. O'BRIEN: Okay.

Now, when you were speaking with Constable Smyth this time, where were you standing?

CST. COX: When I went back to him? Near his police vehicle.

MS. O'BRIEN: Okay, so in the driveway of Mr. Dunphy's residence?

CST. COX: In the driveway, yes.

MS. O'BRIEN: And I take it at this point you're still alone with Constable Smyth?

CST. COX: Correct.

MS. O'BRIEN: Okay.

How did Constable Smyth appear?

CST. COX: Visibly shaken. You could tell there was something wrong, like something had happened.

MS. O'BRIEN: Okay. So what were you seeing to lead you to conclude that?

CST. COX: I remember him shaking a bit.

MS. O'BRIEN: Physically shaking?

CST. COX: Physical shaking, yes.

MS. O'BRIEN: In his – are you saying in his hands or his body?

CST. COX: I remember his hands shaking.

MS. O'BRIEN: Okay.

How did his voice sound?

CST. COX: I wouldn't be able to tell you.

MS. O'BRIEN: Okay.

And how close to him were you?

CST. COX: A couple of feet away.

MS. O'BRIEN: Do you recall what he was wearing? You said earlier dark clothes, can you be more specific?

CST. COX: I remember a dark jacket. That's basically all I remember.

MS. O'BRIEN: Okay. Do you know if he was wearing gloves?

CST. COX: No. I don't know. I can't remember if he was.

MS. O'BRIEN: Okay. What about a hat?

CST. COX: I couldn't tell you.

MS. O'BRIEN: Okay.

Did you smell any alcohol from him?

CST. COX: No, I didn't.

MS. O'BRIEN: Okay.

How long were you speaking to him? How long did this conversation take place?

CST. COX: A couple of minutes, maybe.

MS. O'BRIEN: Okay.

What did you do next?

CST. COX: I believe we took him down to my police vehicle.

MS. O'BRIEN: You took him to your police vehicle?

CST. COX: I asked him if he wanted to sit in it.

MS. O'BRIEN: Okay.

CST. COX: I recommended he sit in it –

MS. O'BRIEN: Okay.

CST. COX: – to get out of, get away from it. And by that time, just after that, the other members arrived, so ...

MS. O'BRIEN: Okay.

So did he get in your police vehicle with you?

CST. COX: He did, yes.

MS. O'BRIEN: Okay.

And where did he sit in the police vehicle?

CST. COX: He sat in the front passenger seat.

MS. O'BRIEN: Okay.

Did you sit in the front driver's seat?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

So you're there with him for just a couple of minutes.

CST. COX: Correct.

MS. O'BRIEN: Did you have any further conversation with him about the incident?

CST. COX: I just basically tried to console him as best I could.

MS. O'BRIEN: Okay.

And I understand you don't have exact memory of what you said to him at that time.

CST. COX: No.

MS. O'BRIEN: But did he tell you anything more about what had happened inside the house?

CST. COX: I don't remember if he did.

MS. O'BRIEN: Okay.

Do you recall whether he used his cellphone at all while he was in the police vehicle with you?

CST. COX: He used his cellphone at one point but I can't remember if it was outside or in the police vehicle. I wouldn't be able to tell you.

MS. O'BRIEN: Okay.

And I know you – we'll get to it later on – you overheard some information at some point from him on a cellphone.

Okay. So I understand that next that Constable Downey and shortly thereafter Trevor O'Keefe, Corporal Trevor O'Keefe, arrived. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: And just to give a sense, Commissioner, of the timelines here, according to Constable Cox's notes he arrived at the scene at 1455, so five minutes to 3 p.m. that afternoon. And Constable Downey's notes indicate that she arrived at 1501, so six minutes after you. And Corporal Trevor O'Keefe, the notes indicate he arrived a minute after Constable Downey.

So all your interactions with Constable Smyth that you've just described to us would have taken place over that, you know, fairly short window of six minutes or so, does that sound right to you?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

Was Constable Smyth's vehicle running?

CST. COX: I believe it was because the lights were flashing in the back window.

MS. O'BRIEN: Okay.

Did you turn it off?

CST. COX: I don't remember if I did or not.

MS. O'BRIEN: Okay.

There's nothing to indicate that you did, but do you recall getting in his vehicle?

CST. COX: I can't remember.

MS. O'BRIEN: Do you recall looking in his vehicle?

CST. COX: I don't remember looking in it.

MS. O'BRIEN: Okay.

Any other vehicles on the scene?

CST. COX: There was a – was it a Jeep Cherokee, I think it was. There was another vehicle ahead of his, but the exact make and model – I think it was a Jeep, an older-model Jeep Cherokee, but I'm not 100 per cent sure.

MS. O'BRIEN: Okay. And that was ahead of his in the driveway, was it?

CST. COX: Correct.

MS. O'BRIEN: Closer to the house. Okay.

So we understand that when Corporal O'Keefe arrived that you and Corporal O'Keefe cleared the house.

CST. COX: We entered the residence, yes.

MS. O'BRIEN: Okay.

Do you know where Constable Smyth went while you did that?

CST. COX: I can't remember if he stayed in the car or if he got out of the car and came up the driveway. I'm not 100 per cent sure.

MS. O'BRIEN: Okay.

Now, your notes indicate that at – if we go here – that at 1507 that you and Corporal O'Keefe entered the house. Have you – we know that the ident team, Forensic Identification section, took photographs of Mr. Dunphy's house later that night and the next day, and those photographs were uploaded to the PROS system.

CST. COX: Correct.

MS. O'BRIEN: Since that day, have you had – have you looked at those photos?

CST. COX: I have viewed the photos, yes.

MS. O'BRIEN: So you viewed the photos on the, of the inside of the house.

CST. COX: Correct.

MS. O'BRIEN: Okay.

And did you view photos of the living room?

CST. COX: I tried the – the overall layout, but the ones with Mr. Dunphy, I didn't look at those.

MS. O'BRIEN: Okay. All right.

Did you see any of the photographs that showed the rifle?

CST. COX: Yeah, it was – you could see it on the floor there, yes.

MS. O'BRIEN: Okay.

Do you know when you looked at those photos or do you have approximately a time?

CST. COX: It would have been the day before you and I spoke.

MS. O'BRIEN: The day before your interview?

CST. COX: Correct.

MS. O'BRIEN: Okay.

All right, so I'm – what we have over here –

CST. COX: Yeah.

MS. O'BRIEN: – Constable Cox, is a map that's been entered formally as an exhibit at P-0035. And it looks like we're getting some water damage on our diagram there, but – so it's a map of his of the house and so given that you've already viewed photos, if you need to refer to that as you're giving your evidence on the next point.

Can you take us through what you and Corporal O'Keefe did in clearing the house? And, again, we don't a lot of detail but if you can just tell us.

CST. COX: Yeah.

Corporal O'Keefe opened the front door for me. We entered through the, it was his front porch there. So we went in through the front porch. We proceeded straight ahead until we hit the hallway on the left there. We made a left-hand turn to the hallway and immediately encountered the bathroom. Entered the bathroom, nothing found in the bathroom, came back out, went the next door down the hallway which was the bedroom where the first marijuana grow operation was located.

MS. O'BRIEN: Okay. That's the bedroom on the front of the house?

CST. COX: Sorry, right next to the washroom there. Yeah.

MS. O'BRIEN: Okay.

CST. COX: And then nothing was found there. And we went across the hall to the other bedroom, nothing was found. Then we came out and went to, I think it's written cat room there. Corporal O'Keefe opened, went to open that door. A large number of cats ran towards the door so we shut the door and we proceeded into the kitchen area, back porch, laundry room and then back finally to the living room area.

MS. O'BRIEN: Okay. And you didn't find anyone else in the house?

CST. COX: No, we didn't.

MS. O'BRIEN: Okay.

So I understand from that you did not enter or look inside the cat room or the room beyond the cat room, what's marked there as the addition, is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

In terms of when – what were your first impressions of the house when you entered into it?

CST. COX: It was dirty.

MS. O'BRIEN: Okay.

Do you recall anything in particular about the smell?

CST. COX: It was just dirty. It smelled dirty.

MS. O'BRIEN: And do you recall seeing any weapons in the room with Mr. Dunphy?

CST. COX: Obviously I remember seeing the rifle –

MS. O'BRIEN: Okay.

CST. COX: – propped up on the Rubbermaid tub, but that's all I remember seeing in that room.

MS. O'BRIEN: That's all you remember seeing in the room?

CST. COX: That's correct.

MS. O'BRIEN: In terms of weapons you mean?

CST. COX: That's correct.

MS. O'BRIEN: Okay. And you said you saw the rifle propped up on the –

CST. COX: It was almost like a bluish-coloured Rubbermaid tub –

MS. O'BRIEN: Okay.

CST. COX: – along the left side of the chair.

MS. O'BRIEN: And what position was that in?

CST. COX: The stock was rested up on the Rubbermaid tub and the barrel had been pointing down towards the floor.

MS. O'BRIEN: Okay.

How far in the living room would you have gone?

CST. COX: I wouldn't have – wouldn't have had to go in very far because you could see everything basically from the doorway.

THE COMMISSIONER: Pardon me; I'm having a little trouble hearing you. Maybe you move in a little bit.

Thank You.

MS. O'BRIEN: So you said you didn't proceed in very far, is that right?

CST. COX: I wouldn't have had to go in very far because it was an open room and you could see basically everything you need to see from just inside the doorway.

MS. O'BRIEN: Okay.

Do you recall what position Mr. Dunphy's arms were in?

CST. COX: No.

MS. O'BRIEN: Now, did you make any notes of how you found doors – I know you said cat room door was closed but other than that, did you make any notes of how you found doors open or closed?

CST. COX: The washroom door was open. I didn't make any notes of it –

MS. O'BRIEN: Okay.

CST. COX: – but the bedroom next to the washroom, that door was closed. It had to be opened by Corporal O'Keefe or myself. One of us opened it, I don't know which one.

MS. O'BRIEN: So you remember the bathroom door was open. The bedroom – what's marked there as bedroom one, I believe you're saying was closed.

CST. COX: Correct.

MS. O'BRIEN: Do you recall if the other – what about the bedroom number two?

CST. COX: I can't remember if that one was open or not.

MS. O'BRIEN: Okay and what about in the door into the laundry room?

CST. COX: I can't remember if it was open or closed.

MS. O'BRIEN: Okay.

When you opened the cat room door you said Corporal O'Keefe closed it immediately. Did any cats get out?

CST. COX: I don't remember any cats getting out, no.

MS. O'BRIEN: Okay.

Did you see cats in any other areas of the house?

CST. COX: There were cats there but it wasn't overrun by cats.

MS. O'BRIEN: Okay.

CST. COX: But how many was there I wouldn't be able to tell you the exact number.

MS. O'BRIEN: Okay.

And do you recall what position you left the doors in when you left the house?

CST. COX: I don't, no.

MS. O'BRIEN: And did you find any in the – particularly going in, did you find any plywood or a board covering over any doors?

CST. COX: I don't remember moving any plywood because I remember coming in and seeing the kitchen, so there was nothing there.

MS. O'BRIEN: Nothing there. Okay and I –

CST. COX: Nothing over the door, I mean.

MS. O'BRIEN: And plywood I probably said was probably a bit misleading. There was a piece of panelling there of a type.

CST. COX: Yes.

MS. O'BRIEN: Okay.

Other than doorknobs, did you touch anything in the house?

CST. COX: I don't even remember touching doorknobs but I don't remember myself opening doors. But the only one I might have opened would have been that bedroom number one, but I don't remember if it was Corporal O'Keefe or myself that opened it.

MS. O'BRIEN: Okay.

CST. COX: But everything else was opened by Corporal O'Keefe.

MS. O'BRIEN: Okay.

And were you or Corporal O'Keefe wearing any protective gear?

CST. COX: Can you be more specific?

MS. O'BRIEN: Yes. Were you wearing gloves?

CST. COX: Normally I would wear my slash gloves but whether I had them on at that time, I can't remember.

MS. O'BRIEN: Okay. And do you remember whether or not Corporal O'Keefe was wearing gloves?

CST. COX: I couldn't tell you.

MS. O'BRIEN: And when you say slash gloves, these are leather gloves that police officers wear that protect their hands against potential knife cuts –

CST. COX: That right.

MS. O'BRIEN: – and that kind of thing.

CST. COX: Correct.

MS. O'BRIEN: So they're a heavy-gauge leather glove.

CST. COX: Yes.

MS. O'BRIEN: Okay.

And so were you and Corporal O'Keefe otherwise just in your regular police uniforms?

CST. COX: Correct.

MS. O'BRIEN: Okay.

In terms of – you said the house was dirty. As a police officer, I know you've been in more houses than the average person probably. How did it compare to other houses that you've been in?

CST. COX: Well, like I explained earlier, it's not the dirtiest one I've been in but it's not the cleanest one I've been in either. It was dirty. Like we're – myself, we're relatively clean so it was a lot dirtier than what we would have had in our house.

MS. O'BRIEN: But you said it wasn't the worst you'd seen.

CST. COX: No, I've been in a lot worse than that.

MS. O'BRIEN: Okay.

Did you take any photographs while you were there?

CST. COX: No, I didn't.

MS. O'BRIEN: Okay.

How long did it take you and Corporal O'Keefe to clear the house?

CST. COX: A couple of minutes (inaudible).

MS. O'BRIEN: Okay. And did you stay together the whole time while you were doing that?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And did you leave the house then together?

CST. COX: We did, yes.

MS. O'BRIEN: Okay.

Did you tell any other officer that you and Corporal O'Keefe had not entered into all of the rooms of the house, that you had not entered into the cat room?

CST. COX: I can't remember if we did or not.

MS. O'BRIEN: Did you walk around to the back of the house to look in any – to see if there were any windows that might have given you a view into that area?

CST. COX: I don't remember going around back, no.

MS. O'BRIEN: Okay.

So I understand that next you and Corporal O'Keefe accompanied the paramedics, Nancy Linehan and Kevin Bishop, into the house. Do you recall that?

CST. COX: Correct.

MS. O'BRIEN: Okay.

Did you stay with them the entire time they were in the house?

CST. COX: Yes, we did.

MS. O'BRIEN: Okay.

Other than Mr. Dunphy's body which we've heard testimony from the paramedic Nancy Linehan that she touched in doing her check of him, did you see them touching anything else?

CST. COX: No, just Mr. Dunphy.

MS. O'BRIEN: Okay.

Did you give them any instructions while they were in the house?

CST. COX: Yes, not to touch anything else, just Mr. Dunphy.

MS. O'BRIEN: Okay.

So you recall telling them that?

CST. COX: Yes.

MS. O'BRIEN: Okay.

Did you or Corporal O'Keefe touch anything when you were there the second time with the paramedics and – with the paramedics?

CST. COX: No. We stood in the doorway and watched them.

MS. O'BRIEN: Okay. And when you say the doorway you mean the doorway to the living room?

CST. COX: Sorry, the living room doorway, yes.

MS. O'BRIEN: And just watched them do their work.

CST. COX: Correct.

MS. O'BRIEN: Okay.

Approximately how long were you in there with the paramedics?

CST. COX: Just a couple of minutes.

MS. O'BRIEN: And did you all four leave together?

CST. COX: Yes, we did.

MS. O'BRIEN: Okay.

I understand that next you and Constable Downey secured the scene with police tape. Do you recall that?

CST. COX: Yes, we did.

MS. O'BRIEN: Okay. And I understand the police tape was placed across the front of the residence along the road and then up the right-hand side of the driveway. Is that consistent with your memory?

CST. COX: Correct.

MS. O'BRIEN: Okay.

And, again, please correct me if I'm wrong but I understand then that your next activity was that you started a Scene Log.

CST. COX: Yes, I did.

MS. O'BRIEN: Okay. And I take it a Scene Log is a document that records who enters and exits the scene?

CST. COX: Correct.

MS. O'BRIEN: Okay.

And I'm going to start – ask to bring up P-0320. Or, Madam Clerk, I don't know if – P-0320. Oh, you're –

MR. DROVER: 0230.

MS. O'BRIEN: Oh, 0230.

Thank you, Mr. Drover; might have been late as I was making my note.

Okay. So, Constable Cox, I understand that you started the Scene Log in your – in a notebook or on some loose page, a notepad you had in your vehicle. Is that right?

CST. COX: Correct.

MS. O'BRIEN: Okay. So is this your writing that we're looking at right here?

CST. COX: Yes, it is.

MS. O'BRIEN: Okay.

So you start here, the call time would mean the time you got the call over the Telecoms system at 1428 while you're at the detachment?

CST. COX: That's correct

MS. O'BRIEN: Okay.

And then you note here that you were on scene at 1455 and you make some notes here about what you – notes here that you took on scene. You note that Constable Downey and Corporal O’Keefe arriving. What I really want to ask you now about is your, the Scene Log.

Sorry.

Okay, so I understand these beginning notes here is where you started the Scene Log. Is that right? So here at 1513 you recorded “all persons out of residence & scene taped off by Cst. Cox and Cst. Downey & secured.”

CST. COX: Correct.

MS. O’BRIEN: Okay. And then: “No persons past scene tape after taped off.”

CST. COX: Correct.

MS. O’BRIEN: And then you note – the next indication you note is that at 1649 “Cpl. Foote on scene.”

CST. COX: Correct.

MS. O’BRIEN: And then a couple of minutes after that it says: “Cpl. Foote and Cpl. O’Keefe entered scene via scene tape at driveway. Cpl. Foote & Cpl. O’Keefe in driveway speaking by RNC vehicle.” And then 1707: “Cpl. O’Keefe out of scene.”

CST. COX: Correct.

MS. O’BRIEN: Okay.

And then what we have here in the notes, your last note here is at 1707. And in this exhibit we’ve entered further notes of the Scene Log but this does not start up again until 2233. And this is a wrong date here; it’s supposed to be April 5.

CST. COX: Uh-huh.

MS. O’BRIEN: And I take it this is not your writing.

CST. COX: That’s correct.

MS. O’BRIEN: Okay. I believe this is Constable X’s writing, but the first entry made by Constable X is that Constable Cox turned over log and left scene.

CST. COX: Correct.

MS. O’BRIEN: Okay.

So I understand – and then the Scene Log continues. But I understand that in between what, the notes we just looked at and what we see here from Constable X that you continued the Scene Log in your typed notes. Is that right?

CST. COX: That’s correct. I started my report there and I just continued through that with it.

MS. O’BRIEN: Okay.

So if we can bring up P-0175. So when you were doing the Scene Log, were you sitting in your police unit?

CST. COX: That's correct.

MS. O'BRIEN: Doing that? Okay.

And so you would have had access to the, your computer there, so you would have started typing up your notes.

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And so this is your Supplementary Occurrence Report. And the, it – the report time, it says here, it's April 5 at 1636. Do you know if you would have entered that time?

CST. COX: No, that's generated by the system.

MS. O'BRIEN: Okay, you believe that – okay. And we're having – getting different evidence on that, but okay.

So here's your typed notes, some of which we've looked at already but relevant to the Scene Log it seems. It starts up here where you retype some of the information that we just saw in your typed notes where you noted: "1707 hours Cpl. O'KEEFE exited the scene."

And then it continues on and we have a number of entries here bringing us up to where you note here at 2229 hours that, I think this is Constable X, was on scene to relieve you and you turned over the Scene Log to Constable X.

CST. COX: Correct

MS. O'BRIEN: Okay.

Now, when we review this, these notes you note like, Sergeant Saunders and Corporal Lee exited the scene and, you know, entered the scene and – when we look at this can we tell whether or not someone just crossed the police tape at the bottom of the driveway or whether or not they entered the house?

CST. COX: Looking back now it would be crossing the scene tape, but whether they went in the house at that time I wouldn't be able to tell you.

MS. O'BRIEN: Okay. So you were recording who crossed the scene tape.

CST. COX: Correct.

MS. O'BRIEN: But you didn't necessarily record whether or not someone entered the house or not.

CST. COX: Correct.

MS. O'BRIEN: Okay.

So by viewing this we don't know if someone was just in the driveway or whether they were in the house. Okay.

We know that other RCMP officers arrived while you were on the scene that evening. Other than Constable Smyth, did you see anyone else at the scene who was not an RCMP officer?

CST. COX: Like public you mean or ...?

MS. O'BRIEN: Yeah.

Anyone in the area – yes, it could be public or another RNC officer or anyone in the vicinity of the house. And we know that there were officers posted to stop traffic on the roads.

CST. COX: Okay.

MS. O'BRIEN: I'm not talking about the public who were beyond that but, you know, near or in front of the house did you see anyone else?

CST. COX: No, just on the road there.

MS. O'BRIEN: Okay.

And that when you say just on the road you mean where the officers who were doing traffic control were stopping the public.

CST. COX: Yeah.

MS. O'BRIEN: Okay.

CST. COX: There was traffic going back and forth.

MS. O'BRIEN: Okay.

And do you know an Officer Didham, Paul Didham with the RNC?

CST. COX: Sergeant Didham, yes.

MS. O'BRIEN: Yes. Do you know him?

CST. COX: Yes.

MS. O'BRIEN: Did you see him in the area that day?

CST. COX: I don't remember seeing Paul, no.

MS. O'BRIEN: Okay.

Did you understand this to be a criminal investigation?

CST. COX: I understood this to be an officer-involved shooting.

MS. O'BRIEN: Okay.

So do you distinguish that from a criminal investigation?

CST. COX: I understood it to be an officer-involved shooting, yes.

MS. O'BRIEN: Okay.

Did you have any other communications with Constable Smyth other than what you've already reported to the Commissioner this morning?

CST. COX: No. He was taken from the scene sometime there and I never spoke with him again.

MS. O'BRIEN: Okay.

Now, we have – we were just looking at P-0175 here which is a Supplementary Occurrence Report typed by you.

CST. COX: Uh-huh.

MS. O'BRIEN: And the report time entered here shows it to be April 5 at essentially 4:36 that afternoon.

CST. COX: Uh-huh.

MS. O'BRIEN: And your notes are typed and I understand you're saying you believe you typed those while you were at the scene that day.

CST. COX: Yes.

MS. O'BRIEN: Okay.

CST. COX: I would have started them anyway.

MS. O'BRIEN: Started them anyway.

CST. COX: Yeah.

MS. O'BRIEN: We do have a second Supplementary Occurrence Report for you –

CST. COX: Uh-huh.

MS. O'BRIEN: – Constable Cox, that has all the information that is in this report but it also has some additional information as well. So I'm going to bring that up now. It's P-0376.

And I'm just going to show you what, having compared the documents, the additional –

MR. KENNEDY: Excuse me.

Mr. Commissioner, my understanding was that the document we were looking at was P-0376 and I think the second supplementary report was 0175. Do I have that ...?

MS. O'BRIEN: No, I think the first Supplementary report that we were just looking at was P-0175 and I'm now bringing Constable Cox to P-0376.

Okay? Is that what you have? Yeah.

Okay. So here, Constable Cox, we see, again, a Supplementary Occurrence Report. It has the same Report Time as Entered Time as the document we were just looking at. And I'll bring you – here's the additional information that has been added to this report, if assuming my comparison is right.

In this paragraph here, the paragraph that starts at 1455 hours, the following sentence has been – sentences have been added: "Cst. COX could also see the barrel of what appeared to be a rifle pointing down and back toward DUNPHY's left leg as he sat in the chair. All that was visible was the end of the barrel of the rifle and it appeared to be dark in colour."

And at this point you're discussing – you're writing about your view through the window of the living room.

CST. COX: Correct.

MS. O'BRIEN: And I'm going to just take you to all the information, extra information in this report.

CST. COX: Yeah.

MS. O'BRIEN: And then in the next paragraph, a sentence has been – a couple of sentences have been added – sorry. These ones here: "Sgt. SMYTH later was speaking to someone on his cell phone ... in the driveway of DUNPHY's residence and Cst. COX noted that Sgt. SMYTH told the person on the phone that he fired 3-4 shots."

On the next page the following information has been added: Once Constable –

MR. KENNEDY: Excuse me, Mr. Commissioner. Ms. O'Brien is saying the following information has been added. All she can say is that there's a difference between – there's additional information in one of the reports. We don't know, I don't think, from the system which one was written first. I don't think there's any way to know that, is there?

MS. O'BRIEN: Well, there will be. If you bear with me, please, Mr. Kennedy, I'll get to it. But when I say additional information, to be clear I mean additional to the report we just looked at, added from the report we just looked at.

THE COMMISSIONER: Right. I think Mr. Kennedy makes a valid point, we don't know. It could have been – this could have been the first document for what I know now with stuff deleted later to get the second – to get the first one you mentioned.

MS. O'BRIEN: We will –

THE COMMISSIONER: But you're going to get to that.

MS. O'BRIEN: I'm going to get to that.

THE COMMISSIONER: Yeah.

MS. O'BRIEN: And we can see that – we do see that and it's actually, it's the –

THE COMMISSIONER: Just wait now a second, Mr. Simmonds has a point.

MR. SIMMONDS: (Inaudible) indicate that the log that was done up, there's a big log from the scene with the total in it. I think that will add some light as to which one was first and which one was second.

THE COMMISSIONER: Oh. Thank you.

MS. O'BRIEN: So, yes, so we'll get to that. Okay?

So when I say additional though, for clarity, Mr. Kennedy, I'm really talking now what's – additional wording that is in this document that's not in the one we just looked at.

“Once Cst. COX and Cpl. O'KEEFE finished clearing the residence Cst. COX again noted DUNPHY sitting in the chair to the right hand side of the living room door. He was sitting with his back flat against the chair ... and head resting on the chair back as well. Cst. COX observed what appeared to be a bullet entry point on DUNPHY's left temple area that had a small trickle of blood coming from it and running down the left side of his face. There was also a quantity of blood visible from inside DUNPHY's left ear also running down the left side of his face slightly. Cst. COX noted that to the left of DUNPHY's chair there was a blue coloured Rubbermaid tub on the floor and the rifle was half resting on the side of it and the barrel was pointing down toward the floor to the left of DUNPHY's chair. The rifle was constructed of a brown and what appeared to be wooden stock with a brown barrel. Cst. COX took note that the rifle was a bolt action rifle and it appeared that the bolt on the rifle was open as it rested on the Rubbermaid tub and floor. No members moved or touched the rifle and the rifle was left in the exact position that it was found and undisturbed.”

And then the final additional wording here is in the next paragraph here, and it is this last sentence here that starts – here we go: “Please note that Cst. COX observed Paramedic LINEHAN as she checked DUNPHY for vital signs and while doing so at no time did any part of her person come into contact with the rifle only with DUNPHY.”

Okay, do you have any memory of why there is a difference between those – these two Supplementary Occurrence Reports?

CST. COX: The only thing I can come up with is as stuff popped in my head, I added it to my report.

MS. O'BRIEN: Okay.

Now, I'm going to just to see if we can assist your memory. I'm going to bring up your Supplementary Occurrence Report for the next day which is April 6.

CST. COX: Uh-huh.

MS. O'BRIEN: And if we look – which is P-0377.

And this is your Supplementary Occurrence Report for the next day but the note I want to bring you here to – it notes: “At 1129 hours as per the request of S/Sgt. TILLER Cst. COX faxed a copy of his report from the previous day to Dr. DENIC at the Office of the Chief Medical Examiner. Cst. COX printed off his report and faxed same. Copy provided to Cpl. FOOTE as per his request.”

Do you recall doing that, Constable Cox?

CST. COX: No, but if it's there –

MS. O'BRIEN: Okay.

CST. COX: – I did it.

MS. O'BRIEN: All right.

And so we can see and, Commissioner, it's been entered or I'm not sure if it has been entered or it will be entered when – as an exhibit when Dr. Avis, the chief medical examiner, takes the stand. But it's an exhibit which is a confidential exhibit from his file C-0015 and it has a fax stamp on it and it shows to be the first version of your notes.

CST. COX: Uh-huh.

MS. O'BRIEN: And the fax sent is indeed for 11:29 that morning and it's the first version without the extra wording.

CST. COX: Yeah.

MS. O'BRIEN: And but when we look at Dr. Avis's file, it appears the second version of your notes with the additional detail which we just looked at, at P-0373; it also appears in Dr. Avis's file.

CST. COX: Yeah.

MS. O'BRIEN: And that printed-out version looks the – on the – looks like it was printed from the PROS system that afternoon, the afternoon of April 6 at 1520 –

CST. COX: Uh-huh.

MS. O'BRIEN: – so that afternoon. But according to the date on it and according to the number identifying the officer who printed that, it looks like it was printed off by Corporal Burke. Okay?

CST. COX: Yeah.

THE COMMISSIONER: Now, what date was it?

MS. O'BRIEN: Same date.

THE COMMISSIONER: The same ...?

MS. O'BRIEN: April 6.

THE COMMISSIONER: The 6th, yeah.

MS. O'BRIEN: April 6, the same date. So it looks like at 11:29 that morning Constable Cox faxed through to the CME's office the version of his report without as much wording in it, but then in Dr. Avis's file we see another version of that report with the extra wording that looks to have been printed off the system by Corporal Burke at 3:20 that afternoon.

So from this one might deduce that the notes were added, the extra words were added sometime between 11:30 that morning and 3:20 that afternoon.

CST. COX: Uh-huh. Correct

MS. O'BRIEN: Do you – does that refresh your memory in any way? Do you recall Corporal Burke, for example, asking you to add further details to your notes?

CST. COX: No one asked me to put further details in my notes.

MS. O'BRIEN: Okay.

CST. COX: My notes are my notes.

MS. O'BRIEN: Okay.

CST. COX: Yeah.

MS. O'BRIEN: So you don't have any explanation why. You don't have any memory of putting that extra detail in.

CST. COX: I don't.

MS. O'BRIEN: Okay.

CST. COX: But based on what you're saying it would lead me to believe that I provided everything I had completed prior to Dr. Denic – Dr. Denic I think it was – and then continued to work on my report.

MS. O'BRIEN: Okay.

All right and so what you're saying is that might explain why we have two printed versions, two different versions?

CST. COX: It could explain it, yes.

MS. O'BRIEN: Okay.

CST. COX: Because really you should only have my one sup report. So why there's two there, I don't know.

MS. O'BRIEN: Well, the –

CST. COX: Other than what you're explaining here.

MS. O'BRIEN: Okay. And so that – it's unusual to have two versions of the report, as you say.

CST. COX: I've never seen it before.

MS. O'BRIEN: And so that led to us trying to figure it out. Okay.

If we – I don't need to – I think you show here that you had on this date on April 6 just some brief interaction with another potential witness on the file here, a fellow by the name of Gerald Dalton. But I understand you didn't do any interviewing of Mr. Dalton. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

Now the next activity that I think we have from you is if we can please bring up the Exhibit P-0359 and page 99. And this is the Daily Log, Constable Cox. We do not have in our records any Supplementary Occurrence Report for you on that date.

CST. COX: I'm sorry, what was the date?

MS. O'BRIEN: On April 7.

CST. COX: Okay.

MS. O'BRIEN: But we do see that your notes were – your typed notes were entered in the Daily Log so I'm just going to take you to that. And it's at page 99.

CST. COX: I thought you guys provided me with a document that had a report for that day.

UNIDENTIFIED MALE SPEAKER: Yeah.

MS. O'BRIEN: We can't –

CST. COX: (Inaudible.)

MS. O'BRIEN: We've done – I did not have it that day. I understood you had it with you because we interviewed you by phone.

CST. COX: I –

MS. O'BRIEN: I don't have his typed notes for that day.

UNIDENTIFIED MALE SPEAKER: (Inaudible) handwritten.

MS. O'BRIEN: I have handwritten notes for him but I don't have a typed Supplementary Occurrence Report –

UNIDENTIFIED MALE SPEAKER: Oh, okay.

MS. O'BRIEN: – for that day. And I understand that this information here that I'm looking at now from the Daily Log likely came from a Supplementary Occurrence Report that we don't have.

CST. COX: Okay. Yeah.

MS. O'BRIEN: And I don't – it's not a critical – you know, I don't think much rests on that but I'm just explaining why I'm bringing you to the Daily Log.

So I understand – if you want to just review that there, Constable Cox, to refresh your memory. But I understand on April 7 you were asked to go seize medications from Mr. Dunphy's home. Is that right?

CST. COX: That's correct.

MS. O'BRIEN: Okay.

And do you recall who asked you to do that?

CST. COX: I received a call from Corporal Shawn Seward.

MS. O'BRIEN: Okay.

And that was because the chief medical examiner wanted the medications. Is that right?

CST. COX: I'm not sure if it was Dr. Avis or if it was Dr. Denic but somebody from the medical examiner's office, one of the doctors, they wanted them.

MS. O'BRIEN: Okay.

And so did you proceed to Mr. Dunphy's house to look for the medications?

CST. COX: Yes, I did.

MS. O'BRIEN: Okay. And did you find any?

CST. COX: Yes, we did.

MS. O'BRIEN: And where did you find them?

CST. COX: Between the kitchen and the living room.

MS. O'BRIEN: So those were the two rooms you looked in?

CST. COX: Yeah, you could see them. They were just sitting there; they were out in the open view.

MS. O'BRIEN: Okay.

Did you look in any container, like an ice cream tub or any –?

CST. COX: There was a tub of some sort. I think it was on the coffee table – or not the coffee table, the little, almost like an end table perhaps to the right of his chair. It was over in that area.

MS. O'BRIEN: Okay.

And did you find anything in the ice cream tub?

CST. COX: Medications.

MS. O'BRIEN: Okay, so you opened that tub and took out medications?

CST. COX: I don't know if it was closed or if it was open but I assume it would be open, but there was medication in the tub.

MS. O'BRIEN: Okay.

Did you see – do you recall seeing anything else in the tub?

CST. COX: Yes.

MS. O'BRIEN: What else did –?

CST. COX: A .22-calibre round.

MS. O'BRIEN: Inside the tub?

CST. COX: Yes.

MS. O'BRIEN: Okay, and just one?

CST. COX: I remember seeing one, yes.

MS. O'BRIEN: Did you tell anyone about that?

CST. COX: Staff Tiller was there with me at the time.

MS. O'BRIEN: Okay, but you didn't note it anywhere in your notes?

CST. COX: No, I forgot to put it in.

MS. O'BRIEN: And was it an unspent .22?

CST. COX: It was an unspent round, yes.

MS. O'BRIEN: Okay.

Did you search in any other rooms in the house at all?

CST. COX: I don't remember. I remember looking in the kitchen for sure and the, and the living room area.

MS. O'BRIEN: Okay.

Okay. Have we covered all your – is that the final activity you had on this file?

CST. COX: Yes.

MS. O'BRIEN: Okay.

All right, I don't have any further questions for you, Constable Cox. Other counsel will, and the Commissioner may have some questions himself.

Thank you.

THE COMMISSIONER: Okay, who's going first?

Go ahead, Mr. Simmonds.

MR. SIMMONDS: Just had a couple of brief questions; on the very last – sorry. Constable Cox, on the very last point –

CST. COX: Yes.

MR. SIMMONDS: – that's the first time or did I miss it in previous disclosure? The .22 round in the ice cream tub, had you mentioned that or put that out anywhere or described that before, or told Ms. O'Brien in your interview with her?

CST. COX: No, I remembered it last night.

MR. SIMMONDS: You remembered it last night?

CST. COX: Yeah, but I do remember having it, seeing it.

MR. SIMMONDS: And it was one single round?

CST. COX: I remember one single round. Now, whether there was more there, Mr. Simmonds, I don't know, but I remember the one for sure.

MR. SIMMONDS: Okay.

And yeah – but you must have tipped it over to get the medications out, did you, or ...?

CST. COX: I don't know if I, if I poured the medications out or if I reached in. I can't remember.

MR. SIMMONDS: Because these were medications in pill bottles.

CST. COX: They were in bottles, yes. Individual bottles so ...

MR. SIMMONDS: Is that strange you wouldn't note that previously in your notes or is there just something that came to you last night?

CST. COX: I forgot about it.

MR. SIMMONDS: Okay.

The other question I have for you – and I was lost when I, when we first realized this – there was two sets of the reports, they're Exhibits 0175 and Exhibit 0376.

CST. COX: Are you talking about the two sup reports?

MR. SIMMONDS: Yes.

CST. COX: Okay. Yeah.

MR. SIMMONDS: And it – we now appear that there's some information in the Scene Log that helped us out.

CST. COX: Yeah.

MR. SIMMONDS: But it now appears clear because the chief medical examiner's office had both copies –

CST. COX: Uh-huh.

MR. SIMMONDS: – it looks like, because you were asked to fax in some information to him. They have both copies of your entitled Supplementary Occurrence Report.

CST. COX: Correct.

MR. SIMMONDS: And there appears to be maybe two or three hours difference in them, in the time they were sent.

CST. COX: Correct.

MR. SIMMONDS: Okay.

And the dates on them both indicate 1636; Report Time 1636, Entered Time 1636. And that – I understand that in previous evidence, that is the time that this information is input into the computer system.

CST. COX: Yes, it is. Yeah.

MR. SIMMONDS: Okay.

And the only other change – Ms. O’Brien took you though all the changes on the two with the exception of on 0376, on the original one there’s no place for remarks.

CST. COX: Can I see that report, please?

MR. SIMMONDS: Yes.

Can you bring up 0376, the second page, Madam Clerk. Yeah, there we go.

You see there – that’s good, right there. She took you to all the other changes but the only change there – does this have any significance, the term there: “Remarks: Folder 003 – Scene Security.” That’s not on your original one.

CST. COX: I don’t remember. I would – I don’t remember putting that in there.

MR. SIMMONDS: You don’t remember putting that in there?

CST. COX: No, because I don’t know that I’d ever put remarks in there.

MR. SIMMONDS: That’s why this is a –

CST. COX: Because folders –

MR. SIMMONDS: (Inaudible.)

CST. COX: I don’t deal with Major Case – I would assume that’s with Major Case Management. I don’t deal with that. I deal with just PROS, right.

MR. SIMMONDS: Okay. So, yes, because they (inaudible) the system over partway through from PROS –

CST. COX: Yeah, that’s correct.

MR. SIMMONDS: – to the Major Crime Unit’s system, the one that they use.

CST. COX: Because when we start a file, like, we just have the one file folder.

MR. SIMMONDS: Right.

CST. COX: Like we don't separate folders.

MR. SIMMONDS: No.

CST. COX: Like, for instance, we wouldn't have a folder for my interview or someone else's interview – like we don't do it that way.

MR. SIMMONDS: It's all in the one.

CST. COX: It all goes in the same one, right.

MR. SIMMONDS: And it's just supplementary continuation report. Like on any –

CST. COX: Yeah.

MR. SIMMONDS: – file I get disclosure on –

CST. COX: Yeah.

MR. SIMMONDS: – there might be five or six Supplementary –

CST. COX: That's right

MR. SIMMONDS: – Occurrence Reports with it.

CST. COX: That's right.

MR. SIMMONDS: So I'm really at a loss as to number one, who puts in this "Folder 003 – Scene Security" which must be on it by the time it goes to the chief medical examiner's office?

CST. COX: Yeah, I don't remember putting it there.

MR. SIMMONDS: You don't remember putting it there.

CST. COX: No.

MR. SIMMONDS: It's not something you would normally put there.

CST. COX: I don't know if I've ever put remarks on the file in that spot.

MR. SIMMONDS: Don't know if you ever put it. And the second thing is – and, you know, I ask you to go from your best memory here.

CST. COX: Uh-huh.

MR. SIMMONDS: The only thing that's added in these reports basically is, or the major thing that's added is the, on page 3 of the exhibit that long paragraph that Ms. O'Brien quoted to you. It's detailed notes now some hours later –

CST. COX: Uh-huh.

MR. SIMMONDS: – with respect to the location of the gun. And I'm at a loss as to why you would make a set of notes at – in the morning, and then within that same day the one other set of

notes that are identical, but the major change being the insertion of this with respect to the location of the gun. I mean –

CST. COX: What's your question?

MR. SIMMONDS: Yeah. Well, it would appear to me that something motivated you to do that.

CST. COX: Yeah, I was continuing my report.

MR. SIMMONDS: But you had done it that morning and you do it again that afternoon. That does seem a little – and both of them had the same kind of entry times.

CST. COX: Uh-huh.

MR. SIMMONDS: What I've seen on Occurrence Reports before is certainly – and we've heard this evidence already – that police add to them. And you may get the same information and another block, but it will have another block of information with it as well incorporated into it, but it will normally have a different entry time. These both have 1636 as the entry times

CST. COX: Not if you're working on the same report it won't. It will still be the same report.

MR. SIMMONDS: But will it have the same report time and entry time? I understood that each time a new portion is added to it, I think one witness described it as if you were doing an affidavit on a wiretap, much of it's the same but each time they add a paragraph to it. So it looks the same except for the additional paragraph but it would have notation that that was added at a later date. These two both have the same entry and report – same reported times –

CST. COX: Which time are you talking about, Mr. Simmonds?

MR. SIMMONDS: Pardon me?

CST. COX: Are you talking about the time in the top-right corner?

MR. SIMMONDS: Yes, I am; Report Time and entering time.

CST. COX: So what you're saying – what you're saying is every time I typed something on that, that time should change.

MR. SIMMONDS: I would have thought. That's what my under – I'm asking you.

CST. COX: Yeah. Well, we can't assume that and that's the same report. I would have continued my report, so ...

MR. SIMMONDS: So the fact that it says: Entered Time 1636, even though it was literally three or four hours after, that's not abnormal or strange for those Report Time and Entered Time to both bear the same, even though they're done at different times.

CST. COX: I wouldn't think so, no.

MR. SIMMONDS: Okay.

Thank you very much, Officer Cox.

CST. COX: You're welcome.

THE COMMISSIONER: Mr. Kennedy?

MR. KENNEDY: Some questions, Commissioner, but I note that it's 10 to 11.

THE COMMISSIONER: Want to take a break?

MR. KENNEDY: Probably.

THE COMMISSIONER: Sure.

All right.

Thank you, we'll recess for 15 minutes.

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry recessed.

Recess

MS. SHEEHAN: I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Go ahead when you're ready.

MR. KENNEDY: Thank you, Commissioner.

Good morning, Constable Cox. My name is Jerome Kennedy; I'm counsel for Constable Joe Smyth.

CST. COX: Good morning.

MR. KENNEDY: If we could have Exhibit P-0230 brought up on the screen, Madam Clerk, please. I'm going to refer you now, Constable, to the Scene Log which outlines certain times I want to bring up, but I also understand that these are in your Occurrence Reports.

CST. COX: Correct.

UNIDENTIFIED MALE SPEAKER: (Inaudible) your light's on here.

CST. COX: Is it on?

UNIDENTIFIED MALE SPEAKER: It's on but I can't see it.

CST. COX: Oh.

MR. KENNEDY: The Scene Log, it's my understanding these notes were made at the time while you were there in Mount Carmel, or in Mitchells Brook. Is that correct?

CST. COX: That's correct.

MR. KENNEDY: So the first time we'll see at 1455 you arrive on the scene.

CST. COX: Correct.

MR. KENNEDY: Then at 1501 Constable Downey arrives on the scene.

CST. COX: Correct.

MR. KENNEDY: And 1502 Corporal O’Keefe arrives on the scene.

CST. COX: Correct.

MR. KENNEDY: And Ms. O’Brien had reviewed those times with you. It appears that at 1507, from your notes, that yourself and Corporal O’Keefe clear the residence.

CST. COX: We entered the residence, yes.

MR. KENNEDY: At 1510, you enter the residence with – yourself, Corporal O’Keefe and the two paramedics enter the residence.

CST. COX: Correct.

MR. KENNEDY: And that at 1513 all persons are out of the residence.

CST. COX: Correct.

MR. KENNEDY: So that the paramedics were in the residence for three minutes.

CST. COX: It would appear that way, yes.

MR. KENNEDY: Approximately.

CST. COX: Correct.

MR. KENNEDY: Obviously, there could be seconds here but ...

CST. COX: Yeah.

MR. KENNEDY: Okay.

Sir, in terms of – I want to start now in terms of your conversation with Constable Smyth as he’s going out to Mitchells Brook. You offered to come along. You did the PROS check –

CST. COX: Correct.

MR. KENNEDY: – but you don’t have any recollection of the uttering threats charge even though he – mentioning the uttering threats charge even though he refers to it in his General Occurrence report.

CST. COX: I don’t remember it until I saw the logs there.

MR. KENNEDY: And also you have no recollection of noting the caution, V for violence or passing that information on to him.

CST. COX: Not until I saw the log.

MR. KENNEDY: Okay.

Well, you saw the log – excuse me, that’s about the first time you saw the V for violence. Yeah.

CST. COX: Well, sorry the – I guess it would be Corporal Lush’s report there, the one that she brought up earlier.

MR. KENNEDY: Yeah, but you do indicate that, or you do agree that would be an important piece of information to pass along.

CST. COX: That’s correct.

MR. KENNEDY: Okay.

So then, Mr. – when you offered to come along you were in your uniform and in your marked vehicle because – were you doing – Sir, do you do traffic? Were you doing traffic work in Holyrood at the time? Is it community policing or GIS or it could be a combination of any of it?

CST. COX: I was doing – I was a general duty constable.

MR. KENNEDY: Yeah. So you would do –

CST. COX: So I’d –

MR. KENNEDY: Yeah.

So when you indicate that Mr. – Constable Smyth said, well, he didn’t want you to come along because it could set Mr. Dunphy off, the uniform and the marked vehicle. You indicated, I think, Sir, and please correct if I’m wrong, that you weren’t sure of the exact words but that was what you noted.

CST. COX: Something to that effect, yes.

MR. KENNEDY: Yeah. So essentially you paraphrased what Constable Smyth said to you.

CST. COX: I believe what I wrote in my report is accurate but I wouldn’t say 100 per cent.

MR. KENNEDY: Okay.

Yeah, so basically do you know if he used words like: aggravate, agitate, irritate, annoy?

CST. COX: It could have been. It could have been.

MR. KENNEDY: Yeah.

CST. COX: Yeah.

MR. KENNEDY: And your interpretation of that would be that it could, the presence of the uniform and the marked vehicle could set Mr. Dunphy off.

CST. COX: Very well could, yeah.

MR. KENNEDY: Yeah, okay.

So I want to, Sir, then move to the – you arrive at the scene and you have a conversation with Constable Smyth as is outlined in your – I guess you call it a Supplementary Occurrence Report.

And, Sir, one explanation is it – one explanation or is it a possible explanation, in terms of the two exhibits which you've been shown, is that one you were simply continuing what you had done that morning when Dr. Denic or Corporal – when Dr. Denic or Dr. Avis were looking for information, you provided them what you had at the time. You continued to work on your report and finalize it that afternoon and then sent that to them also.

CST. COX: That's correct.

MR. KENNEDY: Yeah. So basically if you shut down your Supplementary Occurrence Report, at that point can you go back in and alter it or does it have to be a new addition?

CST. COX: No, I can continue working on it.

MR. KENNEDY: Okay.

So at that point you've indicated no one came to you and said make sure you describe the scene fully or add this to the scene or did you see the rifle. There was nothing like that?

CST. COX: No, my notes are my notes.

MR. KENNEDY: Yeah. That basically – and I assume I'm correct on this, Sir, but I have to ask you anyway. And can I assume that at that point by the next day, less than 24 hours after the incident, you wouldn't have seen – you would have not have reviewed any photographs of the scene?

CST. COX: The first time I saw any photographs was the day before –

MR. KENNEDY: Yeah.

CST. COX: – my interview with Commission counsel.

MR. KENNEDY: Yeah, so it's not like someone comes to you and says: Here's a photograph of what we have, is this what you saw? Nothing like that.

CST. COX: No. No.

MR. KENNEDY: So that when you described the position of the rifle, you're doing that from memory based on what you saw less than 24 hours before that.

CST. COX: That's correct.

MR. KENNEDY: Sir, when you encounter Constable Smyth in the driveway you indicate that he volunteers information to you. You asked him what happened; he volunteers information.

CST. COX: Correct.

MR. KENNEDY: Yeah. There's no – you didn't – no indication of being uncooperative or wanting to talk to anyone first. Simply, you asked him what happened, he responded.

CST. COX: Yeah. As soon as I asked he provided an answer.

MR. KENNEDY: And he looked to you that he was physically shaken in terms of his hands were shaking at the time. You noticed that?

CST. COX: That's correct.

MR. KENNEDY: Now, do you remember telling Commission counsel that he looked like he saw a ghost.

CST. COX: Yes, he did. He –

MR. KENNEDY: Is that a description that you would adopt, Sir, here today?

CST. COX: It's in my report. He looked visibly upset, that's what I mean.

MR. KENNEDY: No, but in your Commission counsel, in your interview with them, you actually said that he looked like he saw a ghost.

CST. COX: Oh no – that, yes, I did say that. Yes.

MR. KENNEDY: Yeah. And is that an accurate description of your evidence?

CST. COX: That's correct.

MR. KENNEDY: Now, Sir, you were within a couple of feet of him and you were within a couple of feet initial – your initial contact.

CST. COX: Correct.

MR. KENNEDY: And then down in the car, you would have been in the enclosed space for a few minutes before Corporal O'Keefe arrived.

CST. COX: Correct.

MR. KENNEDY: Now, you had been, I think, an RCMP officer since 2008.

CST. COX: Correct.

MR. KENNEDY: And I'm assuming that over that period of time you would have dealt with a lot of people who were either under the influence of alcohol or you suspected to be under the influence of alcohol, whether it be impaired driving, domestic disputes, whatever. It's something you deal with a lot, isn't it?

CST. COX: That's right.

MR. KENNEDY: As police officers, it's one of the things that you're trained to observe is whether or not someone is potentially under the influence of alcohol or drugs.

CST. COX: Correct.

MR. KENNEDY: Sir, did you at any time that day get any smell of alcohol from Corporal – of Constable Smyth?

CST. COX: No, I did not.

MR. KENNEDY: No. Is that something that you would be looking for? You would – whether you’re looking for it or not it’s something that if you – you would have known it if you had observed the same. Correct?

CST. COX: You could tell if there was a smell of alcohol there.

MR. KENNEDY: Yeah.

And, Sir, was there anything about his behaviour, other than he had just been obviously involved in a very traumatic incident, that would lead you to believe that he was under the influence of anything?

CST. COX: No, there wasn’t.

MR. KENNEDY: No. His comments to you, even though he’s – obviously he’s physically shaken. His comments to you were – they weren’t disjointed, he could articulate himself in a way that made sense.

CST. COX: Correct.

MR. KENNEDY: Okay.

And, Sir, in terms of what you noted is that – what he said to you is that accurate? Is there anything else that would – that’s comes to you on that in terms of what he said? Or did you note at that time exactly what he said to you?

CST. COX: Are you talking about all the conversation?

MR. KENNEDY: Yeah, in terms of what he said to you when he says that – when you asked him what happened, Constable Smyth: “He informed Cst. COX that he was standing in the living room speaking to DUNPHY and DUNPHY was becoming increasingly agitated while speaking to him.”

He said that Dunphy reached down alongside of the chair “and picked up a firearm and started to point it at Sgt. SMYTH. He said that he kept saying to DUNPHY, ‘NO NO NO.’” – and you have those in big brackets, or no in capital letters, excuse me. Smyth proceeded: “Sgt. SMYTH proceeded to move and while doing so discharged his service pistol at DUNPHY as he moved because DUNPHY was following Cst. SMYTH with” the firearm.

CST. COX: Correct.

MR. KENNEDY: And then you heard him speaking to someone on the, on the phone, and he told the person on the phone that he fired three to four shots.

CST. COX: That’s correct.

MR. KENNEDY: Okay.

So you have that conversation, now you go into the house with, with Corporal O’Keefe, first to ensure safety –

CST. COX: That’s correct.

MR. KENNEDY: – in terms of before you bring anyone else into the scene, obviously. Your indication or the time frames that we dealt with, Sir, indicate that you went into the house at 1507 and went in, back in – you entered the house at 1507, you obviously came outside, checked the house, came outside, and then at 1510 went in with the paramedics.

CST. COX: That's correct.

MR. KENNEDY: Now, Sir, do you remember clearly telling the paramedics not to touch anything and to make sure that they – other than obviously Mr. Dunphy, and to watch where they were walking?

CST. COX: That's correct.

MR. KENNEDY: Do you remember that clearly?

CST. COX: Yes, I do.

MR. KENNEDY: Now, Sir, I'm going to show you a picture, or we'll have you shown a picture of – I'm trying to remember, Commissioner, if 039 or 040 are confidential exhibits. I assume they would be, Scene 039 and 040.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: Yeah, okay.

Could we bring up, please – let's use Scene 040; it's a confidential exhibit.

MS. O'BRIEN: Constable Cox, just so you're aware, you're going to see Mr. Dunphy in this photograph.

CST. COX: Okay, it's going to be on my screen?

MS. O'BRIEN: It's going to be on your screen, okay.

MR. KENNEDY: Scene 040.

UNIDENTIFIED MALE SPEAKER: 040?

MR. KENNEDY: Yeah.

And we might have to look at a couple of photographs, Constable, to get the angle that I'm, that we're looking for, but let's start with this one when it's brought up, please.

Okay, do you recognize that scene, generally, Sir?

CST. COX: Yes, I do.

MR. KENNEDY: Okay. When you would have been looking into the – you indicated in your notes, or in your – I call them your notes, Sir – your Supplementary Occurrence Report that when you looked in through the window you observed a male sitting in a recliner-style chair on the left-hand side of the living room window, inside the living room.

He had one visible wound to the right part of the forehead, and you could see the barrel of what appeared to be a rifle pointing down and back towards Dunphy's left leg as he sat in the chair. All that was visible was the end of the barrel of the rifle and it appeared to be dark in colour.

Now, is that what you've seen looking in through the window, or is that the scene when you came into the house?

CST. COX: This picture?

MR. KENNEDY: Yeah.

CST. COX: Well, I would have saw this when I came in the house, but you could see the stuff through the window as well.

MR. KENNEDY: Okay. I don't know if we have an actual photograph that would depict that, so can you help us, Sir, in terms of what would you have seen through the window first.

CST. COX: The pane closest to Mr. Dunphy is the one I looked in; you can see Mr. Dunphy in the chair –

MR. KENNEDY: Okay, sorry, could you tell me that again? It's on the left-hand side of the picture, that's the window you would have looked in through.

CST. COX: The one closest to Mr. Dunphy, yes.

MR. KENNEDY: Okay, okay.

CST. COX: And then you could see Mr. Dunphy in the chair and you could see the barrel of the rifle at the floor.

MR. KENNEDY: Okay. So that's all you would have seen at that point.

CST. COX: Correct.

MR. KENNEDY: So then when you come into the house with Corporal O'Keefe, do you now see this – is this the layout; is this what you see?

CST. COX: That's correct.

MR. KENNEDY: Sir, in terms of the gun that's pointed – that's there on the rubber – on the bluish container. Is that what you saw when you came into the house?

CST. COX: That's correct.

MR. KENNEDY: You describe it in your continuation report – first actually before I get to that, he was sitting with his back flat against the chair back and head resting on the chair back as well. Is that the position in which you would have seen Mr. Dunphy when you came into the house?

CST. COX: That's correct.

MR. KENNEDY: Now, do you know if the posture in terms of the way he's sitting, is that exactly what you would have seen or can you tell from that photograph?

CST. COX: I won't say 100 per cent.

MR. KENNEDY: Okay. Did you notice anything about the position of his hands when you came into the house?

CST. COX: No, I didn't.

MR. KENNEDY: Okay. In terms of the, the hands, did you see the paramedics in any way move his hands?

CST. COX: I don't remember. I don't know if they took, tried his pulse at his neck or his wrist; I can't remember.

MR. KENNEDY: Sir, in terms of the firearm on the blue tub, with the barrel pointing towards the floor, how good is your memory of that?

CST. COX: That's the firearm and that's how it was resting.

MR. KENNEDY: This is before the paramedics come into the house, this is what you see.

CST. COX: I never moved anything; that's how it was.

MR. KENNEDY: In fact when you were asked by Commission counsel, you indicated during your pre-Commission interview – and I'll actually read it to you. At page 35 of your interview of January 19 – and was this interview in person or by telephone?

CST. COX: By telephone.

MR. KENNEDY: Okay. I thought that.

At page 35 you're asked about the position of the gun; you'd see a photo. Ms. O'Brien says to you: So you refreshed your memory. Before giving your statement today, you refreshed your memory by looking at the photos to remember – help you remember the layout of the house. Is that what you're saying?

Constable Cox: Just the layout, yeah. Like, as far as the rifle and everything goes, there's no argument where that was. Like, that's just engrained in your head. I know where all that stuff was.

Do you remember saying that to Ms. O'Brien?

CST. COX: That's correct.

MR. KENNEDY: And what did you mean, Sir, by suggesting engrained in your head?

CST. COX: I won't forget where that rifle was.

MR. KENNEDY: And so when you prepare – or when you add – we know that at least, by April 6, sometime in the afternoon, the description of the gun on the bluish tub is in your Supplementary Occurrence Report; correct?

CST. COX: Correct.

MR. KENNEDY: So did you, or Corporal O'Keefe, touch that gun at any time?

CST. COX: I never touched it.

MR. KENNEDY: Sir, would it surprise you that the paramedics have testified – Nancy Linehan and Kevin Bishop – that the gun was flat on the floor and they did not see the gun on the bluish tub?

CST. COX: That's surprising, yes.

MR. KENNEDY: Because implicit in that, Sir, is that either you, or someone else – Corporal O'Keefe, or someone – moved the gun from the floor to the bluish tub.

CST. COX: That would be the assumption, yes.

MR. KENNEDY: Do you have any comment on that, Sir?

CST. COX: I didn't touch that firearm. That's how it was.

MR. KENNEDY: Prior to putting together these notes, by April 6, had you any knowledge of what either Ms. Linehan or Mr. Bishop had said to the police in terms of the position in the gun?

CST. COX: Sorry, say that again?

MR. KENNEDY: Prior to preparing your notes, on April 6, the description of the position of the gun on the bluish tub, did you or were you aware whether or not Ms. Linehan or Mr. Bishop had been interviewed or whether or not they had said where the gun was?

CST. COX: No.

MR. KENNEDY: No.

Sir, when you say it's engrained in your head and you won't forget it, is there any particular reason for that?

CST. COX: I think it's just the totality of the situation, and the event.

MR. KENNEDY: Does your description in your Supplementary Occurrence Report coincide with the picture I just showed you?

CST. COX: Yes, it does.

MR. KENNEDY: Yeah.

Did you see either of the paramedics either bump against the rifle, touch the rifle or do anything in relation to the rifle?

CST. COX: I didn't see them touch it.

MR. KENNEDY: In fact, Sir, they were – it appears that by your notes they were in the house for three minutes.

CST. COX: Yes.

MR. KENNEDY: I want to show you a couple of more pictures now to try – these will also be confidential pictures, Madam Clerk. And if we could, I'm still looking –

THE COMMISSIONER: So which number was that? Was that 039 or 040 we looked at?

UNIDENTIFIED FEMALE SPEAKER: 040.

THE COMMISSIONER: 040?

Okay. Thank you.

MR. KENNEDY: I'm going to use – if we could use 124 and 133. These, I'm sure, are confidential.

THE COMMISSIONER: 133 and one –

UNIDENTIFIED FEMALE SPEAKER: 124.

THE COMMISSIONER: – 124.

MR. KENNEDY: Is there a problem, Ms. Chaytor?

MS. CHAYTOR: It's just the numbering (inaudible).

CST. COX: Oh, it's already up there now, so ...

MR. KENNEDY: Sorry, I don't –

THE COMMISSIONER: It's a personal thing, Mr. –

CST. COX: Sorry.

THE COMMISSIONER: Okay.

MS. CHAYTOR: (Inaudible.)

MR. KENNEDY: And, sorry, I didn't ...

CST. COX: That's all right.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Oh, go ahead, Mr. Kennedy.

MR. KENNEDY: Okay, sorry.

THE COMMISSIONER: We're aware there, but basically it was up to the RCMP counsel to indicate if it had any problems with any photos.

So there's no problem. Go ahead.

MR. KENNEDY: Okay. Well, let's – which one do you have? Is there a photo up there now?

CST. COX: Yeah.

THE COMMISSIONER: It's number –

MR. KENNEDY: Now, I want you –

THE COMMISSIONER: – 124, yeah.

MR. KENNEDY: Yeah, I'm concerned or I'm looking at the position of the body. Can you tell from looking at that photograph if that is the same position, because this photograph, we understand, is taken some time later. Can you say, indicate whether or not that position of the body is what you would have seen when you entered the house that day?

CST. COX: It's an accurate depiction, yes.

MR. KENNEDY: Okay.

If I could next go to and I think it's going to be one – or 096 and this is not a confidential exhibit.

MS. SHEEHAN: Yes, it is.

MR. KENNEDY: I don't think.

MS. SHEEHAN: Yes, it is.

MR. KENNEDY: 096 is a – okay, sorry.

THE COMMISSIONER: Clerk rules.

MR. KENNEDY: Okay.

You'll see the picture of the firearm there, again, from a different angle. Is that what you would have seen and which is ingrained in your head?

CST. COX: That's correct.

MR. KENNEDY: Now, you'll see that there's a tub there, Sir. It appears to some kind of, I don't know if it's ice cream, I can't really tell. It looks to be either an ice cream container. Is that where you found the medications?

CST. COX: That's the table. I remember taking them off, so that's the only tub there. That should be the one, yes.

MR. KENNEDY: Is that where you found the live .22 round?

CST. COX: That's correct.

MR. KENNEDY: Okay.

If we could just go to the next photo and, again, this might be – let's go to 102, please.

MS. CHAYTOR: No, it's not confidential.

MR. KENNEDY: There is a, what appears to be a .22 bullet there on the – this appears to be on the coffee table next to the ashtray or the end table next to the ashtray.

Do you know if you laid the un – is that, can you tell – I know nothing about bullets. Do you know, for example – is that an unspent .22?

CST. COX: That's an unspent .22.

MR. KENNEDY: Okay.

Do you know if you would have laid the bullet in the coffee tub down on the table?

CST. COX: I wouldn't be able to tell you.

THE COMMISSIONER: Oh, if you laid what down?

MR. KENNEDY: The .22 cartridge that was in the tub.

THE COMMISSIONER: Right.

MR. KENNEDY: Does he know if he laid that down on the table by the ashtray?

MS. O'BRIEN: Just for clarity, Mr. Kennedy, the evidence is these photographs were taken on the 5th and 6th.

MR. KENNEDY: Right.

MS. O'BRIEN: And Constable Cox was there to seize the photos on the 7th.

MR. KENNEDY: Okay.

Good. Thank you.

So that's another – that bullet is not the one that you would have found in the container?

CST. COX: Yeah, I would assume, not. I think that's an evidence marker in the corner so –

MR. KENNEDY: Okay. Yeah, you're right.

CST. COX: Yeah.

MR. KENNEDY: That's – thank you, Ms. O'Brien.

So the bullet, the unspent cartridge which you found in the container, do you know what happened to that?

CST. COX: I left it there.

MR. KENNEDY: Okay.

I don't have any further questions. Thank you, Constable Cox.

THE COMMISSIONER: Anybody else have any questions?

MR. AVIS: I just have one, one question.

THE COMMISSIONER: Go ahead.

MR. AVIS: Thank you.

Good morning, Constable Cox.

CST. COX: Good morning.

MR. AVIS: My name is Nick Avis. I represent the Royal Newfoundland Constabulary.

I just want to ask you a few questions, somewhat general, somewhat particular, about clearing a house and clearing a scene, what your training and obligations are in doing that.

Would it be fair to say that there are certain aspects of your training, to use your own words, that are ingrained in a police officer's head?

CST. COX: Correct.

MR. AVIS: One of them would be how to clear a house. Would that be fair?

CST. COX: I don't recall that training at depot.

MR. AVIS: Okay, you don't recall that training. Where did you learn to clear a house?

CST. COX: It was a separate course.

MR. AVIS: Okay, so it was a course.

Is it – the first question I have is, Sir, you said you would be wearing gloves. Is there any part of your training that you should be wearing gloves and those little boots whenever you go to a crime scene?

CST. COX: Yeah, we're not provided with the boots that you're referring – you're talking about the things you put over your boots?

MR. AVIS: Yes.

CST. COX: No, we don't have those. I don't anyway.

MR. AVIS: Any reason why you couldn't have those in your vehicle or with you?

CST. COX: If they were provided, they should be there.

MR. AVIS: Okay. That's just sort of a general question.

CST. COX: Yeah.

MR. AVIS: Now, when it comes to clearing a scene, is it not impressed upon you in your training that you must not touch anything unless you absolutely have to. Is that fair?

CST. COX: That would be a good practice, yes.

MR. AVIS: Right. So if you have to open a door, well obviously, you have to touch a door when you're clearing a house. Correct?

CST. COX: That's correct.

MR. AVIS: Two – and the only other thing you might have to do is check the person to see if they are – their medical condition to see if they're alive. Not so in this case, but that would be something you might do when you go to a scene like that?

CST. COX: That's correct.

MR. AVIS: The objective is, is that you have a – I don't know, you do it as quickly as possible, the clearing?

CST. COX: Correct.

MR. AVIS: And that you try to maintain as small a path as possible through the house so you disturb as little as possible.

CST. COX: Correct.

MR. AVIS: I'd say to you that it is absolutely forbidden for you to move anything, isn't it?

CST. COX: I wouldn't move anything.

MR. AVIS: Right. It would possibly be obstruction of justice amongst other things?

CST. COX: I wouldn't move anything.

MR. AVIS: Okay.

With respect to note taking, I'm going to suggest to you that the – obviously you can't do it at the time. But the only thing that is essential for you to note is anything that you touched or inadvertently moved. Would you agree with that?

CST. COX: It would be an important piece of information, yes.

MR. AVIS: Right.

As for your observations, since your duty after that is to preserve the scene and not to let anybody else in, even while your descriptions may be useful, they're not necessary, are they?

CST. COX: Sorry, clarify that?

MR. AVIS: Okay. After you've been in there, no one else gets in there except police officers. Correct?

CST. COX: Correct.

MR. AVIS: So the scene is preserved. You don't have to take photographs because the scene is preserved. Am I correct?

CST. COX: That's correct.

MR. AVIS: Similarly, while your observations that you've given us have been very helpful and very useful in this particular case, you would not ordinarily be expected to take notes of everything you saw as an essential part of your note taking. Or am I wrong?

CST. COX: You should be taking notes of what you saw, yes.

MR. AVIS: Okay.

No further questions. Thank you.

THE COMMISSIONER: Mr. Flaherty.

MR. FLAHERTY: Good morning Constable Cox. My name is Cletus Flaherty and I'm counsel for the Donald Dunphy Community Coalition. I just have a couple of questions.

Madam Clerk, if you could bring up Exhibit P-0175.

So I know that Mr. Simmonds asked you some questions on this and I'm still somewhat confused, so I'm hoping to see if you can clarify a couple of things for me.

So I'm going to refer you to the Report Time and Entered Time at the top right-hand corner of that exhibit. What does the Report Time identify as far as you know? What time gets put in there?

CST. COX: It should be the call time, yes.

MR. FLAHERTY: Or the call time.

CST. COX: Yeah.

MR. FLAHERTY: And the Entered Time, what does that refer to?

CST. COX: When I'm entering my report.

MR. FLAHERTY: When you're entering your report.

So when you're entering your report can you save the report to the system on an interim basis and go back and revise it later?

CST. COX: No, it should auto save but you can –

MR. FLAHERTY: Right.

CST. COX: There is an option to save as well.

MR. FLAHERTY: Okay.

And so if you saved a report and then later reopen the report on your system and put in additional information, is your evidence that the Entered Time does not change in that situation?

CST. COX: Not that I know of. Now, you can ask the PROS people but my understanding is no.

MR. FLAHERTY: Okay.

Now, your evidence was that the Remarks section that's added, actually, in P-0376 – it's your evidence that you normally never input information that would show up under Remarks?

CST. COX: What you would normally get is what you see in P-0175 here.

MR. FLAHERTY: Okay.

CST. COX: I don't know where the Remarks came from. So I don't know if Major Crime added that so they can keep track of what's what for exhibits. I don't know.

MR. FLAHERTY: Okay.

So what does folder, on Exhibit P-0376 – and we don't necessarily need to bring it up unless, Constable, you require it – the Remarks state: "Folder 003 – Scene Security." Can you tell us what that means to you?

CST. COX: It doesn't mean anything to me because I didn't put it there.

MR. FLAHERTY: Okay.

And who has the ability, as far as you know, to enter remarks on an officer's Supplementary Occurrence Report?

CST. COX: I don't know. I don't so ...

MR. FLAHERTY: Okay.

Can you tell me a situation where the Entered Time and the Report Time would be different?

CST. COX: I don't understand what you're asking me.

MR. FLAHERTY: Okay, so in your report, P – you know, we see – look at P-0175, the Report Time and the Entered Time, both the dates and the actual times are the same.

CST. COX: Uh-huh.

MR. FLAHERTY: Can advise me or tell me about a situation where those times do not, aren't the same. Like how, how do, how would that occur?

CST. COX: If one was the call time and one was the Report Time.

MR. FLAHERTY: Okay.

THE COMMISSIONER: I'm not sure I'm following. Are you able to say that the Report Time and Entered Time in your case should be the same?

CST. COX: That would have been done by – that, that's me.

THE COMMISSIONER: That's you.

CST. COX: Yeah.

THE COMMISSIONER: But I'm just wondering; the Report Time, as I understood you to say, was when you received the call?

CST. COX: Normally, it should be. Or whatever time you start the report or whatever.

THE COMMISSIONER: Okay.

CST. COX: Yeah.

THE COMMISSIONER: So when you – basically, you're on the phone, you're starting a report and entering it simultaneously basically, are you?

CST. COX: Yeah. If you want a 100 per cent answer, you're going to have to ask the PROS people.

MR. FLAHERTY: No, fair enough.

CST. COX: Yeah, I – like, I just type it. I don't, you know –

THE COMMISSIONER: Yeah.

CST. COX: It is what it is.

MR. FLAHERTY: You use it, yeah.

CST. COX: Yeah.

MR. FLAHERTY: But, no, we'll refer to additional people on that point.

Is this a situation where there's been information – extra information put into your Supplementary Occurrence Report? Do you recall if you had left the report open on your screen or if you had saved it before the additional information was put into your report?

CST. COX: I lock my computer when I walk away from it.

MR. FLAHERTY: You, you –

CST. COX: It's locked.

MR. FLAHERTY: – you lock it yourself. Okay.

CST. COX: Yeah.

MR. FLAHERTY: When you're, when you're entering information into a Supplementary Occurrence Report on your computer and you lock your computer, are there other people who can revise your report from another computer or another station?

CST. COX: Not that I'm aware of, no.

MR. FLAHERTY: Not that you're aware of.

CST. COX: There very well could be but my computer's locked. So I've locked my – because they have to have my password to get into it.

MR. FLAHERTY: Okay.

Madam Clerk, could we bring up confidential exhibit 124, please.

Now, you had been shown this exhibit only moments ago and you stated to Mr. Kennedy that that picture provided an accurate depiction of what you saw when you entered –

UNIDENTIFIED MALE SPEAKER: (Inaudible) on my screen.

THE COMMISSIONER: Sorry. Sorry.

UNIDENTIFIED MALE SPEAKER: Sorry, Mr. Commissioner, that was just –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. FLAHERTY: So you said that that picture before you offered an accurate depiction of what you saw when you entered the house. Correct?

CST. COX: Correct.

MR. FLAHERTY: So when you say that, are you saying, are you able to confirm 100 per cent that the position of the left arm and hand, as depicted on that picture, is what you would have saw?

CST. COX: I can tell you that's how he was sitting in the chair. Where his hands were, I won't say 100 per cent because I can't remember.

MR. FLAHERTY: Is it possible –

CST. COX: But I know he was sitting with his back and his head in that picture the way it is.

MR. FLAHERTY: Yeah.

Is it possible that the left hand, left arm could have been over the, what I would call, the armrest on the chair?

CST. COX: I can't remember.

MR. FLAHERTY: Okay.

Those are all my questions. Thank you very much.

THE COMMISSIONER: Okay, we have Ms. Rasmussen.

MS. RASMUSSEN: Thank you.

MR. SIMMONDS: Do you want to use the podium?

MS. RASMUSSEN: No, that's okay.

Constable Cox, we talked earlier about your searches in PROS and later in CPIC. And you told us about a Caution Victor flag and what that meant.

CST. COX: Correct.

MS. RASMUSSEN: Do you remember? Can you tell us a little bit about a Caution Victor flag? When you see that on a file, would it always cause you to have the same reaction or would there be different types of Caution Victor flags or how would you describe that?

CST. COX: To me violence is violence, so it would up your risk assessment.

MS. RASMUSSEN: Okay.

And we know that you opened that Occurrence Report and you saw the General Report that Constable Lush had made. Is that right?

CST. COX: Correct.

MS. RASMUSSEN: And you mentioned later in your conversation with Cathy at the Comm Centre that Constable Smyth or Sergeant Smyth had contacted you and you had probably mentioned an uttering threats, or you knew that there was an uttering threats in there? Is that right?

CST. COX: Based on the conversation with Comm Centre, yes.

MS. RASMUSSEN: Yes.

Can you comment on when you looked in Constable Lush's report – and I believe he had cut and pasted information and there was an uttering threats charge that you saw. Did that cause you concern when you saw that uttering threats charge?

CST. COX: When I saw it in Corporal Lush's report?

MS. RASMUSSEN: Yes.

CST. COX: It was an uttering threats from 2005, it was withdrawn and dealt with by way of a peace bond. But it's still an uttering threats complaint, so I mean on a scale of one to 10, like, would it be a 10? Probably not.

MS. RASMUSSEN: Okay, thanks.

Now, when you arrived on the scene and you were met by Sergeant Smyth in the driveway, did you at that time have reasonable and probable grounds to arrest him?

CST. COX: No, I did not.

MS. RASMUSSEN: And I think you had a brief conversation, you said, with him and asked him what had happened and he gave you a brief recount. You then went to the window to look in the window, right?

CST. COX: That's correct.

MS. RASMUSSEN: What was your purpose in looking in the window?

CST. COX: Some of it was to corroborate what he was saying, the other part was to see if indeed Mr. Dunphy was deceased or if I could see if he was deceased.

MS. RASMUSSEN: And when you looked in the window did anything corroborate what he was saying?

CST. COX: Mr. Dunphy was in the chair that he described. And I did see a firearm or the barrel, what I believed to be a firearm.

MS. RASMUSSEN: If you had not seen a firearm would that have caused you any concern?

CST. COX: Just because I couldn't see it from the window doesn't mean there – wouldn't mean there wasn't one there. I still would have had to go in the house like we did.

MS. RASMUSSEN: And when you went in with Corporal O'Keefe to clear the house you mentioned the cat room. So you were clearing the house and you came to the cat room. I believe Corporal O'Keefe opened the door, a bunch of cats appeared and Corporal O'Keefe quickly closed the door. Is that right?

CST. COX: That's correct.

MS. RASMUSSEN: Why was that? Why did you choose not to go in that room?

CST. COX: I'm deathly allergic to cats. If I go in that room they're going to be hauling me out of that house. Not to mention if I open that door, those cats are going to be everywhere in that house.

MS. RASMUSSEN: And what would be the effect of the cats being everywhere in the house?

CST. COX: It can contaminate the whole scene.

MS. RASMUSSEN: Thank you. Those are my questions.

THE COMMISSIONER: Ms. O'Brien.

MS. O'BRIEN: Sorry, Commissioner, just one question arising.

Just on the issue of the V for Victor I just want to make sure that I've understood your evidence clearly. You do not recall on that day whether or not you gave Constable Smyth an indication – told Constable Smyth that Mr. Dunphy was flagged for violence, is that right?

CST. COX: I don't remember that. There was no flag on PROS. The only flag that I would have seen would have been the one in Corporal Lush's report.

MS. O'BRIEN: Which was on PROS, though.

CST. COX: Well, it was on PROS but it wasn't – like, it was a snippet from CPIC in his report.

MS. O'BRIEN: Right. So you would have seen it there on that day in the PROS system looking at Corporal Lush's, but you don't recall that today.

CST. COX: I don't recall it, no.

MS. O'BRIEN: And so you do not recall whether or not you gave that information to Constable Smyth.

CST. COX: I don't remember if I did.

MS. O'BRIEN: Okay.

But you recognize today that would have been an important piece of information for him to have.

CST. COX: Yes, it would have.

MS. O'BRIEN: Okay. Thank you.

THE COMMISSIONER: Okay, nothing further?

Thank you Constable.

CST. COX: Thank you.

THE COMMISSIONER: Now we have Sergeant – Staff Sergeant, is it, Osmond?

Ready to continue?

MS. O'BRIEN: That's correct. And he's here, Commissioner.

Thank you, Staff Sergeant Osmond, if you could just activate your mic, please.

And, Staff Sergeant Osmond, you started your testimony last Friday afternoon. You were affirmed at that time and just to remind you, you continue under affirmation to tell the truth. Okay?

S/SGT. OSMOND: Understood.

MS. O'BRIEN: All right. So when we broke on Friday, I was asking you questions about the transportation of Constable Smyth from the scene by Constable X, if you recall.

S/SGT. OSMOND: Yes, I do.

MS. O'BRIEN: And I'd asked you a question about note taking of first responders. In the pre-hearing interview or pre-inquiry interview that Commission – my Commission co-counsel and I had with you, we discussed at that time the fact that Constable X in the notes that he had recorded, indicated that he had – while transporting Constable Smyth from the scene he had quickly diverted, those were the words he used, the conversation from the incident itself.

S/SGT. OSMOND: Yes, I remember.

MS. O'BRIEN: And if you may recall during our interview I questioned you as to whether officers, RCMP officers, police officers in general, were trained typically to record any spontaneous utterance that a subject or a possible, subject of an investigation or possible suspect of an investigation might make while they were being transferred.

S/SGT. OSMOND: I recall.

MS. O'BRIEN: Okay.

And I understood at that time that you agreed that that was the training to record spontaneous utterances.

S/SGT. OSMOND: I did, yes.

MS. O'BRIEN: Okay.

But also you said at that time that you – words to the effect that you felt Constable X's decision had been the correct one, or you might have done the same thing or words to that effect.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay.

Can you explain your position to the Commissioner, please?

S/SGT. OSMOND: Well, Mr. Commissioner, every situation when you take somebody into custody for – whether it's voluntary or not, is unique unto itself. And in this particular instance I felt that a person coming into a situation where the status of the person that they were taking into their care may be ambiguous, that they should play it safe.

And if they engaged in conversation with a person without knowing their status, be it a suspect, be it a witness, then they also wouldn't know what Charter issues applied to their custody. And if they didn't know that and they received information without issuing the proper warnings, then you could have an utterance or a conversation that violated that person's Charter rights.

And once you do that it's very hard to reverse that and wipe the slate clean and you get into the fruit of the poisonous tree scenario where subsequent statements, if the first one is deemed to be a Charter issue, then any subsequent statements can also be deemed inadmissible afterwards.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I felt that the RCMP Major Crime Unit, when we go to a call we don't normally initiate the investigation, we inherit the investigation. And when I get to a scene and I find out that a member has done everything they can to keep a person's status pristine and not jeopardize any interviews we do with them after, I would commend them for that.

MS. O'BRIEN: Should Constable X have been told by the officer who was there in charge of the scene and who asked him to transport Constable Smyth what Constable Smyth's status was? Like, should that officer have said this is Constable Smyth, he's being detained, he's been cautioned, whatever his status was. Should that not – information not have been communicated to Constable X?

S/SGT. OSMOND: Yeah, I mean it certainly could have been. But I also – even in that situation like, if it was me with him in that car, I would have played it safe. I would not have wanted to have to explain myself to the investigative team getting there saying: Yes, I initiated him in all this conversation; I couldn't make comprehensive notes because I was driving. And then I ask him: Well, did you caution him? Well no. Why didn't you? Because I didn't know if I should or not. Now you're getting into a whole other issue.

MS. O'BRIEN: All right. Thank you.

Constable Smyth, we know was brought to the Holyrood detachment late in the afternoon of April 5. Was – and I know you shortly around that time had arrived at the Holyrood detachment too. Was your intention at that time to get a statement from Constable Smyth that evening?

S/SGT. OSMOND: I think only Corporal Henstridge or Corporal Burke – Sergeant Henstridge. I mean it would have been my preference and I'm sure that – I know that they approached him and asked him for a statement. I guess the short answer would be, yes.

MS. O'BRIEN: Okay.

And yes was the answer I think you'd given me previously.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. So yes, okay.

Now, we also have heard evidence that when Constable Smyth arrived at the detachment he immediately met with RNC representatives and was given a private room to do so.

S/SGT. OSMOND: Uh-huh.

MS. O'BRIEN: Did you have any involvement in that decision?

S/SGT. OSMOND: No, I didn't.

MS. O'BRIEN: Okay.

When you learned of it did you agree or disagree with that decision?

S/SGT. OSMOND: I had no issue with it.

MS. O'BRIEN: Can you think of any other example where the subject of a criminal investigation was provided with a room by the RCMP to meet with people who were not legal counsel?

S/SGT. OSMOND: No, but it's kind of apples and oranges where you're dealing with a person that's identified his protection under section 25 of the *Criminal Code*. And you asked me this in our first meeting and I've reflected on it.

And the only way that I can draw a comparison is that if I entered into an investigation that was ambiguous and I didn't know what I was facing, and the person said: Here is everything I was holding on me at the time, you can have it, if you give me a place to give you my clothes, you can take it – I would do that. And that's what I did there or that's what they did.

MS. O'BRIEN: Okay.

But this was not about the seizure of Mr. – of Constable Smyth's clothes, is that what you're ...?

S/SGT. OSMOND: Well, no, but I mean we're talking about his access at the office and just in general how we dealt with him, are we not?

MS. O'BRIEN: Yeah. We're talking about him being given a room to meet with four RNC officers –

S/SGT. OSMOND: Right.

MS. O'BRIEN: – at the Holyrood detachment.

S/SGT. OSMOND: Right. Well, no, I mean – sorry. I've never dealt with anybody who was an employee of someone else that the employer wanted to talk to you like this. Those lines usually don't sort of intersect.

MS. O'BRIEN: Okay, so you'd not seen this happen before.

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay. But you're saying because Constable Smyth was a police officer, is that what you're saying, he was in a different situation.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

I'd ask, Madam Clerk, if we could bring up Exhibit P-0583, please.

And these are your handwritten notes, Corporal – or sorry, Staff Sergeant Osmond. And your notes have been entered as several different exhibits and these are the – in this exhibit here are

your notes from April 5 to April 7. I think that's just because that's the way we received them. And I'm just going to take you to your note at 1745 that evening, so we're on April 5.

Okay. And you've recorded here in your notes 1745 approximate: "Henstridge advises Smyth not prepared to provide statement at this time. Says he will provide, just wants to decompress." And then the note is: "Decided we needed to take Smyth's clothes, as there may be evidence on them."

Now, I understand you were not present for the conversation between Corporal Henstridge and Constable Smyth. Is that right?

S/SGT. OSMOND: No, I wasn't.

MS. O'BRIEN: Okay.

Now, again, from our interview I understand that it was your opinion that it would have been nice to get a statement from Constable Smyth that night, is that ...?

S/SGT. OSMOND: If it was possible, yes.

MS. O'BRIEN: Okay. And then you could potentially take a follow-up statement later on.

S/SGT. OSMOND: Absolutely

MS. O'BRIEN: Okay. But you recognized that you could not compel Constable Smyth to give it.

S/SGT. OSMOND: We had absolutely no legal grounds to do that.

MS. O'BRIEN: Okay.

With respect to – and we've had some, and we will have some further evidence from Corporal Henstridge, but we've also had some other evidence to date about at this – during this time, I think Constable Warren Sullivan had raised an issue with research indicating that it might be best to give time to Constable Smyth before taking a statement of him.

Have you seen that type of research or material in your career?

S/SGT. OSMOND: I have, yes.

MS. O'BRIEN: Okay.

And the research that you've seen was this specifically directed to police officers who had been in traumatic situations, to allow those officers to take some time before providing a statement?

S/SGT. OSMOND: Yes, it was designed as a guide, sort of what to do if you're involved in a police-involved shooting. And I don't even know if it was specific to shootings, just a traumatic incident.

MS. O'BRIEN: Okay, but it was directed to police officers.

S/SGT. OSMOND: It was, yes.

MS. O'BRIEN: Okay. And is it fair to say that you've not seen anything, any similar – anything similar for non-police officers?

S/SGT. OSMOND: I haven't, no.

MS. O'BRIEN: Okay.

In your notes again at 1900 you – again, approximate time: “I saw Smyth walking by the board room and spoke briefly. I noted he had changed his clothes and asked him how he was doing.” He said he kept playing it over in his head and wondered “why the guy did what he did. Then he wonders if he could have done something different in response. I told him that was a normal reaction in my opinion. He said he wants to provide a statement now, with every bone in his body, but knows his recall will be better tomorrow. I told him he was right and he should go home and be with family & we could talk tomorrow.”

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay.

When you were a – does that accurately record your communications with Constable Smyth?

S/SGT. OSMOND: It does, yeah.

MS. O'BRIEN: Okay. Was anyone else present there at that time?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Actually, yes, but I'm not sure who. He was walking by with another co-worker and he stopped. And I'm not sure if the co-worker stopped with him or if he continued to walk, but it was a conversation between he and I.

MS. O'BRIEN: Okay, so another – when you're saying a co-worker, that would be one of his co-workers.

S/SGT. OSMOND: One of his, yes.

MS. O'BRIEN: An RNC officer?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay, but you don't know who?

Okay. All right.

And what was Constable Smyth's demeanour at this time?

S/SGT. OSMOND: Calm, but I guess, you know, his complexion was pretty white. He looked stressed.

MS. O'BRIEN: Was that the extent of your direct communication with Constable Smyth on that day?

S/SGT. OSMOND: Yes, it was.

MS. O'BRIEN: Okay.

Did you or to your knowledge any other RCMP officer make any effort to persuade Constable Smyth to give a statement that night?

S/SGT. OSMOND: Well, other than being told by Corporal Henstridge that it was tried and declined, that's all. That's the only conversation I know of.

MS. O'BRIEN: So you don't know of any efforts to persuade?

S/SGT. OSMOND: No, I wouldn't know.

MS. O'BRIEN: Okay.

All right, I'm going to ask now if we can go to Exhibit P-0595. And as this exhibit is coming up I can tell you, Staff Sergeant Osmond, this is a C-237 form.

S/SGT. OSMOND: Uh-huh. Yes.

MS. O'BRIEN: And I understand that this is a form that's used to update senior management within the RCMP. Is that correct?

S/SGT. OSMOND: That's correct. It's also sent most times to members of the unit that are involved. And looking at this email now, I'm also sending it to Staff Sergeant Jacques Morneau who's in charge of the West Coast Major Crime. And the reason that would be done is because he needs to know what we're working on for resourcing if they get a call-out within the next few days. And, also, if he views it and has a suggestion or a comment, then we would certainly welcome that.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: So it's sent to people for information purposes.

MS. O'BRIEN: All right.

So at that time you were non-commissioned officer in charge of the MCU –

S/SGT. OSMOND: East.

MS. O'BRIEN: – East. And he, Jacques Morneau, would have been your counterpart in MCU West. Is that right?

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: All right.

And in the entirety of the RCMP file we do see that there are multiple C-237s completed as the file progressed. So I understand this is something you do multiple times –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – updates as the file goes on. But I believe this would be the first one that was completed. Is that right?

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: And did you draft this, Staff Sergeant Osmond?

S/SGT. OSMOND: I did.

MS. O'BRIEN: Okay.

So, well, just the general form of it and I will have a few specific questions, but it goes through a background section, describes what the RCMP response was and then what the intended follow-up will be. And then there is also a section entitled scene which talks about events on the scene.

Here we have some information on Sergeant Smyth as he's noted there and his statements. And then we get to an assessment of his statement, a little information on the autopsy and a media update, so those general sections.

The information that you put in the report, in the C-237, where does that come from?

S/SGT. OSMOND: Various sources. It can be things that I've read on the file. It can be verbal briefings. It can be like, for example, in Constable Smyth's statement, a summary of that. I viewed that statement as it progressed so that was from memory. Those are actually my notes on his statement.

MS. O'BRIEN: So you monitored that statement as it was happening.

S/SGT. OSMOND: I did.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: So it's a variety of sources.

MS. O'BRIEN: Okay.

Okay. And I'm actually now at page 3 of the exhibit and a couple of questions here. In the follow-up section, you note here this has to do about Constable Smyth's interaction with Richard and Debbie Dunphy.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: And "When speaking with them, SMYTH asked questions about DUNPHY's background. SMYTH specifically asked questions about whether" or not "there were any firearms in the residence. They told him there were not."

Now, so you wrote this?

S/SGT. OSMOND: I did.

MS. O'BRIEN: Okay. Had you reviewed their statements at that time?

S/SGT. OSMOND: No. Well, I can't say no for sure. I don't know if I had read the Daily Log summary on it, but I'm thinking that that was based on a verbal briefing.

MS. O'BRIEN: From that office, from the –

S/SGT. OSMOND: Probably from Corporal Henstridge. Yes, he took those statements.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I believe.

MS. O'BRIEN: Having reviewed it since, do you acknowledge that looking at the statements that that's not exactly what Dick or Debbie said?

S/SGT. OSMOND: Yes. They said – sorry.

MS. O'BRIEN: Yeah.

S/SGT. OSMOND: They said that they didn't know if there were firearms. I believe one of them said that they weren't sure but that he wasn't a hunter and they didn't think so, something like that.

MS. O'BRIEN: Okay.

MR. KENNEDY: I don't mean to interrupt, Ms. O'Brien, but this is a point I've been meaning actually to raise, and the fact that Debbie Dunphy's name has been mentioned has alerted me to it.

Obviously, we started this inquiry quite some time ago and Ms. Dunphy, at that point, had indicated that she couldn't testify at the inquiry. I'm just wondering if any further steps have been taken in relation to that.

MS. O'BRIEN: Mr. Kennedy, we can – I'm happy to discuss that and there have been further steps but perhaps we'll deal with this witness, get through this witness's testimony and do that.

THE COMMISSIONER: Yeah, I think we won't interrupt the – there have been steps taken which counsel can discuss or we can inform everybody on it when we finish with the witness.

MS. O'BRIEN: Okay.

So when you were there you monitored Constable Smyth's statement on April 6, the one he gave to Corporals Burke and Henstridge.

S/SGT. OSMOND: I did.

MS. O'BRIEN: Okay.

And do you recall that during that statement, do you recall what, how Constable – what Constable Smyth reported that the Dunphys had told him about the firearm?

S/SGT. OSMOND: Yes, I remember that he said firmly that they said no – one of them. They said: No, there were no firearms in the house, he was not a hunter. They seemed – his demeanour in discussing it was that it was a very definitive answer.

MS. O'BRIEN: Okay.

And did you, at the time, note the discrepancy then between what Constable Smyth was reporting and the Dunphy's actual statements?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: No.

MS. O'BRIEN: And would it have been your responsibility as the team commander to look for those kind of discrepancies? Or would that have been a responsibility of the primary investigator?

S/SGT. OSMOND: That would be the primary investigator.

MS. O'BRIEN: Okay.

All right, and then on the same section here in follow-up in the third paragraph here, the one that – or, sorry, the sixth paragraph here, she is – this is a report of the statement of Meghan Dunphy.

The question I have for you on this has to do with this sentence: "She states that DUNPHY can be difficult to deal with, and while she did not speak of specific mental illness, she stated he can be manipulative."

S/SGT. OSMOND: Right.

MS. O'BRIEN: Okay.

Where did you get that information from?

S/SGT. OSMOND: Once again, it's probably a verbal briefing because the transcripts wouldn't have been done and the statement may not have been typed in on the Daily Log. But I have reviewed it since, because we spoke, and the actual wording of, in Ms. Dunphy's statement is that he knows exactly how to push people's buttons so – and get people going, I think, was the word used.

So I guess that's where that came from, be it paraphrased by me or paraphrased by Corporal Henstridge, I guess, who took the statement.

MS. O'BRIEN: Okay. So that's – and the question was, you know, had she said that word. So you're acknowledging she didn't use the word –

S/SGT. OSMOND: No.

MS. O'BRIEN: – manipulative but you're taking it from he knows how to push people's buttons.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: That language he used. Okay.

Okay. The paragraph here with FIS – I'm on page 4 now of the exhibit. And this is in the section that is under scene. You note here: "Also in the room, near a couch, were a police notebook, a police file, and pen."

Where did you get that information?

S/SGT. OSMOND: Well, once again, after we spoke I reviewed Sergeant – or Constable Smyth's statement and that's an error on my part.

He clearly says that he had a police file and he talks about a pen. The police notebook, I guess is something that I heard in my head as – because we normally use notebooks. But the police file and the pen came directly from his statement.

MS. O'BRIEN: Okay.

THE COMMISSIONER: From whose statement?

S/SGT. OSMOND: Constable Smyth's.

THE COMMISSIONER: Okay.

MS. O'BRIEN: Okay. So you got from Constable Smyth's statement, but you have recorded this under this section where you're talking about the scene and specifically FIS's processing of the scene.

S/SGT. OSMOND: Uh-huh.

MS. O'BRIEN: And you're talking about what was found by FIS; you know, he was – and the body, there was a .22-calibre rifle, the rifle was loaded, another round sits on the table, what Mr. Dunphy was wearing. This – so then, it follows from that.

Did you have any information from FIS or any other police, RCMP officer, that these items were found, particularly, the police notebook and the pen, were found at the scene?

S/SGT. OSMOND: No. That's my narrative, not anybody else's.

MS. O'BRIEN: Your error? Is that what you just said? Sorry.

S/SGT. OSMOND: My narrative.

MS. O'BRIEN: Your narrative.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

And do you understand that narrative now to be in error, particularly –

S/SGT. OSMOND: Well –

MS. O'BRIEN: – with respect to the notebook and the pen?

S/SGT. OSMOND: No. The pen; my understanding he said he was using a pen. I never said we seized it, I said he said that he dropped it. In his statement he says he was writing in a folder and that he didn't know what happened to the pen but he was using a pen.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I mean I wasn't at the scene to process it but I assume that if he said he was using a pen, then there was a pen at the scene.

MS. O'BRIEN: Okay.

You never had that confirmed by any RCMP officer, did you?

S/SGT. OSMOND: No.

MS. O'BRIEN: Similarly with the police notebook, you never had that confirmed with any – by any RCMP officer?

S/SGT. OSMOND: No. The police notebook, that's on me.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: That's something that I thought I heard as he was speaking. Because you know what it's like when you hear people speak, sometimes you hear what you expect to hear. And normally, police use a notebook.

MS. O'BRIEN: Okay.

So – all right. So when you mentioned error earlier, that's what you were talking about –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – on that particular point. So – all right.

The last – I only have one further question on this document, and that has to do with the last paragraph under media. You note here that questions have been raised about the requirement for independent oversight of the RCMP investigation and the nature of the threat towards politicians. Sorry – so at this point, this was on April 6 that you wrote this.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Is that correct?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. And so at that point you were aware that some members of the public believe that independent oversight was – you know, should be undertaken for the RCMP investigation.

S/SGT. OSMOND: I don't think I heard anything from the public.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I heard the media reporting it. I believe potentially Ms. Dunphy's counsel. But I'm not sure on the timing of that.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: And I think politicians had made allusions to that as well.

MS. O'BRIEN: Okay.

And if we can go now to your handwritten notes at P-0583, and this is the same set, I believe, we looked at a few minutes ago. And I'd ask, Madam Clerk, if we could go to page 8.

So this is a note that you took on April 6, and just to give you the context there, Staff Sergeant Osmond, it's a teleconference that you were having at 1:30 that afternoon with these various attendees, other individuals from the RCMP.

Your note here is: "Likely to be an independent review/ ..." investigation "... of both RCMP/RNC investigations @ some point."

What were you referring to there at this time?

S/SGT. OSMOND: Exactly what it says. We fully expected that our investigation would be reviewed, and we fully expected that any RNC administrative or operational review would be reviewed. I don't think it would have come to any of our – we wouldn't have been surprised at that point that an inquiry would be announced. We just assumed that that would be the natural course.

MS. O'BRIEN: Okay, so really as early as April 6 you were already thinking an inquiry here as a possibility?

S/SGT. OSMOND: Absolutely.

MS. O'BRIEN: Okay.

Okay, going now to the first statement of – just to put my ... Thank you. The first statement of Constable Smyth was taken – we've heard ample evidence now that it was taken late in the afternoon of April 6, and as you mentioned a few minutes ago, you monitored the statement.

S/SGT. OSMOND: I did.

MS. O'BRIEN: And just to be clear, when you're talking about monitoring the statement, you were not in the room with Constable Smyth; you were in a nearby room and then watching what was going on through a video feed.

S/SGT. OSMOND: Exactly.

MS. O'BRIEN: Okay.

Did you have any concern about the way the interview was conducted?

S/SGT. OSMOND: Yes, I did.

MS. O'BRIEN: Okay.

What was your concern?

S/SGT. OSMOND: My concern was that it seemed too collegial. Not even necessarily that I felt that way, but I felt somebody looking at it might feel that way and I felt that it would have to be explained at a certain point.

MS. O'BRIEN: Okay.

Did you raise this concern with the two officers that were conducting the interview, Corporal Burke and Corporal Henstridge?

S/SGT. OSMOND: Yes, I did.

MS. O'BRIEN: Okay.

When did you raise that with them?

S/SGT. OSMOND: Directly afterwards.

MS. O'BRIEN: What was their reaction when you raised it?

S/SGT. OSMOND: Not much. I think they wanted to chew on it for a bit. I don't think they were like – I don't want to make it sound like they were resistant to it, but I also don't think that they really saw it that way at that point because I believe, you know, when you're in it, it's different than when you're watching it. So they probably would have wanted to take the time to review it before they made any decision on that.

MS. O'BRIEN: Okay.

So you raised it when the interview was finished?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: We do know – and we've seen parts of that interview and have the transcript, but we do know that you were consulted actually two times during the course of the interview.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: I think one time it was only Monty Henstridge who spoke to you and the other time both officers came out, and I think one time it was to see if you had any further questions you thought should be added and then the second consult had to do with the consultation before they gave Constable Smyth information about there being a bullet in the rifle.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Why did you not raise it with them at one of those two earlier opportunities you had?

S/SGT. OSMOND: Because it wasn't true at those opportunities.

MS. O'BRIEN: Okay, can you explain what you mean by that?

S/SGT. OSMOND: Well, it hadn't gone in a direction that caused me any concern.

MS. O'BRIEN: Okay.

So your concern came towards the end of the interview. Is that what you're trying to –?

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Towards the latter part.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

Did you make any note of this criticism anywhere in your notes?

S/SGT. OSMOND: No, I did not.

MS. O'BRIEN: Okay and nowhere in the file?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

Why would you not have noted that in the file?

S/SGT. OSMOND: Because it's not investigative in material. It's RCMP/MCU business, feedback, constructive criticism, however you want to phrase it; and also it was captured on audio and video. Like I told them, this is going to be reviewed by someone other than us and you'll have to explain it at that time if it's raised as a concern.

MS. O'BRIEN: Okay.

And this was one of the criticisms that was ultimately raised by the Alberta Serious Incident Response Team –

S/SGT. OSMOND: Yes, it was.

MS. O'BRIEN: – in their review, as you're aware. Okay.

Another one of the criticisms raised by ASIRT was that Smyth should have been cautioned –

S/SGT. OSMOND: Uh-huh.

MS. O'BRIEN: – so that he was aware this was a homicide investigation and so that he was – that he could have some potential jeopardy. Do you agree with ASIRT on that point?

S/SGT. OSMOND: I respectfully disagree.

MS. O'BRIEN: Okay. So can you explain why you disagree with their position with respect to the caution?

S/SGT. OSMOND: Because at that point in the investigation it was very, very early. We had no indication that a criminal act had occurred. If you don't have a criminal act, you cannot have jeopardy; if you don't have jeopardy, then the caution doesn't apply.

Now, ASIRT says that he could have jeopardy and I guess that's true, but not at that point. We discussed it as a team and decided that we weren't going to do that.

MS. O'BRIEN: And to be clear, you discussed it as a team and decided not to prior to the interview taking place. Is that right?

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Yeah. Was that discussion recorded in your notes?

S/SGT. OSMOND: I think it was recorded in Corporal Burke's.

MS. O'BRIEN: So not in yours.

S/SGT. OSMOND: Not mine.

MS. O'BRIEN: Okay. All right.

Others may have further questions for you about that statement. We've already reviewed it in some fairly thorough detail with Corporal Burke and we will have be hearing from Corporal Henstridge, so I don't have any further questions for you on that topic.

I think I can do the next section, Commissioner, quickly before lunch. We have about five minutes –

THE COMMISSIONER: Okay.

MS. O'BRIEN: – and I have a very short section to go through.

Who made the decision to release the scene?

S/SGT. OSMOND: I have reviewed that because it came up in our discussion and it appears as though John Galway and Rod Tiller did.

THE COMMISSIONER: Sorry, it appears ...?

S/SGT. OSMOND: Constable John Galway and Staff Sergeant Rod Tiller.

MS. O'BRIEN: Okay. And I'd like to bring up P-0593, please.

Did they consult with you prior to doing that?

S/SGT. OSMOND: I have no record of it and I have no memory of it.

MS. O'BRIEN: Okay. And I think Corporal Burke said similarly he didn't have a memory or knowledge of when or how the scene was released.

Here's an email from you and, certainly, Galway and Tiller are on the email. And it's on April 5 at 9:30 and you are saying: "Before we release the scene please check with me or Cpl Burke."

S/SGT. OSMOND: Correct.

MS. O'BRIEN: So that was the direction you gave but what you're saying to us now, you don't recall whether they checked with you or not?

S/SGT. OSMOND: I have no record that they did.

MS. O'BRIEN: Okay. And you have nothing in your notes to indicate exactly when the scene was released. Is that right?

S/SGT. OSMOND: No, I know from the file that the following – I think it was on the morning of the 7th, I think, I advised Corporal Burke that it had been released.

MS. O'BRIEN: On the morning of the 7th?

S/SGT. OSMOND: I think.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I'm not sure but there's a note in the Daily Log as to when I became aware and I advised Corporal Burke.

MS. O'BRIEN: Okay. I don't –

S/SGT. OSMOND: But it's actually written by him, not by me.

MS. O'BRIEN: Okay and I don't have specifically that note there. I do know we did see earlier today, Commissioner, the scene log which was put into evidence when we had Constable Cox on the stand. I believe that shows that the last recorded entry was at 1720 on the 7th. So it would have been –

S/SGT. OSMOND: Yeah, okay, so it would be the morning of the 8th.

MS. O'BRIEN: (Inaudible.)

S/SGT. OSMOND: I think at 9 is when I told Corporal Burke.

MS. O'BRIEN: When you say when the scene was released, that would have been the end of the scene log. Is that correct?

S/SGT. OSMOND: It should have been, yeah.

MS. O'BRIEN: Okay.

Do you know if any information learned from Constable Smyth's statement was provided to the FIS or ident team prior to the scene being released?

S/SGT. OSMOND: I don't know. But having sat in on his statement, in my opinion – you know, I can't speak for Corporal Burke but in my opinion – there was nothing arising from that statement that would have caused us to go back to that scene.

MS. O'BRIEN: You might have found the pen?

S/SGT. OSMOND: If you place value on that.

MS. O'BRIEN: Okay.

So you wouldn't place value on the pen?

S/SGT. OSMOND: Not particularly.

MS. O'BRIEN: Okay.

All right, so you don't think that you don't know that any information was passed back to the ident team, but you're saying from what you heard in that statement there was nothing to pass back to the ident team.

S/SGT. OSMOND: Nothing that I noted.

MS. O'BRIEN: All right.

Okay, so you're not aware of any direction being given to the ident team to look at a particular area or look for any particular objects following that statement?

S/SGT. OSMOND: No, I'm not.

MS. O'BRIEN: Okay.

All right. Thank you.

Those are my questions on that section. And now would be a good time to break for lunch, Commissioner, if that's agreeable.

THE COMMISSIONER: Okay. We'll break for lunch until 1:30.

MS. SHEEHAN: All rise.

The 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: Go ahead when you're ready.

MS. O'BRIEN: Thank you.

Thank you, Staff Sergeant Osmond.

Now, I understand that you were involved early on in the discussions regarding retaining an independent observer.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: But if I understand correctly you were not involved in selecting Judge Riche.

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And you did not know him previously?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And you did not draft his terms of reference?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And you were not his primary contact on the file.

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And you had no prior experience working with an independent observer. Is that right?

S/SGT. OSMOND: No, it was the first time.

MS. O'BRIEN: Okay.

Now, you were the first person to meet Judge Riche on the file face to face because you picked him up and brought him to the first re-enactment on April 8. Is that right?

S/SGT. OSMOND: Yeah, he was identified within probably an hour of the first re-enactment. So, yeah, I picked him up and we drove there together.

MS. O'BRIEN: Okay.

During that day, during the drive out there, while you were there or on the drive back, did you have any discussions with Judge Riche regarding his mandate or his terms of reference?

S/SGT. OSMOND: Only that it was a work in progress and that neither one of us knew how it would look at the end of the day.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: It was still being worked out I guess.

MS. O'BRIEN: Okay.

And we understand that Judge Riche's mandate, his terms of reference, were actually delivered to him on Friday, April 10. Inspector Pat Cahill was there, I know, at that time. Am I correct you were not there for that meeting, were you?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

Are you, to your knowledge, or were you present when Judge Riche was ever given a briefing with respect to how Major – how the MCU works or how the Major Case Management triangle works or any of that kind of high-level review like that?

S/SGT. OSMOND: No. The only conversations I had with him were going out there that day. I sort of explained just an overview of what was going on, why we were investigating, sort of what happened or what we knew at that point, I guess. And outside of that, it was just some meetings to brief him on file progress.

MS. O'BRIEN: Okay.

All right, I'll bring up P-0422, please – oh, sorry. This is – we're going to see a communication here with Erin Breen. Okay, thank you.

So this is just a communication where Erin Breen actually initially wrote Constable John Galway, but we'll see here the answer back came from you, not John Galway. And she was asking, she said you mentioned that there would be a retired judge but – Meghan had mentioned that she'd been told that there'd be a retired judge, but she couldn't explain much more beyond that. "Could you tell me what that means so I can better explain it to her?"

And this is your answer back to Ms. Breen: "We have requested ... an independent observer be appointed to oversee the professionalism, thoroughness and timeliness of the investigation. When police investigate police, it is important that the process is accountable, and is not just transparent, but seen to be transparent."

Then "Retired Supreme Court Judge David RICHE has been assigned this task and was with me today overseeing some investigative steps" And, again, this is right on that day of April 8.

"I have not yet seen the exact mandate letter, or terms of reference, he has been given so I can't specify further than that at this time."

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Once the terms of reference had been finalized did you ever communicate that information to Erin Breen or to Meghan Dunphy through her counsel?

S/SGT. OSMOND: Not me. I didn't, no.

MS. O'BRIEN: Okay. And you're not – are you aware whether anybody else did?

S/SGT. OSMOND: I'm unaware.

MS. O'BRIEN: Okay.

If we could see the Daily Log, please, Madam Clerk, P-0359 and we'll go to page 406.

Okay. So these notes that I'm about to take you through, Staff Sergeant Osmond, take place in August of 2015 and the first one here is August 6. So what I have here is from the Daily Log but we're going to see they're really excerpts from your typewritten notes, your Supplementary Occurrence Report.

MR. KENNEDY: Sorry, what page is that there?

MS. O'BRIEN: Page 406 of the Daily Log.

THE COMMISSIONER: 0359 is the exhibit number.

MS. O'BRIEN: P-0359 is the exhibit, sorry.

Okay.

So I'm just, I'm not going to go read through the whole note, I just want to ensure that you understand what it is I'm referring to here. So it starts off with this sentence here: Sergeant Osmond was approached by Corporal Burke who had some concerns about the review of David Riche. And he gives a little more detail and then down here you write – and these are your notes?

S/SGT. OSMOND: Yes, they are.

MS. O'BRIEN: Okay.

“BURKE was concerned that 1) RICHE was well outside his mandate of oversight by developing investigational theories and directing police, and 2) his theory made no sense and” he “had the potential to unduly cast doubt on the investigation. OSMOND agreed.”

And then you do go on to say, “Having said that, Sgt OSMOND as Team Commander would have no issue with anyone, in any role, at any time, identifying a valid oversight or ‘gap’ in an investigation so that the matter could be addressed.”

And then I'll just take you over to the next page. Just one sentence I want to point out before I start asking questions: “Sgt OSMOND asked for a meeting with Insp. CAHILL to discuss this issue.”

Okay. Do you recall this incident taking place or this, these circumstances?

S/SGT. OSMOND: Yes, I do.

MS. O'BRIEN: Okay.

And so I take it from that – and we have heard already from Corporal Steve Burke about this that he had had some concerns, he brought them to you. You agreed with his concerns, is that fair to say?

S/SGT. OSMOND: I did, yes.

MS. O'BRIEN: Okay. And that, and the concern, would you agree with the summarization that Judge Riche was doing more investigating than just observing. Is that a ...?

S/SGT. OSMOND: Yes, that's fair.

MS. O'BRIEN: Is it? Okay.

And these are words that I took from my, from the testimony of Corporal Burke. But if you want to tweak it in any way, just say so.

S/SGT. OSMOND: Well, there– you know, there's investigation, and then there's theorizing –

MS. O'BRIEN: Right.

S/SGT. OSMOND: – without fact. And I felt he was trying to do both.

MS. O'BRIEN: Okay, so –

S/SGT. OSMOND: And what was most concerning to me is his drawing of conclusions with absolutely no basis in fact.

MS. O'BRIEN: Okay, so he was doing some investigating you felt and also theorizing.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And when he was supposed to just be observing.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay. All right.

And now if we go to page – I'm just going to move ahead to page 409. I understand you took that then to then-Inspector Cahill. And on page 409 here is, again – these are your notes.

So you record here there was a meeting between Sergeant Osmond, Corporal Burke, and Inspector Cahill. Cahill agreed that the investigation cannot be influenced or directed by Riche but that any valid concern he has should be addressed.

Cahill shared Osmond and Burke's opinion that the question he wanted asked of Ms. – Meghan Dunphy, I take it that would be, was it? Okay – was leading and had been answered in the past, so should not be done.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: And this had to do with the question that Judge Riche wanted to ask her about whether she – when she was at her father's house the day before, on the Saturday, April 4, whether she'd seen a gun by the side of the chair. Is that right?

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay.

“OSMOND advised CAHILL of RICHE's theory and his/BURKE's concerns that RICHE was stepping outside his mandate. OSMOND stated he didn't feel comfortable reminding RICHE of his mandate or suggesting what he should or shouldn't be doing, as it could be perceived as interference. CAHILL understood that concern and asked that meeting be set up with RICHE to discuss any issues he has.” Meeting was arranged by Corporal Burke for 10 o'clock the next morning.

So can you just explain to the Commissioner about the concern that you're raising there in your notes?

S/SGT. OSMOND: Well, even at this point I don't believe I'd seen his terms of reference. So early on, I think at the beginning of what you just presented, my understanding was that he was to oversee us to make sure we were prompt, impartial, thorough, without bias towards – any favouritism towards police or biased in any way.

That morphed into – and I want to reiterate that Corporal Burke coming to me that day was not the first comment that he had made.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: That was just sort of, it came to the point where we felt action needed to be taken. So he had made passing comments before about comments by Judge Riche, theories by Judge Riche and it was making him uncomfortable. But we were in a situation, as I mentioned in my notes, where we were the ones being observed and it felt really unnatural for us to be going to him and putting any kind of restrictions, or even mild suggestions, about the way that, that should occur.

So on this particular day, Corporal Burke came to me. And part of what the impetus was, was that he wanted us to go back to Ms. Dunphy and ask her a question that was clearly leading. And it would suggest that we didn't accept her answer or that it wasn't an acceptable answer and we should give her a second try.

When somebody tells you definitively that they saw something at a certain place, it's dangerous to go back and say: Well, are you sure you couldn't have seen it another day? And that's basically what was being asked of us.

So that combined with his investigative theories, some of which made absolutely no sense. We just felt that because management brought him on board and created the paradigm in which he was supposed to observe us, that management should then also be the ones to restrict, or not restrict but, I guess, rephrase that paradigm with him and it shouldn't be us.

MS. O'BRIEN: Okay. So when you're saying management, when you're going to Inspector Cahill, he would be management at that time?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

And that comment you had just – you just made there saying, you know, not going back to her, suggesting that you didn't like her answer the first time when she'd also – you know she'd already clearly answered the question, and this is in reference to seeing, you know, where she last saw the gun.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: How – do you or how would you distinguish that from – do you recall the issue that Judge Riche also pointed out with Constable Smyth using the word “couch” –

S/SGT. OSMOND: I do.

MS. O'BRIEN: – in his statement?

S/SGT. OSMOND: I do.

MS. O'BRIEN: And going back – and you did go back. Corporal Burke did go back and take another statement from Constable Smyth to ask him to clarify an answer that he had already given.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: So how do you distinguish those two scenarios?

S/SGT. OSMOND: Well, there's a discrepancy in what Constable Smyth said. He said couch, I believe it was, when Judge Riche felt he probably should have said chair, and that – to use his words – he said he slipped up.

And, ironically, in preparing for this testimony, I reviewed where I believe Judge Riche took that information and it's during the re-enactment. And Constable Smyth is clearly pointing at the chair when he says couch, so ...

MS. O'BRIEN: Okay. I think that you may stand to be corrected on that point because I think it was in the statement on April 6 (inaudible).

S/SGT. OSMOND: Okay. But when he does the re-enactment, he actually – maybe it's the second time –

MS. O'BRIEN: Okay

S/SGT. OSMOND: – that he does the same thing.

But I guess my point is, is that there was a discrepancy between what he said and what he said in other parts of his statement.

Ms. Dunphy had no discrepancy, it just appeared that he didn't care for her answer and either thought we shouldn't care for her answer or that we should go and suggest to her that maybe she should re-evaluate. And that's just not the way police work is done.

MS. O'BRIEN: Okay. And I'll be able to verify that for you. And my memory is not infallible, obviously.

S/SGT. OSMOND: Mine either.

MS. O'BRIEN: So – okay.

I understand that. And then – so, going then now, I'm just going to take you through on page 410. So here is where you actually have the meeting with Inspector Cahill.

And was this the first time that you had – you said it wasn't the first time Corporal Burke had raised a concern to you, but is this the first time you've raised that concern up to the management level?

S/SGT. OSMOND: Yes, it was.

MS. O'BRIEN: Okay.

And in this meeting – and your notes of this meeting are what's on the screen there, Staff Sergeant Osmond – but in this meeting, did anyone directly address what Judge Riche, the concern that he was overstepping his mandate?

S/SGT. OSMOND: Not in that meeting and not directly. And I'm glad that didn't happen in our presence. I don't think that would have been appropriate.

I don't know. Maybe Inspector Cahill spoke with him after the meeting but, once again, I wouldn't want to be sitting there, as the team commander, reminding him of his mandate when it was me and my unit that he was supposed to be observing.

MS. O'BRIEN: Okay, so you didn't hear that happen at that meeting.

S/SGT. OSMOND: I didn't, no.

MS. O'BRIEN: Okay.

At that meeting were his terms of reference reviewed with him?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

Do you know whether there was a plan in place for Inspector Cahill to then have a separate conversation with Judge Riche, or would you not be privy to that?

S/SGT. OSMOND: I don't know that there was a plan, but I do know in speaking with Inspector Cahill that the terms of reference were discussed several times with him.

MS. O'BRIEN: Okay, but not with you there.

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And now here, just a couple of quick questions on just a couple of things you wrote here. This was your – again, your notes of the meeting: “RICHE was told that if he wanted further clarification, he should feel free to contact Erin BREEN or Ms DUNPHY. In the opinion of the investigators, the question has been asked and answered ... to seek further answers to the question is a leading process and might appear as though the police were looking for a specific answer rather” than “the one that had already been offered.”

So you've already explained that to us, but the question I have on this is did Judge Riche's terms of reference contemplate him questioning witnesses?

S/SGT. OSMOND: No, it didn't.

MS. O'BRIEN: All right.

And I understand it's, here he's being told if he wants to he should go speak to Ms. Breen or Ms. Dunphy.

S/SGT. OSMOND: Yes. And I don't know who suggested that but from my perspective it wasn't something he was going to let go and we were satisfied with it. And like I have – even though it wasn't in his terms of reference, I have no issue with him doing that, in theory. It probably wasn't the best idea in retrospect because it just, I guess, enhanced his perspective on what he was able or allowed to do.

MS. O'BRIEN: Okay.

And I think the evidence shows that he had in fact already had an op – been given an opportunity to question Meghan Dunphy in June when the bullet had been found in Meghan Dunphy's home. You were –

S/SGT. OSMOND: Yes, he was there when that was seized I believe.

MS. O'BRIEN: He was. And the evidence shows that he had, you know, had asked Ms. Dunphy some questions at that time. And also the evidence shows there and it will become maybe a bit clearer later on when the chief medical examiner testifies, but also Judge Riche got to meet with Dr. Simon Avis as well.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

When these things were happening, when Judge Riche was being, you know, allowed to question witnesses, did anyone in the investigative team turn their mind to the fact well we're letting him ask questions of witnesses, that's not in his terms of reference?

S/SGT. OSMOND: I don't – when it came to – now, this wasn't discussed with me but if you're asking my opinion, I can give you my opinion.

MS. O'BRIEN: It's not your opinion – well, I want to know, at the time did anyone turn their minds to the fact that you were facilitating or assisting Judge Riche with doing questioning of witness which was not contemplated by his terms of reference.

S/SGT. OSMOND: No, only the, what you've pointed out to me about going and talking to someone because he was dissatisfied, I guess, with the level of our questioning. But in terms of meeting with the chief medical examiner, I don't know the exact parameters around that, but I understand it was a meeting that he was allowed to attend with Corporal Burke and he wasn't actually interviewing Dr. Simon Avis. And, I mean, I think his terms of reference say that he can have access at the primary investigator's discretion.

MS. O'BRIEN: Yes, to monitor. Yes.

S/SGT. OSMOND: So no. In terms of the chief medical examiner, I have no issue with that at all.

MS. O'BRIEN: Okay. But you're saying with respect to actively questioning Meghan Dunphy, what's your position on that?

S/SGT. OSMOND: I didn't think it was necessary. It was explained to him why it wasn't necessary.

MS. O'BRIEN: All right.

Did Judge Riche's – to your knowledge, did Judge Riche's behaviour in terms of the concerns that you and Corporal Burke have, change after this meeting here in August 2015?

S/SGT. OSMOND: Not to my knowledge.

MS. O'BRIEN: Okay.

Do you know whether there was any further follow-up with him by either you or somebody else with respect to the issue?

S/SGT. OSMOND: Inspector Cahill would have to speak to that. I know Corporal Burke was in regular contact with him; I would suggest weekly, if not even more frequently. But once again, I mean, he was his point of contact but he certainly wasn't in a position to be telling Judge Riche what to do. The optics weren't okay.

MS. O'BRIEN: Okay. And we're going to hear from now-Superintendent Cahill on that, but you – so you, to your knowledge, you weren't involved in any further meeting, were you?

S/SGT. OSMOND: No, I wasn't.

MS. O'BRIEN: Okay. And you – at any time did you ever review Judge Riche's terms of reference or mandate with him?

S/SGT. OSMOND: Not with him, no.

MS. O'BRIEN: Okay. All right.

Now, entered at exhibit – and I don't know if I need to bring it up but it's – for the record, it's been entered as Exhibit P-0041. And this is a letter that Erin Breen wrote to Constable John Galway on April 8.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

And she raised a number – do you recall that letter?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: She raised a number of concerns in that letter, and many of them we've already addressed with other witnesses, but there are a couple that I wanted to put to you.

And also, Commissioner, just for completeness of the record, Staff Sergeant Osmond did write an email summarizing the various issues raised –

S/SGT. OSMOND: I did.

MS. O'BRIEN: – and his response to those issues and that is also entered as evidence at P-0606. I do not need to bring Staff Sergeant Osmond to that document to ask him any direct questions but it is there. And if at any time, Staff Sergeant Osmond, in answering you would like to see that email or the letter itself just let me know.

But one of the concerns that was raised was that Ms. Dunphy believed that her father in the media, that the information that had been put out about him – that he had, you know, pointed a gun at Constable Smyth, there was a sudden change in his demeanour – that this information painted her father in a negative light.

Do you recall that concern?

S/SGT. OSMOND: I do.

MS. O'BRIEN: Okay.

And a press release had been put out by the RCMP just the day before on April 7.

S/SGT. OSMOND: 7th.

MS. O'BRIEN: And I think it's reasonable that looking at that, that that would be the document that Ms. Dunphy had the concern with. Do you recall that?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

I'll ask to bring up Exhibit P-0570 and that is the press release itself.

Okay. So here is the press release. I'm not going to read it all but it's there in evidence.

THE COMMISSIONER: What is the number?

MS. O'BRIEN: P-0070 – sorry, P-0570, Commissioner.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: And it was put out by the media relations officer, Sergeant Greg Hicks.

S/SGT. OSMOND: I can't see the top.

So that originated from Greg Hicks? Okay.

MS. O'BRIEN: From Greg Hicks and it's sent out to the 2014 RCMP news releases group. So that's what we understand –

S/SGT. OSMOND: Yeah.

MS. O'BRIEN: – the release to be, the press release.

I understand that you had some involvement in drafting that press release.

S/SGT. OSMOND: Yes, I did.

MS. O'BRIEN: Okay.

And we know that there was a number of individuals involved in that. Do you recall whether there was any discussion or consideration in developing the draft as to how Mr. Dunphy was being portrayed in the document?

S/SGT. OSMOND: No. The purpose of the press release was to get as much information to the public as possible without tainting the investigation, if possible. I mean anything that taints the investigation we're not going to release anyway.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Clearly, this was a matter of high public interest and we wanted to allow the public to have as much information as they could.

MS. O'BRIEN: Okay.

I think you just answered the question, no, for Donald Dunphy, but I'm going to ask the same question for Constable Smyth. Do you recall whether there was any discussion or consideration in developing the draft as to how Constable Smyth was being portrayed in the press release?

S/SGT. OSMOND: I don't.

MS. O'BRIEN: Okay.

And I'm going to ask, Madam Clerk, to bring up Exhibit P-0596, please.

Thank you.

I'm looking at – the top is between Superintendent Zettler and Greg Hicks but it's the bottom I'm more interested in. This was a forward of an email from you on April 6, so the evening of April 6, the day before the press release went out. And it was: "As discussed ... if we want to put out more detail, we can go with something along these lines ... or we can wait until after the autopsy and comment on that as well."

Please advise – of your thoughts, I would think.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And so then you have a draft, you've done a bit of a draft press release here for people's consideration.

A couple of questions I just want to – a couple of lines here I want to draw your attention to now –

S/SGT. OSMOND: Sure.

MS. O'BRIEN: – for the next questions I want to ask.

The first line is in this paragraph right here that says: "The Holyrood detachment of the RCMP was contacted and offered assistance to the Royal Newfoundland Constabulary Officer based on his risk assessment. However risk assessments are an ongoing event and can change quickly."

So here you'd added the words that essentially Constable Cox, it would have been –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – but an RCMP officer had offered assistance to Constable Smyth, so if you can just hold that in your mind.

The next sentence that I wanted to ask some follow-up on was the sentence you drafted was: "The male was hit by XXXXX shots and died immediately at the scene." Sorry.

So now if I could bring up P-0597, please; so this is an email, Staff Sergeant Osmond, that you send the next day, the next morning. And you say, you write: "I like this. I know we'll discuss in the meeting, but please consider the following in the meantime:

"This morning, we discussed the issues we feel are of concern to the public, and the primary one seems to be why a member would respond to a known threat by himself, and the suggestion that if he went with back-up the event might not have occurred. Based on this, we would make the following additions/modifications in red."

And down here where, just a few minutes ago in your previous draft you had specifically mentioned that –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – the RCMP officer had offered to go with Constable Smyth, it has – that sentenced has been changed. It says: “As part of the RNC member’s safety protocol, local RCMP members in Holyrood were advised of his location and were consulted.”

S/SGT. OSMOND: Right.

MS. O'BRIEN: Was the line about the RCMP officer offering assistance – offering to assist Constable Smyth removed because the public was questioning whether or not Constable Smyth should have gone there alone?

S/SGT. OSMOND: I don’t know. It looks to me like I am inserting my comments in red in another – like an evolution of that original document where it was removed. So I don’t know if I removed it. If I did, it certainly wouldn’t have been for that reason. It may have been brevity.

You know, I don’t have an answer for that. I don’t remember who removed it or why.

MS. O'BRIEN: Okay, but this is your email.

S/SGT. OSMOND: It is my email.

MS. O'BRIEN: And in this email this is your writing here where you’re reporting on a meeting that you’d had that morning and the primary concern was as to why he would respond to a known threat by himself with the suggestion that if you went with backup, the event might not have occurred. That’s your writing there?

S/SGT. OSMOND: It is, yeah.

MS. O'BRIEN: Okay. Do you recall that meeting where that concern was raised?

S/SGT. OSMOND: I know it happened, I believe, that morning in our unit. We were discussing, I guess, what we had seen on the media or whatever.

MS. O'BRIEN: Okay. So do you recall this concern that the public was suggesting if you went with backup it might not have happened?

S/SGT. OSMOND: I don’t recall it specifically but I recall writing the email, so I guess.

MS. O'BRIEN: Okay.

And then you say: Based on this, you’re making the, “... we would make the following additions/modifications in red.” So it’s you who would have put in this red type here.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I guess what I’m saying is I don’t know that it was me that took out the other sentence.

MS. O'BRIEN: Okay.

The fact that Constable Cox had offered to go with Constable Smyth was a fact.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. Did releasing that fact to the public, would that have affected the integrity of your investigation?

S/SGT. OSMOND: I don't see how.

MS. O'BRIEN: Okay.

At this point – and here we're on the morning of April 7. And the afternoon of April 6 you would have monitored Constable Smyth's statement.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Do you recall discussions between Constable Smyth and Corporals Burke and Henstridge in that, in that interview about the difficulty that Constable Smyth was having because of the way he was, you know, he felt he was being portrayed in the media?

S/SGT. OSMOND: Yes. Now that you mention it, I do.

MS. O'BRIEN: Okay. And do you recall comments from, I think, it's Corporal Henstridge that putting – there may be some help for him when the RCMP gets out their press release?

S/SGT. OSMOND: No.

MS. O'BRIEN: You don't recall that.

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

And just for the record – I'm not going to bring it up here now but the exhibit I'm referring to is P-0119, it's been entered. And I'll just give you a couple of references and I might not –

UNIDENTIFIED MALE SPEAKER: What is P-0119?

MS. O'BRIEN: P-0119 is the transcript of Constable Smyth's first interview. And I just paraphrased there –

S/SGT. OSMOND: Sure.

MS. O'BRIEN: – but I'll give you the precise references. If you go to page 70 of that document, at lines 8 to 23 and page 71, at lines 19 to 23 you'll see some discussion between the officers. So but you don't recall that specifically now but you recall the issue being discussed generally.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

I'd asked to bring up P-0599, please. And earlier, when I brought you to your first draft that you'd done on April 6, you recall you had the writing there about the number of shots.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And that gets removed from the final draft.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And here we have an email from now-Superintendent Pat Cahill and this is on April 7 in the morning: "Thanks Greg. Further discussion at our meeting. I'm not big on putting out the number of shots fired and the number of hits etc. Multiple shots were fired by the officer may suffice. Public perception may take a swing to 'overkill' when we get into the specifics here.

"Again we can discuss further at the meeting."

Do you recall whether or not it was this concern raised by then-Inspector Cahill was the reason why the number of shots was taken out of the draft?

S/SGT. OSMOND: I don't recall why, but I do know that had I been asked, I would have asked to have it removed anyway because we hadn't completed our investigation. It's just too detailed; we don't want that out there. Because we may end up speaking to another witness and then we can't determine whether or not they got those facts from our own press release. So investigatively speaking, I would have suggested taking it out. So –

MS. O'BRIEN: Didn't you put that wording in there in the first place, though? That first email we looked –

S/SGT. OSMOND: Yes, and it was a mistake.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Yeah.

MS. O'BRIEN: All right.

Would a public perception of overkill, is that something that you would think would reflect negatively on Constable Smyth?

S/SGT. OSMOND: If that was the public perception, sure.

MS. O'BRIEN: All right.

Just going – a couple of other things now, I was going back to that April 8 letter of Erin Breen and I said there was only a few topics that I want to discuss.

S/SGT. OSMOND: Sure.

MS. O'BRIEN: One of the other ones that she raised in that letter was that her client had felt that the interview of her client by Corporal Monty Henstridge on – and Corporal Burke was there as well – on April 5, had been hostile. Did you review that interview?

S/SGT. OSMOND: I did. I received a letter from Ms. Breen mid- to late afternoon and I arranged a statement – a meeting with Ms. Dunphy I think by 8 o'clock that evening. And in the interim, I reviewed that interview.

MS. O'BRIEN: Okay. And did you have any concerns with the tone of that interview?

S/SGT. OSMOND: None whatsoever.

MS. O'BRIEN: Did you have any concerns that, in terms of the information that you would want to get from Meghan Dunphy for the investigation, that that first interview had not been thorough enough?

S/SGT. OSMOND: No, I didn't feel that way either.

MS. O'BRIEN: But in your – you did subsequently interview Meghan Dunphy –

S/SGT. OSMOND: Yes, I did.

MS. O'BRIEN: – on April 8. Okay.

When the first night Meghan Dunphy was interviewed – so looking back on the 5th, obviously she just learned that her father had been shot. And no doubt that was incredibly upsetting for her and I think in anyone's mind –

S/SGT. OSMOND: Certainly.

MS. O'BRIEN: – someone would be, having suffered that kind of trauma might be in some sort of shock and I don't mean that in a medical sense.

Do you think that Meghan Dunphy would have understood at that time that she wasn't required to give a statement to Corporals Burke and Henstridge?

S/SGT. OSMOND: Probably not, but I mean I have done other investigations where I approach someone in similar circumstances and they said: You know what, I'm too rattled. Can I talk to you tomorrow?

So I mean even though it wasn't expressly said to her, if she had said that she was too traumatized to speak, we would have honoured that and arranged another time.

MS. O'BRIEN: Okay.

And you weren't there at the time itself? You're just basing what you understand was said to her based on the transcript. Is that right?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. And, again, we will be hearing further from Corporal Henstridge on that point.

The statement that you took from Meghan Dunphy on April 8 is – has been entered as P-0037. I just have very – a couple of questions on that.

If I could have that exhibit up, please; Madam Clerk can go to page 92. Thank you.

So at the top it's Ms. Dunphy speaking: "So you know anything that's gonna help my dad in this situation you have no worries about anything." And you respond: Well the biggest thing that's going to help your dad – uh-huh – is keeping this confidential.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And she says, yes. And you say, yeah. And she says: "Hmm, hmm. Yeah. For sure. I can talk to it about him that's why I want him" And I think she was there referring to Billy Corcoran who was in the room.

S/SGT. OSMOND: Mr. Corcoran, yes.

MS. O'BRIEN: Mr. Corcoran was in the room. And you said: "Well he's sitting right here."

So you – appears here that you were asking her to keep the information that she learned and the details of the interview confidential.

S/SGT. OSMOND: I am.

MS. O'BRIEN: Okay. And she agreed?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

As far as you're aware, did she keep that commitment?

S/SGT. OSMOND: As far as I know, yes.

MS. O'BRIEN: Okay.

When Constable Smyth was interviewed on April 6 he was not asked to keep the information from the interview confidential.

S/SGT. OSMOND: Right.

MS. O'BRIEN: And so you monitored –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – that interview so you'd be aware of that.

Why the difference? Why were you asking Meghan Dunphy to do that and it wasn't asked of Constable Smyth?

S/SGT. OSMOND: Well, our statement for Meghan Dunphy, what I was discussing with her was about someone else. When we were speaking with Constable Smyth, he was giving us his own personal experience.

Some of her statement was that way, but it was also the information flow was going from the police to her. And she is still connected in the community. We hadn't completed all our witness statements. If she had divulged something to another witness, then it could have compromised our investigation.

The reason I asked her to do this is because I was really bending over backwards to give her an awful lot of fact with the implicit trust between her and Ms. Breen that this would not be discussed any further. I took a risk, but I did it because she lost her dad. And with Constable Smyth, he's sitting in the room with us, he's talking about first-hand information, and we're not telling him what someone else said. Lastly, if Constable Smyth discusses what happens in that room with someone else, then we now have another witness. That's not a bad thing for us.

MS. O'BRIEN: During the interview with Constable Smyth, and I just noted the transcript is in evidence at P-0119, and we have reviewed some of it –

S/SGT. OSMOND: Uh-huh.

MS. O'BRIEN: – in this, in this hearing room already. You were there; you saw it.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Wouldn't you agree that a fair bit of information was given by Corporal Burke and Corporal Henstridge to Constable Smyth about the investigation?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. So he –

S/SGT. OSMOND: But that's what I was talking about earlier when I was criticizing the two members when they came back to me.

MS. O'BRIEN: Okay. So they did give him information.

S/SGT. OSMOND: Yeah.

MS. O'BRIEN: So he wasn't just getting – it wasn't just about his own experience that he was talking about there. He was getting –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – other information and information about other individuals during the course – he was told information about Mr. Dunphy, Donald Dunphy. He was given information about –

S/SGT. OSMOND: I don't recall what you mean.

MS. O'BRIEN: Okay. Well, he was. He was told – and you can just take my word for it now, perhaps, unless you want to see it, but he was told that Mr. Dunphy was not a drinker, he smoked a lot of dope, that he had –

S/SGT. OSMOND: Right.

MS. O'BRIEN: He was given information.

S/SGT. OSMOND: Right.

MS. O'BRIEN: So I'm not really understanding the difference. He was given information about the investigation, why wouldn't he have been asked to keep that confidential? Wouldn't the same concerns about tainting other witnesses or not all, you know, statements have been taken – wouldn't those same concerns have been there?

S/SGT. OSMOND: He's the subject of the investigation. If he goes and he tells another person that divulges a criminal act, that's not a bad thing for our investigation.

MS. O'BRIEN: But what about if he tainted other – I understood your answer just then with respect to Meghan Dunphy is that as the investigation was ongoing and she shared information that could taint other witness statements.

S/SGT. OSMOND: Yes, because we hadn't done a full exploration of all our witnesses in the community.

MS. O'BRIEN: I know.

S/SGT. OSMOND: Yes, so Constable Smyth didn't have access to those people; he wasn't going to talk to those people. Anybody that he told anything about, they were not witnesses to the event. We didn't know if there were witnesses to the event still left in the community.

MS. O'BRIEN: Okay. So you're saying because – are you distinguishing here because Constable Smyth wasn't from Mitchells Brook, you're saying he didn't have access to those people – what do you mean, he wouldn't ...?

S/SGT. OSMOND: Yes, absolutely.

MS. O'BRIEN: Okay.

Do you know if Constable Smyth kept the information that he received during his interview confidential?

S/SGT. OSMOND: No idea.

MS. O'BRIEN: Okay. All right.

April 9, if I could bring up Exhibit P-0584, please. So this is April 9 and we're bringing up your notes here, Staff Sergeant Osmond, and we can go to page 6, please, Madam Clerk.

At 1530 here on this day – sorry, because five comes before seven, here it is. So you note here a meeting with Jason Sheppard, RNC with Chief Superintendent Boland and Inspector Cahill, overview investigation provided to him. Do you recall this meeting?

S/SGT. OSMOND: Truly, just vaguely. Without the note, I wouldn't have remembered that it occurred.

MS. O'BRIEN: Okay. Do you remember anything that was discussed at that meeting?

S/SGT. OSMOND: I really don't – it was like a 10,000 foot view of what was happening. I know I was there because – in case something came up, I was in the know on the investigation. So if there was, I guess, maybe a question that Superintendent Sheppard had, that they couldn't answer – but the way I remember it was almost – I was almost like an afterthought; I was brought in as a resource. It was very general.

MS. O'BRIEN: Okay.

According to Superintendent Sheppard's notes – and they've been entered into evidence again, Commissioner, at P-0443 – the meeting was over an hour. I think an hour and, you know, seven minutes or something like that and, though – he has already given us testimony. He said it – he estimated about 15 minutes of that was spent on other topics, but we're still talking about a significant amount of that meeting regarding the Dunphy file. It seems like, for a brief overview, it does seem like a lengthy meeting to be spending 50-plus minutes or so on the topic. Do you have – you can't give us any details?

S/SGT. OSMOND: I have offered you everything I can remember.

MS. O'BRIEN: Okay. All right.

You – this is the extent of the notes that you took.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Chief – sorry, Chief Superintendent –

S/SGT. OSMOND: Boland.

MS. O'BRIEN: – Andrew Boland has already given us testimony. He took no notes of the meeting, and when asked if he would have expected one of the other two RCMP officers to take the notes he said yes, absolutely or words to that effect. But I take it that wasn't you.

S/SGT. OSMOND: Everybody's responsible for their own notes; that's all I can say about that.

MS. O'BRIEN: Okay.

And do you recall why, why you ended up having three fairly high-ranking RCMP officers present at this meeting to give the RNC liaison officer an update?

S/SGT. OSMOND: Well, Chief Superintendent Boland was the Criminal Operations officer at the time, so everything fell under his preview. I don't know why Superintendent Sheppard was selected from the RNC, but I do know very early on, I think if you look at my notes, he was identified as the RNC liaison.

MS. O'BRIEN: He was.

S/SGT. OSMOND: So that's why he was there. Inspector Cahill was in charge of the Major Crime Unit. So I think that's highly appropriate that those three people would meet. The odd duck in that meeting is actually me and I guess that's probably because if they had questions, like I said, I could probably answer them.

MS. O'BRIEN: On the investigation you mean?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. All right.

So you can't tell us anything. Superintendent Sheppard had a few notes. He had a note about the vehicle. Do you recall anything about the vehicle being –

S/SGT. OSMOND: Nope.

MS. O'BRIEN: Okay.

Media: He noted there was a discussion about media. Do you recall that?

S/SGT. OSMOND: There was a discussion about media at every meeting, so ...

MS. O'BRIEN: Okay. All right.

Now, if we could go to P-0231, please. We have heard already from Corporal Trevor O’Keefe that he called Constable Smyth on April 10 to pass – to essentially check in on Constable Smyth, how he was doing, because he was concerned. Do you recall that coming to your attention?

S/SGT. OSMOND: I do.

MS. O’BRIEN: Okay.

So this is an email that you wrote and can you just explain – and give you a quick note, but you’re writing Staff Sergeant Rod Tiller. You’re asking him to go address it with Corporal O’Keefe and draft comprehensive notes. Why would you have written this email?

S/SGT. OSMOND: Because I felt that it was common sense that if you’re an investigator on this file, even though his role is very limited, that as much as you may want to on a humanitarian side, you maintain your arm’s-length status from that person. My concern was that the perception could be that we were passing along information or that I guess his creditability or our creditability could come under scrutiny for that. And that’s why I said in the email, I understand we are all human beings with feelings, but you sort of have to clue in to what your role is. And if he was really concerned about Constable Smyth, he should have contacted the RNC liaison and make sure he was getting his EAP referral.

MS. O’BRIEN: Okay.

Did you have any direct follow-up with Corporal O’Keefe or would you have just left that to –

S/SGT. OSMOND: No, he was Rod Tiller’s employee. I identified an issue, I left it with him. I said, you can assess how you wish to deal with this as a supervisor, and that was it for me.

MS. O’BRIEN: Okay. One final question, your first sentence here in the email you say: I know you’ve already spoken with Corporal O’Keefe about his disclosing information to the family.

S/SGT. OSMOND: Yes.

MS. O’BRIEN: What do you recall about that?

S/SGT. OSMOND: Well, at the beginning there was some confusion. Corporal O’Keefe had spoken with Meghan Dunphy at the scene, which was appropriate, but he disclosed information that probably shouldn’t have been said and turned out to be inaccurate, and that caused I think some mistrust on behalf of Ms. Dunphy. And when it’s early on in an investigation, like literally minutes in, you have to be very, very careful what you are disclosing.

MS. O’BRIEN: Do you know what information you’re referring to? Now that –

S/SGT. OSMOND: Yes, he told Ms. Dunphy that – well, allegedly told. He says he didn’t say this.

MS. O’BRIEN: Okay.

S/SGT. OSMOND: But Ms. Dunphy was under the impression that her father was on the floor of the house.

MS. O’BRIEN: Okay. And that was my question because he had – I understood that to be the information that her father was on the floor with the gun beside him.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And we've heard from Corporal O'Keefe and he denied saying that.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: So you were aware of that?

S/SGT. OSMOND: Yes, yes.

MS. O'BRIEN: All right. The next issue I want to talk to you about takes place – it has to do with Mr. Dunphy's glasses which were found on or about April 17. And we have had a lot of information here at the inquiry already on this issue, so I'm not going to spend a lot of time on it. But I understand, in a nutshell, what happened was Meghan Dunphy went into her father's home and found his glasses in, you know, quite a state of damage, and that concern was raised with the RCMP, why the glasses hadn't been seized. And I think the possibility – her concern was that these damaged glasses might be evidence of some sort of a fight or altercation between her father and Constable Smyth.

I understand that after the concern was raised that you and Corporal Burke visited Erin Breen at her office and reviewed some scene photos with her. Is that correct?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: We spoke to her about it. She didn't have the scene photos then.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I think in my original meeting with you I said that, but that was incorrect.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I reviewed it since, and we only got the photographs some time later. But she was going on a description that she had gotten from Ms. Dunphy; unless she had reviewed them, but we never.

MS. O'BRIEN: Did you at any time review any scene photos with her?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. So when was that?

S/SGT. OSMOND: I'm sorry, maybe I misunderstood. But I thought what you asked was whether or not she had the photographs from Ms. Dunphy at the time?

MS. O'BRIEN: No, what I understood was that you, when this issue was raised, you and Corporal Burke met with Ms. Breen with your scene photos, the photos that had been taken by the FIS.

S/SGT. OSMOND: Okay. Once again, no; we met with her at her office –

MS. O'BRIEN: Yes.

S/SGT. OSMOND: – and she described the condition of the glasses and asked us questions about why we didn't seize them.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: Her description that she offered us didn't marry up with the scene photographs. She asked if she could view the scene photographs. So on the way driving back from her office to our office, I told Steve, I thought, you know, no harm, let's let her look at it because we could crop the photos because they're digital, not to show any of the other parts of the scene. So that's what we did.

So later on, I think maybe an hour or so later, she was at our office and she viewed the photographs there on the computer.

MS. O'BRIEN: On your office –?

S/SGT. OSMOND: Yeah.

MS. O'BRIEN: She reviewed them at your office, not hers?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

All right, and I understand having reviewed those photographs that did not allay Ms. Breen's concern. Is that fair to say?

S/SGT. OSMOND: Well, all she said at the time was that she couldn't – I think her words were I can't orient myself to what I'm looking at.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: She didn't say one way or the other if it allayed her concerns.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: At least not to me.

MS. O'BRIEN: Okay.

Can we see P-0586 again? These are your notes, and I'll ask if we can go to page 12. Okay, so here's what you wrote. And again – oh, sorry, I'll get the date. This is the 17th of April.

Based on what I have seen/heard this far I do not share Ms Breen's concerns about the glasses. Notwithstanding, Steve and I discussed same and decided to: 1) Interview Ms Dunphy; Interview Mr. Corcoran; Interview Mr. Dinn; obtain photos from Ms. Dunphy; obtain pre-event video if it exists; interview staff of the Woodstock that served Ms. Dunphy.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: So, that's your note there. Did you – in your opinion, were these six steps that you're outlining here, were these necessary investigative steps?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay. So why were you taking them?

S/SGT. OSMOND: I think several factors weighed in. One was the fact that she raised the concern. And as you already read from my notes, I'm not adverse to anybody raising an issue at any time. So I took that under advisement, but the real reason why I wanted to do it was because I felt that Ms. Dunphy needed to have an explanation for that. She lost her father. She felt that it was, I guess, an element of the offence that we may have missed. And it needed to be demonstrated to her that we did everything we could and it's a non-issue.

MS. O'BRIEN: Okay.

Has that ever happened on any other investigation that you have been involved with prior to this one? So where you as part of the investigative team would take investigative steps that the investigative team does not consider necessary, but because someone affected by the investigation asks you to or because they express some dissatisfaction or concern about some aspect of the investigation?

S/SGT. OSMOND: Yes, it does.

MS. O'BRIEN: Okay. So can you give – you did mention this in your pre-hearing interview. If maybe if you could expand on that a little for the benefit of the Commissioner?

S/SGT. OSMOND: Sure. Oftentimes when there's a death in a family, certainly this one is quite unique, but when there's a death in the family, perhaps it's a suicide, perhaps it's an accidental death like a drowning, the family has trouble accepting the reality of what's occurred, and they may ask for a review of a file. They may ask you to go a couple of extra steps to confirm something. And even if, as an investigator, you don't think it's absolutely required, or has any merit, if it will bring them some peace then, yes, absolutely, we do it.

MS. O'BRIEN: Okay.

And in our pre-hearing interview you – I asked you, Sir, what frequency, and you estimated that in your experience that could happen up as frequently as once a year. Is that still a fair estimate?

S/SGT. OSMOND: Yes, because in MCU we're often tasked with going out and reviewing the original investigation that the family is concerned about. So we go out and we ensure that all the t's were crossed, all the i's were dotted, and that the findings were legitimate or not, maybe they weren't, or maybe more should have been done. But, yes, we go out – and it has happened within our files as well, but oftentimes it's a suicide or I remember one specific drowning file where we spent quite a bit of time on.

MS. O'BRIEN: Okay.

The next exhibit I have for you, it will just be a quick question, it's P-0426. This is an email that you wrote. We've already reviewed it with any number of witnesses, but as you're the author of the email I just wanted to ensure that we've been interpreting it correctly. But this is an email that you wrote to a number of members who are listed here. And this is, again, right around the time of the glasses incident. So April 17, and where you just received a strongly worded letter from Ms. Breen, as you note.

But the last line you said: Moving forward, when dealing with the family or Ms. Breen, please direct them to Cpl Burke or myself. If they have questions, note the questions and forward same to us. All the interactions are to be well documented.

Can you please confirm that we're right, that it was after this letter that Constable Galway ceased to be the family liaison and Corporal Burke moved into that role? Is that right?

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay.

Now, the next series of questions I have for you, we can look at P-0610.

S/SGT. OSMOND: Excuse me, might I expand on that answer a little bit –

MS. O'BRIEN: Oh, of course.

S/SGT. OSMOND: – because when we spoke before, the question you asked me was whether or not that reflected poorly on Constable Galway and was he removed.

MS. O'BRIEN: I don't remember that, but I'll take your –

S/SGT. OSMOND: I want to be clear to the Commission that Constable Galway was not removed from that role. We felt that it was better to have a direct point of contact with Major Crime, and that's why we decided to take that role on. Constable Galway was performing well in that role in our estimation and he was not removed.

MS. O'BRIEN: All right. So is –

S/SGT. OSMOND: Thank you.

MS. O'BRIEN: Yeah, of course.

So now we have P-0610. So this here – and I'm going to lead you a bit through this evidence –

S/SGT. OSMOND: Sure.

MS. O'BRIEN: – Staff Sergeant Osmond, but this is having to do with the 3-D recreation. So this is – it all seems to start here on April 20 with an email from you to Sergeant Chris Saunders, who we've already had testimony of, and where you are say to him: you've spoken "with Steve this morning and we are interested in getting your advice regarding scene processing/recreation. We would like to explore some sort of advanced scene processing, if it exists.

"Maybe I'm watching too much TV, but do you know of a reputable process, or company, that can take proven scene facts...trajectories, angles, measurements, and blend them with the statement and re-enactment of Sgt. SMYTH to ensure they are consistent with one another?"

"Given the confined areas of the scene and relative simplicity in terms of blood spatter etc, I believe a video produced in such a manner would be of great benefit, and am wondering if this is possible?"

"I want to be clear that **I do not** want this pursued for the purpose of theatrics or a "mock-up" of the scene if it cannot be deemed accurate and explained/corroborated on some level by the person who created it.

"Any advice would be appreciated."

So we have heard from Sergeant Saunders on this and I'm going to summarize the evidence just to ensure that you agree –

S/SGT. OSMOND: Sure.

MS. O'BRIEN: – with the summary. So I understand that Sergeant Saunders did some research here and he ultimately proposed a number of individuals who worked in this area –

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: – and he did a fair bit of work on that and, ultimately, I understand that the person who you retained was one of the people he identified and that was Mr. Darryl Barr who is with the firearms unit of the Calgary Police Service?

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay.

And from what we heard from Sergeant Saunders, he preferred Darryl Barr for two reasons: One because Mr. Barr did a static reconstruction that allowed him to work from the measurements of FIS and did not require him to come, actually visit the house and set up the furniture and recreate –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – the scene in any form. And also he preferred Mr. Barr because Mr. Barr had ballistics and firearm expertise?

S/SGT. OSMOND: Right.

MS. O'BRIEN: Okay. All right.

And if we look at P-0613, in the file there is an awful lot of communication back and forth on this topic, but it seems – and I just want to confirm that this understanding is correct – that everyone comes to an agreement and it sort of culminates here on May 11 with a series of interviews. And actually, really, I think, on April 28 with your email here where you start with: Light bulb moment!

S/SGT. OSMOND: Yes.

MS. O'BRIEN: And this is where you, I think you say you understand the benefit that Barr will bring because of his particular background.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: Okay.

Now, much earlier in the evidence before the inquiry when Meghan Dunphy was on the stand, we heard some testimony from her and reviewed some letters from her counsel surrounding confusing messages that she had received from the RCMP during this period regarding whether or not the house had to be – you know, you were asking her to maintain the house for the possible visit by a 3-D expert.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Do you recall that?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

And is it fair to say that that confusion was caused, was as a result of this period when you were trying to determine who your expert would be?

S/SGT. OSMOND: Yes. My understanding is, like, we let her know that we were contemplating this option, but I don't believe we told her we'd settled on anything. You know, Corporal Burke was in contact with her directly. I don't think, other than my meeting with her where I took that statement from her, I don't believe I was ever in direct contact with her. So, you know, I believe that she was told that we may need to get back in the house. And I don't know how much that was clarified or –

MS. O'BRIEN: We have seen the correspondence here. But I just want to clarify with you that that was happening during this period –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – and ultimately when Mr. Barr was selected, you realized you didn't need the living room to be saved.

S/SGT. OSMOND: Correct.

MS. O'BRIEN: All right. During this file, did you have any contact or discussion with anyone at the premier's office?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay. Any member of government?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay. And I mean not – in relation to the investigation.

S/SGT. OSMOND: Right.

MS. O'BRIEN: Right, okay.

And other than Constable Smyth and the interactions that you've already described for us today, did you have any contact or discussion with any RNC members at any point during the investigation in reference to the investigation? And again, we know you've said you, you know, you were meeting with Superintendent Sheppard and –

S/SGT. OSMOND: No. I didn't even interview any of, any of them, no.

MS. O'BRIEN: Okay.

Now, we understand that on September 14 of 2016 – so this past September – that you met with Constable Smyth, his wife and legal counsel and briefed them on the ultimate findings of the RCMP –

S/SGT. OSMOND: Correct.

MS. O'BRIEN: – is that right? Okay.

And I'll just quickly take you to that, P-0205.

Okay.

And this is an email from you and it's: Meeting with you and Constable Smyth. And I understand this is your notes of the meeting, the briefing meeting you had. And I'm not going to take you through all the notes, I just had one question on page 3 of the exhibit here: "SMYTH expressed frustration that nobody would speak on his behalf, not the RNC or the RCMP, and it was feeding those on social media who are promoting cover-up theories and conducting character assassination. OSMOND shared a similar experience with SMYTH, and advised him that, in his experience, releasing the facts does not stop these people from promotion fiction."

Do you recall that?

S/SGT. OSMOND: I do.

MS. O'BRIEN: Okay. Is there anything else in the discussion you recall other than what you have noted here?

S/SGT. OSMOND: If you could clarify, I might be able to answer.

MS. O'BRIEN: Sorry. I apologize if was an unclear question.

Does this note here added, you know, cover off your discussions with Constable Smyth at that meeting regarding his frustrations with communications?

S/SGT. OSMOND: It was a lengthy portion of our meeting.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: I don't have any specific memories of what his specific issue were other than the fact he felt I guess, unsupported. And I had gone through a similar thing where social media had been attacking me for quite some time. And my experience with it was no matter what you do, there's very little you can do to stop it. And so I shared my personal experience with him.

MS. O'BRIEN: Okay. And that was during this meeting, was it, on September 14?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

Now, following this meeting, I understand that you and Constable Smyth shared a number of texts back and forth.

S/SGT. OSMOND: That's correct.

MS. O'BRIEN: Okay.

And is it fair to say that a number of those texts had to do, again, with Constable Smyth's frustration with respect to, at that time, Judge Riche speaking publicly and how –

S/SGT. OSMOND: Yes.

MS. O'BRIEN: – and what was going on in the media? Okay.

And those texts, Commissioner, have been entered as P-0616, I do believe. I'm not going to go through them all with you but they're there in evidence. In a couple of incidents – and if you need to refer to them, Staff Sergeant Osmond, you just say. But in a couple of instances do you recall that Constable Smyth asked you for some information with respect to the file?

S/SGT. OSMOND: He did.

MS. O'BRIEN: Okay. And did you provide that to him?

S/SGT. OSMOND: No.

MS. O'BRIEN: Okay.

Now, those communication, those text communications, those came to light during our pre-hearing interview.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Why would those not have been provided as part of the RCMP disclosure originally?

S/SGT. OSMOND: Well, I really didn't think of it that way. It wasn't part of our investigative file and I guess I wasn't thinking of it in the terms of the grand scope of an inquiry. But, I mean, you asked me had I had any other conversations or communications; I immediately offered it up. I said: Yes, it's on my phone and you can have it.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: There was no effort to hide or anything like that. It was a person who had – the results were in, the ASIRT report was done, Judge Riche had, in my opinion, spoken out of turn and I felt that he was looking for someone to vent to.

MS. O'BRIEN: When you say he was looking for someone to vent to, you mean Constable Smyth.

S/SGT. OSMOND: Constable Smyth. Yes.

MS. O'BRIEN: Okay.

Do you recall contacting Jason Sheppard on September 21, 2016, regarding the texts?

S/SGT. OSMOND: I do.

MS. O'BRIEN: Okay.

Now, that wasn't disclosed in the RCMP file but in Jason Sheppard's – and it wasn't included in your notes that we received.

S/SGT. OSMOND: Yeah, I completely forgot about it. And, you know, I remember phoning him because I was very concerned about Constable Smyth's mental health. He used words like: I want to throw up, this is breaking me.

And when you hear those kind of words coming from someone you barely know, you need to make sure that they're okay. So I reached out to Superintendent Sheppard and made sure that his Employee Assistance Program was plugged in and that he was using it.

MS. O'BRIEN: Okay.

And maybe we'll bring up just his notes at P-0443. And it's page 33 of that document, please, Madam Clerk. And just to ensure that you agree with the way he has recorded that interaction.

S/SGT. OSMOND: Sure.

MS. O'BRIEN: So he notes here – and again, it's September 21, as I just mentioned, at 11:37. It says: Staff Sergeant Osmond calls me to advise that he is very concerned about Joe Smyth's well-being. Says Joe Smyth contacted him to say: I want to throw up. I want to speak to you about Riche. This has been breaking me. And he has dementia is the note he's written here. And that's put in quotes.

That came from those text messages, did it?

S/SGT. OSMOND: That's an amazing set of notes because that's exactly the texts that were sent.

MS. O'BRIEN: Okay.

S/SGT. OSMOND: (Inaudible.)

MS. O'BRIEN: And you took it from your texts. You didn't have any other conversation with Smyth.

S/SGT. OSMOND: No.

MS. O'BRIEN: It was all in the texts.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

“Osmond is the lead on the Donald Dunphy shooting for the RCMP. Says that he has spoken to Joe and his wife when he advised of the outcome of ASIRT review.”

So that would have been in the debrief session that we just referred to?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

“Says his wife is concerned about Joe's well-being.

“Osmond reiterates that he is concerned about Joe's mindset and is very worried about him. Says we need to intervene and take care of him.

“Says the RCMP didn’t disclose the details of retired Justice Riche’s report as they didn’t agree with it.”

S/SGT. OSMOND: Right.

MS. O’BRIEN: “They (RCMP) thought it would be disclosed during the inquiry when Crown and defense could cross-examine Riche on his thoughts/reports.”

And this is Sheppard saying now: “I asked Osmond how Judge Riche could say that Smyth was an angry man. Discussed Cst. Steve Burke reviewing Smyth’s professional standards file.” Says Burke wrote this from the file.

Is that an accurate report of the conversation?

S/SGT. OSMOND: That’s all correct – absolutely.

But I want to clarify one thing about not releasing Judge Riche’s report. That was the details of the report to Constable Smyth in that meeting, not the releasing of the report. I had no control over that. And the report being released was part and parcel to this process today.

MS. O’BRIEN: Okay.

Just one last area question for you, Staff Sergeant Osmond; during the course of the inquiry some further information has come to light, at first in Corporal O’Keefe’s testimony and then this morning we had Constable Cox on the stand. And their – that testimony revealed that it had been recorded in the RCMP’s PROS system that Mr. Dunphy had received a Caution Victor or violence flag.

S/SGT. OSMOND: Okay.

MS. O’BRIEN: It had been done in CPIC in the (inaudible) but one of your officers, a Corporal Lush, had cut and paste that into the PROS file.

S/SGT. OSMOND: Okay.

MS. O’BRIEN: And that that information had been viewed by both Constable Cox and Corporal O’Keefe that morning prior to Constable Smyth’s attendance at Mr. Dunphy’s house.

S/SGT. OSMOND: Okay, I think I got that.

MS. O’BRIEN: Okay? Were you aware of that before now?

S/SGT. OSMOND: No.

MS. O’BRIEN: Okay. Is it fair to say that was never uncovered during the course of the RCMP investigation?

S/SGT. OSMOND: I can’t answer.

MS. O’BRIEN: Okay. It –

S/SGT. OSMOND: Because, I mean, Corporal Burke could have been very well aware of that; I wasn’t.

MS. O'BRIEN: It's not recorded anywhere in the RCMP file.

S/SGT. OSMOND: Okay.

MS. O'BRIEN: Okay? So would that tell you that it probably wasn't uncovered during the invest –

S/SGT. OSMOND: Probably not.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Sorry, I missed that. What are you referring to?

MS. O'BRIEN: This is the issue that came up today with – well, came up with Corporal O'Keefe first but also Constable Cox that he had seen the note in the PROS file that morning that Mr. Dunphy had been flagged V for violence.

THE COMMISSIONER: Right.

MS. O'BRIEN: And that information that's in the RCMP PROS file, that information was there, was not uncovered, I don't think, during the RCMP's investigation and it doesn't appear anywhere in the RCMP disclosure.

S/SGT. OSMOND: What file was that in?

MS. O'BRIEN: It was in –

S/SGT. OSMOND: Because if it was in our file then it was disclosed to us.

MS. O'BRIEN: Well, it was in the PROS system but it wasn't in the –

S/SGT. OSMOND: Okay.

MS. O'BRIEN: – your electronic disclosure. Does that make sense?

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay. All right.

And I take it had you noted that in the course of the investigation that there'd been a violence flag on Mr. Dunphy, that's likely something that would have been discussed within the command triangle, the investigative team.

S/SGT. OSMOND: Yes.

MS. O'BRIEN: Okay.

All right, those are my questions for you, Staff Sergeant Osmond. Others will have some and, as well, the Commissioner may.

Thank you.

S/SGT. OSMOND: Thank you.

THE COMMISSIONER: Okay. Do we have – who is going first here?

Mr. Simmonds?

MR. SIMMONDS: Staff Sergeant, my name is Bob Simmonds and I'm counsel for the Meghan Dunphy family.

This was a unique set of circumstances in relation to this death, the shooting. Would you agree?

S/SGT. OSMOND: Yeah.

MR. SIMMONDS: It's a homicide, there's only one witness and that one witness is a police officer. Correct?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: And in this situation, the police officer is part of the premier's protection service and the shooting takes place in the man's living room.

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Unique, would you agree? Have you ever had anything that's remotely similar, Staff Sergeant?

S/SGT. OSMOND: No.

MR. SIMMONDS: Because the shooter is the only witness, would you agree that the scene is absolutely critically important?

S/SGT. OSMOND: The scene is important in every investigation.

MR. SIMMONDS: But would you agree that it's more so in this case because you have no other potential witnesses whatsoever except the one person who is under investigation, be it criminal or otherwise?

S/SGT. OSMOND: It's as important as in any investigation.

MR. SIMMONDS: And the identification of evidence at the scene to be collected is absolutely crucial.

S/SGT. OSMOND: Yes.

MR. SIMMONDS: And that's why the Forensic Identification unit is brought in to do an examination of the items at the scene and determine what to seize.

S/SGT. OSMOND: Correct.

MR. SIMMONDS: Yeah.

Would you agree that once the scene is released the evidentiary value of anything determined thereafter is greatly diminished? I think Corporal Burke said of no value but I would say greatly diminished.

S/SGT. OSMOND: Agreed.

MR. SIMMONDS: Agreed?

S/SGT. OSMOND: Yeah.

MR. SIMMONDS: So you would want to get as much information as possible before you release the scene in that situation.

S/SGT. OSMOND: In any situation.

MR. SIMMONDS: Okay.

The concern that's been voiced here by Ms. Dunphy, and Ms. Breen previously, is that the investigating force, the RCMP, were guilty of tunnel vision, the single-minded and overly narrow focus on a particular investigative or prosecutorial theory so as to unreasonably colour the evaluation of information received and one's conduct in response to that information.

Do you agree that there was any shade of that in this case?

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

MR. SIMMONDS: You don't.

Could we go to Exhibit 0570? Now, this was released on the 7th of April –

S/SGT. OSMOND: Correct.

MR. SIMMONDS: – this press release. The only witness you have is Officer Smyth. He gave a statement on the 6th.

S/SGT. OSMOND: Correct.

MR. SIMMONDS: Correct?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: You haven't got the full reports from your Forensic Identification unit at this point in time.

S/SGT. OSMOND: Those results or those reports can take weeks and months.

MR. SIMMONDS: Can take a period of time. Okay.

Could we move this up a little bit, Madam Clerk?

Now, the only evidence you have is that Officer Smyth says he went into the house and an argument pursued. Mr. Dunphy got agitated, picked up a gun from the right side, pointed it at him and Officer Smyth had no choice but to shoot him.

MR. KENNEDY: Commissioner, I don't think Constable Smyth said an argument ensued.

MR. SIMMONDS: Pardon me?

MR. KENNEDY: Mr. Simmonds said that Constable Smyth said that an argument ensued. That wasn't his evidence.

THE COMMISSIONER: Yeah.

MR. SIMMONDS: He became agitated –

THE COMMISSIONER: Yeah.

MR. SIMMONDS: – in the discussion. Poor choice of words.

THE COMMISSIONER: Correct.

MR. SIMMONDS: That’s the only evidence you had.

S/SGT. OSMOND: Incorrect.

MR. SIMMONDS: How am I incorrect?

S/SGT. OSMOND: Well, we had had that evidence from him, but we also had the preliminary autopsy results and we also had the preliminary FIS results.

MR. SIMMONDS: You say on the 7th in this press release: “To date, the RCMP investigation indicates the investigating officer attended the Dunphy residence, spoke with Mr. ... Dunphy at the door, the officer was identified as a police officer, and was in invited into” the Dunphy’s “home by Mr. Dunphy. Once inside the residence, a discussion unfolded between the officer and Mr. Dunphy over a period of approximately 15 minutes. During this time period there was a sudden and dramatic change in the demeanor of the visit. The police officer was faced with Mr. Dunphy holding a long barrel firearm which was pointed at the officer. Evidence indicates the ... officer responded to this threat with lethal force by drawing and discharging his service pistol. Mr. Dunphy was fatally shot and succumbed to his injuries”

You had accepted, at that point in time in that press release, the full of the rendition given to you by Officer Smyth and you’re two days into the investigation. Is that not correct, Staff Sergeant?

S/SGT. OSMOND: Absolutely incorrect.

MR. SIMMONDS: How is it incorrect when this is what you said in your press release? You’re not sending out a false press release, are you?

S/SGT. OSMOND: No.

MR. SIMMONDS: Right. So this is what you’ve said in it. This is what you believe happened. This is two days into the investigation.

S/SGT. OSMOND: “To date, the RCMP investigation indicates”

MR. SIMMONDS: I understand the use of the words “to date.” That means (inaudible).

S/SGT. OSMOND: Well then – well then that’s my answer.

MR. SIMMONDS: But that is a full acceptance of Officer Smyth’s rendition of what took place. Do you not agree?

S/SGT. OSMOND: No, I don’t.

MR. SIMMONDS: It is absolutely consistent with what Officer Smyth told you? Correct?

S/SGT. OSMOND: It's –

MR. SIMMONDS: It's a rendition put there.

S/SGT. OSMOND: It's consistent with what he told us and that was what the investigation indicated to date.

MR. SIMMONDS: Okay.

So it's to date even though to anyone viewing it, it would appear very clearly that the RCMP have accepted what the officer said.

S/SGT. OSMOND: I can't speak to what other people perceive from that. I can tell you what my perception of it is only.

MR. SIMMONDS: Indeed I put to you that for the first two weeks of the investigation all was focused on was whether Mr. Dunphy's mental health, what caused him to draw a firearm, and indeed Constable Galway's requisition to search Mr. Dunphy's phone was done for that purpose, to prove Mr. Dunphy had some issues. Correct?

S/SGT. OSMOND: I don't agree with anything you just said.

MR. SIMMONDS: A requisition from Constable Galway to search the phone of Donald Dunphy, what was it done for?

S/SGT. OSMOND: I didn't requisition it.

MR. SIMMONDS: So you're –

S/SGT. OSMOND: I'm not the investigator, Sir.

MR. SIMMONDS: But you're the overseer of the investigation, are you not, Staff Sergeant?

S/SGT. OSMOND: I am. But when a task is made up by the primary investigator he doesn't tell me the philosophy behind it.

MR. SIMMONDS: So in your triangle where information flows and you give advice, not instructions I believe is what you told us –

S/SGT. OSMOND: Correct.

MR. SIMMONDS: – you are the, sort of, counsel to give wise guidance to what's going on. You wouldn't be aware of these things.

S/SGT. OSMOND: I may or may not.

MR. SIMMONDS: You may or may not as –

S/SGT. OSMOND: If you're asking me if I knew what Corporal Burke was thinking when he requisitioned the records of Constable – or Mr. Dunphy's cellphone, no, I don't know what he was thinking.

MR. SIMMONDS: Would you not think that would be an important piece of information to have is – in your position?

S/SGT. OSMOND: As the team commander? Irrelevant.

MR. SIMMONDS: Irrelevant. Okay.

Would you agree that the issues focused on, to this point in time up to that – certainly that point that I mentioned there – was focusing on Mr. Dunphy, not on the possibility or the likelihood of the rendition given by Constable Smyth. You wouldn't agree with that?

S/SGT. OSMOND: Did you just answer your own question?

MR. SIMMONDS: No, I'm asking you, Sir.

S/SGT. OSMOND: Okay. Well, no, I don't agree with that.

MR. SIMMONDS: You don't agree with that.

Who would you agree, outside of Officer Smyth, is the best source of information that you have, Staff Sergeant?

S/SGT. OSMOND: Outside of Officer Smyth?

MR. SIMMONDS: Yeah. About the background information in relation to Don Dunphy; what he does, how he works.

S/SGT. OSMOND: Oh, about Mr. Dunphy himself?

MR. SIMMONDS: Yes.

S/SGT. OSMOND: His daughter.

MR. SIMMONDS: His daughter.

She grew up in the house. She knew her father. The statement taken from her on the evening of the incident, she was asked about her last contact with her father, how often they had contact, asked about his mental issues, access to firearms, use of marijuana, prescriptions, video cameras. Doesn't seem to be anything asked with respect out of – outside of issues with respect to the capacity and habits of Don Dunphy.

Anything else covered?

S/SGT. OSMOND: I don't know. I didn't review that statement for a while. But I can tell you that, you know, this was the day of, or the next day I believe, maybe, and it's not uncommon for us, once we learn new material, to go back and speak to someone and get further information.

MR. SIMMONDS: But none of the other questions that could have been asked, and I'll put some to you now; number one, do you have any knowledge of what was asked? Did you review the statement thereafter?

S/SGT. OSMOND: I have a general idea, yes.

MR. SIMMONDS: Okay.

During that first statement wouldn't you think a crucial piece of information would be – you know, this man is supposed to have taken a firearm from the right, brought it up. Wouldn't you

think a crucial piece of information would be whether he's right- or left-handed? Wouldn't you think that to be important?

S/SGT. OSMOND: At that instance? I don't know. It's something we could have asked her at any point in time.

MR. SIMMONDS: You're doing the first statement to get as much information as you can.

S/SGT. OSMOND: Yes.

MR. SIMMONDS: You have a statement you're getting the next day from the officer involved.

S/SGT. OSMOND: Uh-huh.

MR. SIMMONDS: He's alleging that a gun was pointed at him but you don't think that's one of the first questions that should have been asked? The gun supposedly came over the right-hand side of the chair. You don't think that's one of the first questions should be asked?

S/SGT. OSMOND: I'm not saying it shouldn't have been asked but I'm saying that it wasn't something that couldn't have been determined later either.

MR. SIMMONDS: Do you know if it was ever asked?

S/SGT. OSMOND: I have no idea.

MR. SIMMONDS: You have no idea?

Would you not consider the lack of asking a question, a basic question like that, a flaw in the investigation?

S/SGT. OSMOND: A lack of one question?

MR. SIMMONDS: Oh, I'm going to take you to some other – would you agree that that's a basic question that should have been asked?

S/SGT. OSMOND: I guess.

MR. SIMMONDS: You guess.

There was a stick found. It's pictured in the diagram there. It was found almost in the walkway to the house, into the living room. It had tape on it.

S/SGT. OSMOND: Uh-huh.

I'm aware of the stick.

MR. SIMMONDS: Yeah, allegedly a weapon.

Do you think it might have been appropriate for the officers at that stage – this stick kind of stands out right in the walkway – to ask Meghan Dunphy where's the stick normally located to, what did he use it for? Do you think that might have been a question that was important on that first night?

You're shaking your hands –

S/SGT. OSMOND: Well, my answer is the same. You're acting like if we go in and take one statement, then it's got to be a one all and be all and that's not the way investigations go.

So if you're asking me if it should have been asked or could have been asked, yes, it could have been.

MR. SIMMONDS: But –

S/SGT. OSMOND: But that evidence wasn't lost to us. We could have went back and spoken to her at any given time.

MR. SIMMONDS: Once the scene is released, which was done fairly quickly after this, the value of anything at the scene becomes greatly diminished. We agree?

S/SGT. OSMOND: We're talking about a question, not evidence. You asked me –

MR. SIMMONDS: (Inaudible.)

S/SGT. OSMOND: Excuse me.

You asked me –

MR. SIMMONDS: (Inaudible.)

S/SGT. OSMOND: Excuse me.

MR. SIMMONDS: Yeah.

S/SGT. OSMOND: You asked me if a question to Ms. Dunphy about where the stick was normally kept.

MR. SIMMONDS: I did.

S/SGT. OSMOND: Yes, but now you're talking about evidence. It's not the same thing.

MR. SIMMONDS: No, the stick is evidence. Is it not?

S/SGT. OSMOND: I don't even understand where you're going.

I'm telling you that we could go back –

MR. SIMMONDS: You don't need to understand where I'm going, Officer, if you'd just answer my questions. Is the stick –?

S/SGT. OSMOND: I don't understand your question.

MR. SIMMONDS: Would the stick potentially be evidence?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Okay. But would the location of the stick potentially be important as to how it may have ended up somewhere different?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Why then was that not asked on that night?

S/SGT. OSMOND: My answer remains the same.

MR. SIMMONDS: Okay.

S/SGT. OSMOND: That could have been asked at any point.

MR. SIMMONDS: Why – would you think it was appropriate to ask: Has the stick ever been in that position before, Meghan? Have you ever seen it out in the walkway there? It kind of stands out. Would you think that's an important question to ask that night?

S/SGT. OSMOND: My answer remains the same on that.

MR. SIMMONDS: Same. Okay.

Would you think it was important to ask about the chair he was sitting in when he supposedly pulled a long gun over the right arm of the chair? Would you think that that's important to ask – question on the first night?

S/SGT. OSMOND: Ask what about the chair exactly?

MR. SIMMONDS: Pardon me?

S/SGT. OSMOND: Ask what about the chair exactly?

MR. SIMMONDS: Does he normally sit in it? Is there anything in the pockets of it, things of that nature? Does it work? Is it mechanical? Wouldn't you think that that might be important questions to ask?

S/SGT. OSMOND: My answer is the same.

MR. SIMMONDS: What is that answer?

S/SGT. OSMOND: My answer is that this statement – you're portraying this first statement as though we had to anticipate every potential question we could ever ask Ms. Dunphy, and that's unrealistic. That's my answer.

MR. SIMMONDS: Staff Sergeant, did they ever conduct any experiments, any kind of re-enactment, with respect to the long gun and the chair and where it might have been hidden? I'm asking you that, years after. Did they do anything of that nature?

S/SGT. OSMOND: You have to explain exactly what you mean. Because what kind of a re-enactment would you mean?

MR. SIMMONDS: I don't think I have to explain it, actually, but I will. I'm asking you if indeed Mr. Dunphy supposedly had brought a long 38½-inch rifle over the right arm of a chair to a point that the officer could not have seen it, do you think it might have been appropriate to go back and put the rifle on the floor, in the chair, against the wall, in various positions to see what would be the actual view Officer Smyth would have had?

And does it make sense that, gosh, he never seen that 38½-inch rifle before it got pointed at him? And this man, who we understand is somewhat disabled, is able to bring it over the arm of the

chair. Don't you think those might have been appropriate questions for your investigators to ask and do some kind of re-enactment to see?

S/SGT. OSMOND: Well, what you're describing is not a re-enactment to start with. But we took video of the crime scene; we have photographs from what I consider the perspective that Constable Smyth would have taken looking at that chair.

MR. SIMMONDS: Is that right?

S/SGT. OSMOND: That's – yes.

MR. SIMMONDS: I understand there was no photo ever taken of exactly where Constable Smyth says he was standing when he first saw the barrel of the gun coming at him.

S/SGT. OSMOND: I think photo number 173, I believe. Looks like it to me.

MR. SIMMONDS: Not according to what our understanding is.

S/SGT. OSMOND: Well, I –

MR. SIMMONDS: He was never asked where he was standing. Would you not agree that that's a flaw in your investigation?

S/SGT. OSMOND: He said exactly where he was standing in the re-enactment – exactly. He stood there and said this is where I was standing.

MR. SIMMONDS: I understand there's no photo –

S/SGT. OSMOND: I just –

MR. SIMMONDS: – of exactly where he was. That's the evidence we have.

THE COMMISSIONER: Could we look at that, 343 is it, for a second?

MR. SIMMONDS: What number was it?

THE COMMISSIONER: What number did you say?

UNIDENTIFIED FEMALE SPEAKER: Do you say –

THE COMMISSIONER: Sorry.

S/SGT. OSMOND: I think it was – now, actually, I'm sorry. The photo that I looked at, I believe, was 173 and that's on the file.

UNIDENTIFIED FEMALE SPEAKER: At 170 –

S/SGT. OSMOND: I don't know what document it would be in your material.

THE COMMISSIONER: So that's the, what they call the TRIM number, is it?

UNIDENTIFIED FEMALE SPEAKER: 173.

THE COMMISSIONER: 173.

S/SGT. OSMOND: Yeah, that's clearly not it.

UNIDENTIFIED FEMALE SPEAKER: It's not very helpful.

MR. SIMMONDS: I understand from Officer Burke, who was the lead investigator, that no photo was taken. Mr. – Constable Smyth was not asked exactly where he was standing at the point in time he first saw the barrel pointed at him. Now, that's what I understand the evidence from –

S/SGT. OSMOND: Okay.

MR. SIMMONDS: – Corporal Burke.

S/SGT. OSMOND: I reviewed his re-enactment and whether or not he was asked. It's offered.

MR. SIMMONDS: Do you not agree that a picture of exactly the view he would have had of the front of the chair and the possibility for a long-arm rifle, a long gun to be concealed, would be an appropriate important piece of evidence?

S/SGT. OSMOND: According to what I just said, you have one.

MR. SIMMONDS: Well, your chief investigator says we don't have it.

S/SGT. OSMOND: I mean you have all our material, Mr. Simmonds.

MR. SIMMONDS: Okay.

S/SGT. OSMOND: You can go find it. And maybe I'm wrong. I looked at and I thought that's what it looked like to me, so ...

MR. SIMMONDS: Do you know if there was any questions put to Ms. Dunphy to determine the level of disability of her father?

S/SGT. OSMOND: I'm not sure. But I do know that in Constable Galway's notes when he spoke with her, his notes described – he said that Meghan Dunphy described her father as mobile and able bodied.

MR. SIMMONDS: Did you ever – was she ever asked about the degree – because we've heard from Dr. McGarry. He told us about the disability which – or inability if you want to phrase it that way – which was not insignificant. Do you know if your investigators ever asked that information of Meghan?

S/SGT. OSMOND: No, I don't know.

MR. SIMMONDS: Okay.

On the morning of April 6 – so we're –

S/SGT. OSMOND: Actually, can I expand on that a little bit?

THE COMMISSIONER: Sir, sorry – sorry, it's 3 o'clock. It's an appropriate place to break, Mr. Simmonds?

MR. SIMMONDS: Yes, it is.

THE COMMISSIONER: As good as any.

MR. SIMMONDS: As good as any.

THE COMMISSIONER: Okay. Just give me, for scheduling, a rough idea. Other counsel – how long do you anticipate you're going to need?

MR. SIMMONDS: I could be until 4 o'clock.

THE COMMISSIONER: Until 4? Okay.

Other counsel got any rough ideas?

MR. KENNEDY: I've been wrong every time, Commissioner, so I hesitate to suggest.

THE COMMISSIONER: All right.

MR. KENNEDY: But I would say I will be a half hour to 40 minutes.

THE COMMISSIONER: It could be a while anyhow.

MR. KENNEDY: In fact, I'm willing to cut it off at 40 minutes if other counsel will do the same.

THE COMMISSIONER: I'm trying to establish are we likely to finish this witness this afternoon.

MR. AVIS: My questions would be five to 15 right now, depending upon what's said. It usually gets less.

THE COMMISSIONER: All right.

MR. SIMMONDS: Mr. Commissioner, if it helps, I'm certainly willing to stay somewhat longer, a half an hour, whatever it takes to finish (inaudible).

THE COMMISSIONER: Well, I'm not sure it's crucial but we'll see.

Mr. Flaherty, do you have –

MR. FLAHERTY: Ten minutes at this point is my best estimate.

THE COMMISSIONER: Hmm?

MR. FLAHERTY: Ten minutes is my best estimate at this point.

THE COMMISSIONER: Okay, fine.

Mr. –

MR. DROVER: We may have as much as a half an hour, depending on how the questions before us go, Mr. Commissioner.

THE COMMISSIONER: All right. We might have to run over.

Okay. Thank you.

We'll adjourn for 15 minutes.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now recessed.

Recess

MS. SHEEHAN: The Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: Okay.

Go ahead when you're ready, Mr. Simmonds.

MR. SIMMONDS: Staff Sergeant, in that first interview with Meghan do you know if the investigators asked –

MR. FREEMAN: Mr. Commissioner, I'm sorry, I just have to stop for one second.

Right before we went to break the question was about Mr. Dunphy's disability or lack thereof and Sergeant Osmond, I believe, was cut off by our taking a break. He said – he was saying: Excuse me, may I say something else.

THE COMMISSIONER: Oh sorry, I missed that.

S/SGT. OSMOND: That's okay.

THE COMMISSIONER: Go ahead.

S/SGT. OSMOND: I just wanted to point out that, you know, we did have a conversation with Ms. Dunphy where she gave that description. But to my recollection, we also got his medical records and interviewed his family doctor, I believe.

MR. SIMMONDS: But that question was not asked during the first night of the interview.

S/SGT. OSMOND: No, I don't think so.

MR. SIMMONDS: Do you know if during that first interview there were any questions with respect to his use of his glasses?

S/SGT. OSMOND: I'm not sure.

MR. SIMMONDS: Not sure.

S/SGT. OSMOND: No.

MR. SIMMONDS: Do you think that that would have been a relevant piece of information to know?

THE COMMISSIONER: His use of what, Mr. Simmonds?

MR. SIMMONDS: Glasses.

THE COMMISSIONER: Oh, glasses.

S/SGT. OSMOND: You mean Constable Smyth's glasses or Mr. Dunphy's?

MR. SIMMONDS: No, I'm talking about Mr. Dunphy's glasses. When they met with Meghan that night there was no question with respect to his use of his glasses, his eyeglasses.

S/SGT. OSMOND: Right.

MR. SIMMONDS: Do you think that not – that might not have been relevant information to know?

S/SGT. OSMOND: At that point I can't imagine why we would have asked that question then.

MR. SIMMONDS: Okay.

You said that this was an initial interview –

S/SGT. OSMOND: Yes.

MR. SIMMONDS: – and you could certainly go back and have another interview. This wasn't meant to be all comprehensive. In fact, I believe you indicated in your subsequent meeting with Ms. Dunphy that that first interview was not thorough. Is that correct?

S/SGT. OSMOND: It could be because, I mean, when you're looking at the questions you're posing now – I guess this is my entire point – is that we know very little ourselves at this point so there's only so much we can ask. We anticipate going back to witnesses at least, you know, one more time.

MR. SIMMONDS: The next morning Corporal Lee – who was one of the Forensic Identification unit personnel. Correct?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: She met with MCU on the morning of April 6 at 9:30, but was told there was no new info to share so she left headquarters and returned to the scene. Had some of those questions been asked the night before – if he's right- or left-handed, various other things, the level of disability – do you think that's information that might have been important to her as a Forensic Identification investigator?

S/SGT. OSMOND: I'm trying to recall what questions you put to me now; nothing that stands out to me.

MR. SIMMONDS: Whether her father was left- or right-handed, where the stick was kept, was it ever in the position that it was found, any kind of examination of a chair, what was the level of his disability and what were his use of the glasses: if she'd had answers to those questions do you think that may have been of assistance to her when she went back to the scene on the morning of the 6th?

S/SGT. OSMOND: I don't really see how.

MR. SIMMONDS: You don't see how, in her examination of the issue in relation to the stick, whether there was any indication of where it's normally found, that they might have put it back, if there was indication with respect to the chair and the rifle: that those issues may not have been important to her?

S/SGT. OSMOND: Where the stick was kept, in terms of processing the scene, I mean it is where it is and it's up to us to determine if that's normal or not. Her job is to capture where it is at that moment in time. So I don't really see ...

MR. SIMMONDS: Okay.

Were they ever requested, Saunders or Lee, to go back to the scene and seize any other exhibits?

S/SGT. OSMOND: Well, I believe their scene examination went sort of late evening into the early morning, and I believe they went back the following day.

MR. SIMMONDS: The 6th.

S/SGT. OSMOND: Yeah, to finish up.

MR. SIMMONDS: And they were never requested by the investigators to go back and do anything else; i.e. in relation to the placement of the rifle, i.e. in the relation to the glasses, any of it?

S/SGT. OSMOND: Not to my knowledge, no.

MR. SIMMONDS: Do you think that those might have been appropriate things to have them do?

S/SGT. OSMOND: It's a judgement call on the investigator's part.

MR. SIMMONDS: If I am right and Corporal Burke's evidence was that there was no picture taken where Officer Smyth was standing at the time he first saw the barrel pointed at him, would you not agree that that would be an important thing for them to go back and do?

S/SGT. OSMOND: If we don't have it.

MR. SIMMONDS: Officer Smyth gave a statement on the 6th.

S/SGT. OSMOND: Correct.

MR. SIMMONDS: Do you know if any synopsis or rendition of that statement was ever given to Officer Saunders or Lee to assist them in their investigation?

S/SGT. OSMOND: That's not normally done. We'll brief them if required. If something arises during a statement that we feel they need to know for scene processing, we'll advise them. But I've never seen a statement of a person under investigation or, you know, a key witness or anything actually given to FIS.

MR. SIMMONDS: Would you not think a rendition of some of the information he provided – for instance, where the gun came from – would have been important to Investigator Saunders and Lee who were in there to do a scene investigation?

S/SGT. OSMOND: I mean they don't want to go in with any undue influence. Like, they go in and they look at the scene – and I'm speaking from my experience, I'm not an FIS person. But they go in look at the scene as a blank canvas and they don't want any undue influences as to what they anticipate finding.

MR. SIMMONDS: Okay.

What if Meghan had said the stick is never on that side, it's on the right-hand side up against the chair or the wall? What if Meghan had said the gun is normally behind – the last place I saw it was behind the couch. What if, indeed, you have a picture of where – you knew exactly the position that Constable Smyth was standing when he first saw the barrel so a shot could be taken of what view he would have had.

Would you not agree that three of those would be useful pieces of information that the Forensic Identification unit could have assisted in, Staff Sergeant?

S/SGT. OSMOND: You're going to have to forgive me because that was a lot you threw at me. I'm going to go backwards.

MR. SIMMONDS: Sure.

S/SGT. OSMOND: In terms of where the stick was, I think I've covered that. Their job is to identify where it is at the time. It's Major Crime's job to determine if it was normally there and if that's an area of concern.

What were your other two points again, please?

MR. SIMMONDS: Did you ask them to go back and get a photo of exactly – well, we know that to you knowledge.

S/SGT. OSMOND: No, I believe it's there.

MR. SIMMONDS: Did you ask them to do any kind of review with respect to the location of the gun because Officer Smyth has told you – he's told you on the 6th that the gun came over the right arm of the chair. Do you think it would have been appropriate to take that rifle, go back there and put it next to the chair and do some viewing of where it may have been for it to come over the right hand, right arm of the chair?

Do you think that might have been appropriate?

S/SGT. OSMOND: I really don't see how. I mean, a rifle can come over the arm of a chair –

MR. SIMMONDS: Okay.

S/SGT. OSMOND: – if it's left or right.

MR. SIMMONDS: Where it was hidden to, if it was indeed hidden before that, would be indeed relevant. And would that process not assist in it if they placed it on the floor, by the side of the chair, up against the wall? None of that was done.

S/SGT. OSMOND: But we have no idea if it was hidden. There's no indication it was hidden.

MR. SIMMONDS: You – if the experiments had have been done we'd have had a front-on view of the chair. Don't you agree that that would be relevant evidence for the Commissioner to consider, whether you could see it or not see it?

S/SGT. OSMOND: But you'd have to put it in like so many different positions and we don't know exactly where it was so we can't – you can't jump and just say: Well, if it was here it couldn't have been seen; if it was here it was, because we don't know where it was.

MR. SIMMONDS: Can we go to photo – confidential photo 044. And I'm also going to ask to go to Photos 103 and 104.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: The first one was what, Mr. Simmonds?

MR. SIMMONDS: The first one was 044, Mr. Commissioner, and then it was going to be 103 and 104, all of which are confidential.

THE COMMISSIONER: Uh-huh.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. SIMMONDS: 044 – Scene 044.

That Scene 044, in fact if we had a relationship between that and where Constable Smyth was standing, if we had that, the gun could be placed in various locations there in the void in the garbage, up against the wall, by the side of the chair: all of which, I put to you, would be very relevant to have the Forensic Identification unit review.

S/SGT. OSMOND: I don't know why it would because all you'd be doing is hypothesizing about where it might have been. My understanding is that Constable Smyth has no idea where the gun came from. So if you put it in one position and you can see it and another position and you can't, I don't believe Constable Smyth ever said that it couldn't have been seen.

MR. SIMMONDS: Officer or Staff Sergeant, we know there are only so many possible locations that gun could have been on the right side. We also know Officer Smyth said that Don Dunphy never got out of the chair.

S/SGT. OSMOND: Correct.

MR. SIMMONDS: If the rifle came over the arm of the chair, then there are a very limited number of locations where it could be, all of which would be seen from Photo 044 or Photos 103 and 104.

S/SGT. OSMOND: I don't see the relevance. I don't understand what it is you believe that would bring.

MR. SIMMONDS: If the rifle was laid on the floor in the void of garbage, it would be clearly viewable. The rifle is –

S/SGT. OSMOND: Yes.

MR. SIMMONDS: If the rifle is longer than the chair is wide, if it was put up against the wall, the barrel would be clearly viewable. Would those not be relevant pieces of information for this investigation to assess against Officer Smyth's statement?

S/SGT. OSMOND: If he said that the gun could not have been seen, then I might agree with you. I don't believe he's ever said that. I believe he said he never saw it and I don't believe he's ever said he understands why he didn't see it.

MR. SIMMONDS: Staff Sergeant, if indeed the view he had was the view that we've seen in Photo 44 which is still on the screen there I believe?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Then that would go to his credibility as to whether or not that's an acceptable rendition or a believable rendition that the rifle would not have been seen had it been placed in those various locations and photos taken of it. Do you not agree?

S/SGT. OSMOND: No, I don't. Like I said, if he had said unequivocally that the gun could not have been seen –

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: – then I would agree with you. I don't – to my knowledge he's never said that.

MR. SIMMONDS: But you don't believe that there was any point in any kind of a synopsis being provided of his statement to the Forensic Identification unit investigators to let them make an assessment.

S/SGT. OSMOND: We will offer evidence, or new knowledge gained, to the FIS if we want them to go back and obtain more evidence. If Constable Smyth gave that statement to Corporal Burke and Sergeant Henstridge, and it was Corporal Burke's decision that nothing new came of it and he wasn't going to send FIS back to the scene, then no.

MR. SIMMONDS: Do you know if there was ever a request and, indeed, whether a search was done, a proper search was done, of Constable Smyth's vehicle?

S/SGT. OSMOND: I don't believe the vehicle was, like, searched in terms of a physical search, no.

MR. SIMMONDS: Do you not agree that that might have provided useful information had it been done?

S/SGT. OSMOND: Not necessarily. Like by the time –

MR. SIMMONDS: Not necessarily.

S/SGT. OSMOND: Sorry, I wasn't finished.

By the time we released that vehicle, we had had Constable Smyth's statement.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: We had had the FIS examination done.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: We had had the autopsy results.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: And I mean I can't speak for Corporal Burke, but it seemed I would believe that he felt that he had determined where the scene was and a –

MR. SIMMONDS: So you're leaving it to Corporal Burke. You say his decision is final.

S/SGT. OSMOND: Completely, yeah.

MR. SIMMONDS: Okay.

So the fact that he didn't have the vehicle searched, a vehicle that may have – for instance, let's just throw out there – set of gloves that might have been of interest in this matter had they been found, you don't find –

MR. KENNEDY: Commissioner, again, there is evidence that a police officer looked through the vehicle, whether or not it's an actual search. So I think we have to be fair in terms of the summary of the evidence.

MR. SIMMONDS: (Inaudible.)

THE COMMISSIONER: Yeah, we have a statement that there was a flashlight search front and back. We don't, I don't think there was any reference to gloves in that particular search. And I'm not sure, was it – are you saying we have direct evidence that there were gloves in the truck?

MR. SIMMONDS: No, I'm saying that they didn't – and I wasn't here for Officer Saunders. I understand his rendition of the evidence was that he pointed a flashlight in it and had a quick view of the inside of the truck.

THE COMMISSIONER: Right.

MR. SIMMONDS: That's what I understood (inaudible).

MS. O'BRIEN: Yes, Commissioner, I think Sergeant Saunders's evidence was that he didn't make any notes of anything he saw, nothing stood out at him in the ordinary. But he acknowledged he couldn't see all areas of the car looking in with this flashlight.

THE COMMISSIONER: All right.

S/SGT. OSMOND: One thing that should be noted as well is that up until we released the scene we had control of the scene under the *Fatalities Investigations Act*. And our power to search under the *Fatalities Investigations Act* is limited to places and items that we feel might assist the chief medical examiner in determining cause and manner of death. And we had no evidence that there was anything in that car at that time.

MR. SIMMONDS: Could you not have requested Officer Smyth to let you search his truck?

S/SGT. OSMOND: Completely. I'm just saying, I'm just stating a fact here.

MR. SIMMONDS: And could not the search of the truck, if indeed something like gloves – and I throw that out there – could that not possibly have been relevant evidence in this case, Staff Sergeant?

S/SGT. OSMOND: Well, I go back to the fact that somebody looked inside. And we had that vehicle in our possession up until the time that we had preliminary results back.

MR. SIMMONDS: But you didn't look in it. Outside of the flashlight, no one went and looked in the inside of that truck, looked under the seats, did any kind of a check of it whatsoever. Correct?

S/SGT. OSMOND: Correct.

MR. SIMMONDS: We understand from Officer Smyth that when the discussion between him and Mr. Dunphy became agitated, to try and de-escalate it, diffuse the situation, he was writing some notes and looking down at his file. I understand a number of tests were done with respect to the file folder.

S/SGT. OSMOND: I wouldn't say a number of tests. I think we dropped the folder.

MR. SIMMONDS: I think they dropped it a number of times and tried it a number of ways. But that's my understanding, perhaps you have more information?

S/SGT. OSMOND: No, it could be.

MR. SIMMONDS: Do you know if they ever went back and attempted to locate and seize the pen that he must have been writing with? Because you referenced it there once but I don't see any evidence that it was ever located or seized.

S/SGT. OSMOND: Right.

MR. SIMMONDS: And that, certainly, may have provided valuable information as to whether he was really writing anything or not. Wouldn't you agree?

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

MR. SIMMONDS: You don't know?

S/SGT. OSMOND: I don't know how a pen on the floor could indicate one thing or another.

MR. SIMMONDS: I'd throw out there that perhaps the ink could be matched to the ink on the file folder where there's notation. And if it didn't match, that might be crucial evidence that, no, he couldn't have been writing with that pen. And if that's the only pen found, then that might be

–

S/SGT. OSMOND: I'm sorry, I don't agree with that. I don't think that's –

MR. SIMMONDS: You may find this humorous.

S/SGT. OSMOND: No –

MR. SIMMONDS: I don't particularly find it humorous, Staff Sergeant, I must say. I thought I was asking a very relevant question: Why was the pen not located and seized if indeed he was supposedly writing with it at the time?

S/SGT. OSMOND: Sir, once again, I'm not the investigator. That was the investigator's decision.

MR. SIMMONDS: Would you have seized it if you were – located it and seized it if you were the investigator?

S/SGT. OSMOND: I'm not going to get into hypotheticals.

MR. SIMMONDS: Okay.

So you're on the role of overseeing it, but you can't give us evidence as to whether you think that's a shortfall or not. That's what you're saying.

S/SGT. OSMOND: Well, I mean, when I was being questioned, I said I didn't place a lot of significance on the pen. That stands.

MR. SIMMONDS: Okay.

Is it normal – and Ms. O'Brien referred to this. Is it normal in an interview with someone – and we won't call him a suspect but a person of interest which is what Officer Smyth was – to impart to him during the interview information about the investigation? Is that a normal practice?

S/SGT. OSMOND: I've already answered that. No, it's not.

MR. SIMMONDS: I'm going to ask you – I'm going to ask you again: Is it a normal practice?

S/SGT. OSMOND: No, it's not.

MR. SIMMONDS: It's not.

Why, then, would they have told him that the firearm that was found in the house supposedly was told that was one that came from his father? Dick and Debbie Dunphy had indicated that two of them had been located but this must be the third one. Why would he have been advised of that?

S/SGT. OSMOND: You'd have to ask the people that advised him.

MR. SIMMONDS: I'm asking you.

S/SGT. OSMOND: Well, I can't read their minds, Sir. I told you –

MR. SIMMONDS: But you're the head –

S/SGT. OSMOND: Excuse me –

MR. SIMMONDS: You're the head of this triangle.

S/SGT. OSMOND: Excuse me, I told you that it's not normal for that to occur.

MR. SIMMONDS: Okay.

S/SGT. OSMOND: I told you that I raised it.

MR. SIMMONDS: Yeah.

S/SGT. OSMOND: I have no idea what they were thinking.

MR. SIMMONDS: Okay. When you asked –

THE COMMISSIONER: Sorry, what was –

MR. SIMMONDS: I'm sorry –

THE COMMISSIONER: I was taking a note. What – not normal practice to do what?

S/SGT. OSMOND: To provide the person you're taking a statement from with information.

THE COMMISSIONER: Yeah.

MR. SIMMONDS: Would it be normal if the person asked you if cameras were working that were seen at the location, to advise him, no, the cameras weren't working? Would that be a normal piece of information you would impart to someone that you're interviewing?

S/SGT. OSMOND: My answer is the same, Sir.

MR. SIMMONDS: Okay. Which is, no, it would not be normal.

Why would they say at the end of it – Officer Henstridge says something to the effect that: The general public doesn't understand the kind of pressure that we're under, I don't think, and they never will. But I mean the most important person in this whole picture now is you for sure.

Is that an appropriate line of discussion to have with the person you're interviewing?

S/SGT. OSMOND: You'd have to ask Corporal Henstridge that.

MR. SIMMONDS: You – sorry, go ahead.

S/SGT. OSMOND: Personally, the very beginning of the statement – of that statement you just read, I believe to be reflective more of people that work in the public service who don't get the opportunity to speak out and share their real-life workplace realities with the general public.

I think that's true of nurses. I think that's true of police. I think it's true of teachers. And the reality is we don't understand those people's careers. And I think that's probably what he was referring to there.

MR. SIMMONDS: Officer Henstridge is, I believe, referring to – because he's a police officer and Officer Smyth's a police officer. I believe he's referring to being a police officer when he says: The general public doesn't understand the kind of pressure that we're under, I don't think, and they never will.

And my –

S/SGT. OSMOND: I'm not saying that he's not talking about police; I'm saying that there are other professions that I think that's true for.

MR. SIMMONDS: And I'm asking you: Is that a proper line of discussion to have with a person of interest who you're trying to get a statement from and the most possible information when he's the only witness to what took place?

S/SGT. OSMOND: I don't see a real large problem with that.

MR. SIMMONDS: Okay.

S/SGT. OSMOND: Our investigative techniques, our interviewing techniques, have evolved over the last 10 years to the point where it's all about rapport building.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: It's all about building relationships and rapport. And I think the public would be very surprised if they saw an awful lot of the interviews we do with people that were later convicted of very, very serious crimes. It's very friendly.

MR. SIMMONDS: Would you – would you agree, then, or what is your opinion then: But I mean the most important person in this whole picture now is you for sure.

Is that an appropriate thing for the investigating officer getting the statement to say to the person of interest?

S/SGT. OSMOND: Depends on what the purpose was. If he's trying to build rapport and make Constable Smyth very comfortable so he'll come back in the room a second time –

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: – then, yeah, I have no issue with that.

MR. SIMMONDS: Did you have any indications that Officer Smyth wouldn't come back a second or a third time?

S/SGT. OSMOND: Not at that point.

MR. SIMMONDS: No.

S/SGT. OSMOND: But I actually attribute that to the investments we made building a rapport with him at the beginning.

MR. SIMMONDS: And are you concerned at all when Officer Smyth texts a friend of his or another officer and indicates they were complimentary – describing what took place in the statement: They were complimentary of the process and the tactics. They expect a short investigation.

Do you see that that's an appropriate position to leave or an appropriate impression to leave with the person of interest that you're investigating?

S/SGT. OSMOND: I'm not sure that was left with him. Those are his words; you'd have to ask him.

MR. SIMMONDS: Did you expect a short investigation?

S/SGT. OSMOND: I didn't really have a time frame in mind. The investigation takes as long as it takes.

MR. SIMMONDS: And at that point on the 6th the autopsy wasn't even done, so how could you possibly be thinking you'd have a short investigation?

S/SGT. OSMOND: Well, I just said I didn't say that. I didn't have that in mind.

MR. SIMMONDS: But, do you know – you had no idea, then, how the officers could have communicated such information to him.

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

MR. SIMMONDS: Is it possible his cellphone, Officer Smyth's cellphone, may have been a relevant piece of information?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Can you explain why it wasn't seized from him until the 20th of April?

S/SGT. OSMOND: I think that's for Corporal Burke to explain. I don't know.

MR. SIMMONDS: You don't know.

In fact, he'd gone to Florida and come back. And it's quite possible the phone could have disappeared in that period of time; it's three weeks.

S/SGT. OSMOND: Once again, I don't know how to answer that.

MR. SIMMONDS: You send an email, Exhibit P-0527, which states: Before we release the scene please check with me or Burke. We need to keep continuity of the scene until we get Smyth's version in case we need to go back in for anything.

So it's obvious that after your statement from him you had foreseen the possibility that you may send your Forensic Investigation unit back in there.

S/SGT. OSMOND: Correct.

MR. SIMMONDS: The scene gets released at 9 o'clock on the morning of the 8th. Is that your –

S/SGT. OSMOND: No, it didn't. It got released the evening before that.

MR. SIMMONDS: Or –

S/SGT. OSMOND: Nine o'clock in the morning of the 8th is when I advised Burke it was.

MR. SIMMONDS: It got released the night before.

S/SGT. OSMOND: Yeah.

MR. SIMMONDS: I apologize.

So at 9 o'clock in the morning of the 8th it's released. Was that your instruction to release it?

S/SGT. OSMOND: I – in my deposition with Ms. O'Brien, she asked that question of me and I went back and I reviewed the file.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: And it appears that the decision was made by Staff Sergeant Tiller and Constable Galway that evening.

MR. SIMMONDS: But the three –

S/SGT. OSMOND: I don't recall being consulted on that.

MR. SIMMONDS: But the three in the triangle are yourself –

S/SGT. OSMOND: Corporal Burke.

MR. SIMMONDS: – Corporal Burke –

S/SGT. OSMOND: And Dion Foote.

MR. SIMMONDS: – and Dion Foote.

So neither one of the three people in the triangle are consulted but the scene is released before ye have an okay that it can be released. Is that not a shortfall of concern?

S/SGT. OSMOND: If – like I say, I mean I don't recall being spoken to. If that's the way it went down then, yes, that was an oversight.

MR. SIMMONDS: Because once the scene is released, anything that's determined thereafter has greatly diminished evidentiary value.

S/SGT. OSMOND: Agreed. Yeah.

MR. SIMMONDS: I understand that there were, and we've been told, that there were two re-enactments done. The first re-enactment, because of a problem –

S/SGT. OSMOND: Yes.

MR. SIMMONDS: – was not able to be, the video of it was not able to be retained. I understand that both you and Officer Burke spoke, or communicated, and the decision was made not to ask Officer Smyth to go back in and do another re-enactment.

S/SGT. OSMOND: Initially, yes.

MR. SIMMONDS: Would you agree that that clearly was a mistake and was overruled by Chief Superintendent Boland?

S/SGT. OSMOND: B'y, if you look at my notes, there's an evolution of the decision there. A lot of things went into that thought process. And I'd like to point out that when I made, or we made, the decision that we preferred not to or we felt that it might not be required, I wasn't aware that the audio had also been lost. We almost always have a backup audio in my experience. So in my opinion at that time, we didn't actually have the entire record lost. So I was a little bit mitigated by that.

MR. SIMMONDS: Obviously, it was important enough for the chief superintendent who clearly doesn't have a hands on to overrule and say no, we are going back in.

S/SGT. OSMOND: Well, I mean he was the one that made the final decision, but I mean we brought it to his attention and said this is the conundrum we find ourselves in.

MR. SIMMONDS: I understand that on or about April 9, you were looking for a checklist to investigate officer shootings?

S/SGT. OSMOND: Correct.

MR. SIMMONDS: Now, this is four days into the investigation. The scene has now been released. The Forensic Identification unit has been sent home or they're finished in there, and you're now looking for a checklist of things you should have done or gone through before releasing the scene and telling these people to go home. Am I correct?

S/SGT. OSMOND: We were looking for a checklist for the entire investigation. The investigation wasn't complete at that point –

MR. SIMMONDS: But you do agree that once the scene is released, the most important part is now gone? I thought we had agreed on that.

S/SGT. OSMOND: No, we didn't agree that the most important part of the investigation was gone. We agreed that evidence remaining at the scene would have a limited value, but I mean there's an awful lot that happens in an investigation after that point.

MR. SIMMONDS: So looking for checklists four days into the investigation, I put to you, is indeed late?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: And is indeed a shortfall?

S/SGT. OSMOND: It could be argued that the fact that we went looking for it is a strength because we could have done it without it.

MR. SIMMONDS: Eventually Officer Smyth's phone was obtained. You're aware of that?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Okay.

Whose decision was that? Was it yours, Corporal Burke's?

S/SGT. OSMOND: To obtain his phone?

MR. SIMMONDS: Yes.

S/SGT. OSMOND: Oh, that would have been the primary investigator.

MR. SIMMONDS: Okay.

Did it cause you a concern that three weeks had past now since that phone may have been utilized here; may have had relevant information is –

S/SGT. OSMOND: I don't believe I ever knew at what point he decided to obtain that phone. But it's never been – like I don't – the tasks are assigned by the primary investigator. I don't go in and ensure that they're done in a certain sequence. This is all what the primary investigator does. In terms of that not being pursued for three weeks, I mean, I wouldn't have known that. I just would have probably seen the task and know that it was being done.

MR. SIMMONDS: But, not knowing it, would you not agree that the understanding is that you're head of the triangle, that you're providing advice, you're providing mentorship and leadership and not knowing whether it's done is in and of itself a problem.

S/SGT. OSMOND: Not at all. If I get down that far into the weeds, I'm actually the de facto investigator. That's not my role.

MR. SIMMONDS: So what happens that it doesn't – important things like, arguably, seizing a cellphone are not done, and you don't find out about it until a time when the cellphone has gone missing, or lost or destroyed. Would you not agree that that's a problem?

S/SGT. OSMOND: Yes, absolutely.

MR. SIMMONDS: Who's supposed to be the backup then if Corporal Burke doesn't do what he's supposed to have done? That's you, isn't it?

S/SGT. OSMOND: I'm not pretending or I'm not saying that I don't monitor the investigation. But if I'm aware that that cellphone, a request has gone out to get it, and that we're getting it, it's not unusual for me not to know at what point in the investigation that happened.

MR. SIMMONDS: Can you explain to us what was going on with this cellphone – when you did get it, there were records that didn't come to light until as recently, in fact, as a week ago; information on the cellphone that we didn't get. Can you explain how someone would not have double checked it or –

S/SGT. OSMOND: No, I can't. I mean, I left the unit a year and a half ago. That's well before that kind of stuff was going on.

MR. SIMMONDS: Can you answer us why it wouldn't have been obtained initially when you were head of unit?

S/SGT. OSMOND: Why what wouldn't have been obtained?

MR. SIMMONDS: Why the information from the phone was not obtained in a timely fashion, that shortly after it was seized on April 20, when you were head of the unit?

S/SGT. OSMOND: No, I think Corporal Kent Luther is going to testify to that. He's our technician that would have processed the phone.

MR. SIMMONDS: And would you be surprised to know, Staff Sergeant, that the timeline done by Wanda Richards, who's your analyst –

S/SGT. OSMOND: Uh-huh.

MR. SIMMONDS: – became completely useless because of a mistake made in it, with respect to a couple of numbers. Did you know that?

S/SGT. OSMOND: It's a pretty extensive timeline; I don't know how it would become useless because of (inaudible).

MR. SIMMONDS: A timeline became – because she attributed a call that was made from one party to another party, and the time that was being utilized as to when that call was made, could no longer be utilized.

S/SGT. OSMOND: Okay, so that's – I mean, don't get me wrong Mr. Simmonds, I haven't reviewed this, this came in after I left, but I find it hard to believe that a detailed timeline would be rendered useless –

MR. SIMMONDS: A timeline – let me rephrase that: A timeline with respect to the crucial times of when Officer Smyth went to Dick and Debbie Dunphy's, when he was parked on the side of the road and then when he finally went into Mr. Dunphy's house.

S/SGT. OSMOND: So there was more than one error?

MR. SIMMONDS: It looks like one error that it permeated through the whole thing, because it put all the times off.

S/SGT. OSMOND: Oh, okay. Well, I mean, you'd have to talk to Wanda Richards about that. That came in long after I left as well. I've never looked at that.

MR. SIMMONDS: Who should've looked at that it? Who should've looked at it and possibly picked it up, that the call wasn't made to Colin Dinn.

S/SGT. OSMOND: Well, I mean it's –

MR. SIMMONDS: Constable Smyth wasn't calling Colin Dinn; he was calling Don Dunphy.

S/SGT. OSMOND: It's an investigative aide for the primary investigator.

MR. SIMMONDS: Did you, at some point, get a feeling for – and I take it from your press release, which was on the 7th, I think we said, you've set out a scenario at this date, was what you said, which it is phrased. That's the part you went back to.

Did that cause you any concerns that an officer, a well-trained police officer, goes into – where he had some level of risk assessed before he went in there, goes into a room that's 13 by 14 feet, is standing, perhaps, as close as seven feet from Mr. Dunphy who's seated in a chair, and that man is able to pull up from somewhere on the right-hand side, a 38-inch rifle, and pointed it at him and it may be anywhere from three to five seconds, I think, is an estimation of it, before he realized it, or the time frame for him to realize it – does that cause you some concerns as to whether that's a believable or, gee, that seems odd a trained officer keeping their eye, at least peripherally, on the person, the person's able to get a rifle up over the arm of the chair – does that cause you concerns in a small room like that where there they're six or seven feet apart?

S/SGT. OSMOND: No, it doesn't.

MR. SIMMONDS: But you never asked your Forensic Unit to go back in and conduct any test like that, whatsoever, because you didn't think there was a value in it,

S/SGT. OSMOND: Once again, Sir, it's not about me. That's the primary investigator's role.

MR. SIMMONDS: You don't believe it's a shortfall in the investigation that the primary investigator, Corporal Burke, didn't ask the Forensic Unit to go back in and conduct some such tests?

S/SGT. OSMOND: That's correct.

MR. SIMMONDS: Okay.

Does it surprise you that the only item ever fingerprinted was the rifle? That Don Dunphy's phone wasn't fingerprinted; that the ammunition wasn't fingerprinted. That cause you any concern, or do you agree that that may indeed be a shortfall in the investigation?

S/SGT. OSMOND: So the rifle was fingerprinted – Don Dunphy's phone?

MR. SIMMONDS: Don Dunphy's phone (inaudible).

S/SGT. OSMOND: I don't know why we would've fingerprinted that.

MR. SIMMONDS: The stick wasn't fingerprinted. That was found out of place. The ammunition wasn't fingerprinted.

Do you agree that any of those things, if they had of been fingerprinted, might have revealed relevant evidence?

S/SGT. OSMOND: Theoretically, I mean, I don't – I mean, it's hypothetical. But I mean –

MR. SIMMONDS: Why wouldn't you fingerprint? Why wouldn't they have fingerprinted a stick that they now know is out of place, with tape on it – I don't know whether it can be fingerprinted, but why wouldn't they have tested it? Why wouldn't they have tested the ammunition to see if that could be fingerprinted?

S/SGT. OSMOND: The ammunition is probably more likely to yield a print. I have never, ever seen a fingerprint pulled off an old piece of wood like that stick. But that's just my experience. Once again, I'm not a FIS expert.

MR. FREEMAN: And, Mr. Commissioner, before we started this matter we had a pre-trial conference where we talked about asking questions to appropriate witnesses and making efficient use of time, and Corporal Kelly Lee is going to give evidence about fingerprinting and not printing and all of that at some point. So I'll just, I'll add that here now, but –

MR. COMMISSIONER: Well, I think the expert is going to prevail there, Mr. Simmonds, so you might keep that in mind.

MR. SIMMONDS: No, fair enough.

Did you – I understand that on April 8 when you met with Meghan and her boyfriend, Mr. Corcoran, that that was you and Corporal Burke; correct?

S/SGT. OSMOND: No, it was myself and Staff Sergeant Rod Tiller.

MR. SIMMONDS: Tiller?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Did you indicate at that time to her that you believed everything Officer Smyth said right up to entering the house as to why he went down there, why he went down there on a Sunday, why he didn't call in advance?

S/SGT. OSMOND: I said there was no reason to doubt it at that point, yes.

MR. SIMMONDS: No reason to doubt it.

S/SGT. OSMOND: Why he had made phone calls to different communication centres, he had run computer checks – my point was that there were verifiable things that could be pursued there.

MR. SIMMONDS: Would you be surprised if we told you that in the email messaging and the communications that we got well after the fact, within the last two weeks, there's one place where he states I'm going down to deal with a lunatic threatening the premier. Would that surprise you?

S/SGT. OSMOND: In what sense?

MR. SIMMONDS: That an officer who says he was empathetic, was going down, didn't consider this a threat, wasn't have any – nothing to do with the premier, in fact, and we now find out that that was the phraseology he used on that day or the day before; does that cause you any concern?

S/SGT. OSMOND: I think it's an unfortunate use of words, but it doesn't cause me any concern in terms of what he told us, no.

MR. SIMMONDS: He indicates, if I have to arrest him, too much paperwork. Questioned by his friend, did you arrest him? No, tomorrow.

Does that line of discussion from the police officer who said he went down there in the manner he's told us about it, does that cause you any concern?

S/SGT. OSMOND: So when did he say he was going to arrest him tomorrow? I don't under –

MR. SIMMONDS: Tomorrow being the 5th.

S/SGT. OSMOND: Pardon me?

MR. SIMMONDS: Tomorrow being the 5th.

S/SGT. OSMOND: Oh, okay.

MR. SIMMONDS: He had this on the 4th.

S/SGT. OSMOND: Okay.

Sorry, I didn't understand that part.

It doesn't – no, it doesn't cause me concern. I mean if – I mean we always anticipate all various kinds of outcomes. I don't believe that that means he was – he felt he was going to have to make an arrest.

MR. SIMMONDS: You don't?

S/SGT. OSMOND: No, I –

MR. SIMMONDS: He says – but you don't agree that that's –

S/SGT. OSMOND: If I have to arrest him, I mean, he doesn't know what's going to happen when he gets there. I mean you're asking my opinion.

MR. SIMMONDS: (Inaudible.)

S/SGT. OSMOND: I don't know what's in Constable Smyth's head, right?

MR. SIMMONDS: Is it a concerning detail to you?

S/SGT. OSMOND: No.

MR. SIMMONDS: No. Okay.

Staff Sergeant, in a, I think it's Exhibit 0537 – we don't need to go to it. And in a phone call and it's on – the phone call with Saunders who was in Ottawa at that point in time, you indicate – Saunders notes that you told him Ms. Breen stated: Tunnel vision and a critical piece of evidence was missed.

S/SGT. OSMOND: Yes.

MR. SIMMONDS: If I put to you that in her letter she did not ever refer to it as a critical piece of evidence. What she said and had always said was that a piece of potentially relevant evidence – big difference in the two.

S/SGT. OSMOND: Well, you know, there was more than – we had conversations with her too.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: Right? So –

MR. SIMMONDS: And she's quite clear about what the conversations were so ...

S/SGT. OSMOND: Pardon me?

MR. SIMMONDS: She's quite clear about what the conversations were, so please go ahead.

S/SGT. OSMOND: No, I'm just saying that, you know, if those are my words, then that's the way I interpreted probably what she said.

MR. SIMMONDS: So you're not taking issue that she always described it in any of her communications or discussions as a potentially relevant piece of evidence, which I put to you it was.

S/SGT. OSMOND: Well, I disagree with you wholeheartedly.

MR. SIMMONDS: Uh-huh.

S/SGT. OSMOND: And she described it in many different ways I'm sure.

MR. SIMMONDS: And did you tell Ms. Dunphy during this interview that – and he said, being Smyth: “out of his peripheral vision he saw the gun come up. And he feels that the gun was by the right side of the chair. And he couldn't of seen that because the chair is solid material it's not like these ... So the arm comes up, right? It's kind of like a”

And Meghan replies: “It's like here” And you reply: “... a wing back I think they call them you know like the” And she indicates: No, it's not a wingback, it's a lift chair.

S/SGT. OSMOND: Uh-huh.

MR. SIMMONDS: Big difference in the two.

So you were operating under the wrong understanding of what kind of chair Mr. Dunphy was seated in –

S/SGT. OSMOND: No, I wasn't. I seen pictures, Sir. If I described it as a wingback and it's actually an elevation chair, I know what I looked at, I know what I saw.

MR. SIMMONDS: Those are your words, not mine. You said wingback.

S/SGT. OSMOND: Yes, and I think you're really getting into splitting hairs here when I use the term "wingback" and it's another term.

MR. SIMMONDS: No, no, I'm not splitting hairs.

S/SGT. OSMOND: No, no, excuse me –

MR. SIMMONDS: With the greatest of respect, Staff Sergeant, I'm not splitting hairs here.

S/SGT. OSMOND: Yes, you are, because you're asking me if I mislabelled a chair. And I guess I did because it's not a wingback. That doesn't diminish the fact that I saw the chair. I knew exactly what I was talking about.

MR. SIMMONDS: That chair is one of the central pieces of evidence. It was not seized by you. You did not conduct any experiments or any kind of review of where the rifle might have been hidden in relation to that. And we know the rifle had to be somewhere on the right side.

Now, you say that's Corporal Burke's position to do that, that you're not the one that makes those decisions.

S/SGT. OSMOND: I don't understand what that's got to do with a wingback comment. You're going from top –

MR. SIMMONDS: It's a difference in –

S/SGT. OSMOND: I'm telling you that the way I described that chair has nothing to do with one word. Now, if you want to talk about whether or not it should have been seized and all that, that's a whole different issue altogether, but there was no question –

MR. SIMMONDS: I do want to talk about whether it was seized.

S/SGT. OSMOND: Then go ahead.

MR. SIMMONDS: And I do want to talk about where you would have got the impression – which is a very different chair – a wingback chair. But –

S/SGT. OSMOND: I'm sorry, Sir, but I just find that a ridiculous comment. I really do.

If I call a chair a rocking chair and it rocks one way and not another, the bottom line is, Sir, I saw the photos of the chair, I know what I saw. I described it to her; I used a word that you think is inaccurate.

MR. SIMMONDS: It's a therapeutic lift chair, is what it is.

S/SGT. OSMOND: Okay. Great.

Thank you.

MR. SIMMONDS: Can you – she asked you also: Why was Officer Smyth able to walk around? When she got there he was walking around the driveway. Do you remember her asking those questions?

S/SGT. OSMOND: I do.

MR. SIMMONDS: Do you remember what your reply was?

S/SGT. OSMOND: Not exactly, but I –

MR. SIMMONDS: What should we have done different?

S/SGT. OSMOND: Well, I also said to her that I can't answer for what was done at the scene because I wasn't there.

MR. SIMMONDS: Do you agree that that appears to be an inappropriate handling of the scene to let the person of interest walk around the scene, as opposed to having him or her placed in a police vehicle? Would you agree that that would be the proper thing to do?

S/SGT. OSMOND: Well, I don't know how long the person was able to be free. But, also, the minute we place someone in a car and they are not allowed to get out, they're detained. And we were not in a position to detain him.

MR. SIMMONDS: No, I never said you were.

S/SGT. OSMOND: Well –

MR. FREEMAN: Mr. Commissioner, to call it walking around the scene might be taking some liberties with the evidence as well. We've heard that he was at or around a police cruiser for most of the time. We heard that from Kelly from –

MR. SIMMONDS: And in the driveway.

MR. FREEMAN: – Kelly Downey.

THE COMMISSIONER: Yeah.

MR. SIMMONDS: Fair enough.

THE COMMISSIONER: I didn't think that was the thrust of the section. The thrust of the question was that wherever he was walking around he was around in an apparently unrestrained fashion, I think, Mr. Freeman.

Go ahead, Mr. Simmonds.

MR. SIMMONDS: Thank you, Mr. Commissioner.

Do you remember Officer Tiller saying – well, first, you told Meghan about an incident and used the phrase: You know, we’ve all been shot at and we understand, and all of that sounds like excuses.

And then officer Tiller says something – well, actually, a little bit before that, page 67: And we did it in a training-controlled environment where I knew we just had actors and everything else and we’re doing it with little paint pellets.

Do you think that that’s an appropriate – her father’s been shot; she maintains that this was said to her before. Do you think that that was an appropriate kind of discussion or appropriate kind of scenario to put forward?

S/SGT. OSMOND: You’d have to give me more context than that. That’s –

MR. SIMMONDS: Comparing what happened to any kind of an exercise where paint guns are used, I think is a very poor choice of words and example. Would you agree?

S/SGT. OSMOND: I don’t think we were comparing the death of her father to Simunition drills and police training. I don’t believe that for a second.

MR. SIMMONDS: Okay.

Do you – I’m sorry. Do you recall her boyfriend asking: Why didn’t Officer Smyth call him on the way down?

S/SGT. OSMOND: No, I’m not – I’m not saying he didn’t ask it but I don’t remember.

MR. SIMMONDS: And you replied: “We try not to police on the phone.”

S/SGT. OSMOND: That’s correct.

MR. SIMMONDS: Would it have been inappropriate on a weekend, Sunday, to call the man and indicate that you wanted to have a discussion with him as opposed to driving down there. I’m not going to use the word “confronting” him but coming in contact with him unannounced in his house, would you agree that perhaps a phone call to lead it off might be appropriate?

S/SGT. OSMOND: My personal opinion is no. I think that he was looking to gauge Mr. Dunphy’s demeanour, his reaction. People, when you phone them, they can hang up on you. It’s not an effective way to gauge anything and it’s just, it’s not – we always encourage our police officers to do face-to-face contacts.

MR. SIMMONDS: I think Officer Tiller – my direction is Holyrood – is don’t deal with the stuff on the phone. And you used the expression in the RCMP is get on the road.

S/SGT. OSMOND: Absolutely.

MR. SIMMONDS: So this man has committed no crime, he’s not even under investigation for a crime. He’s not uttered any threats; he’s coming back on a long weekend on his – from a dinner.

He’s in his house and a black four-wheel drive hauls up in his driveway and a police officer comes out of it and asks to come into his house. Do you not think that that might be a bit of a start? Don’t you think a more appropriate, less aggressive approach may have been to call him, may have been to stop and talk to his daughter, may have been to find out some background information before going down there?

S/SGT. OSMOND: I have absolutely no issue in the way he conducted that.

MR. SIMMONDS: Was Meghan Dunphy ever advised of all the times you were going back in her father's home? She gave a consent for certain specific things she understood. Was she aware that Inspector Cahill and Superintendent Sheppard from the RCM – RNC were going to go down there and have a walk through the house? Was she ever aware that there was going to be two re-enactments taken in relation to the house?

S/SGT. OSMOND: I don't know if she was told specifically but I mean we had to get the keys from her, so she knew we were going back there. And we had her consent to use the house to further the investigation.

MR. SIMMONDS: But don't you think it might have been appropriate in this very delicate situation, particularly after the fiasco that happened with respect to her going to view her father's remains; being told by Kenneth Dunphy that I can't let you see him, his head's in a bag. After that incident, wouldn't it be – you know to make doubly sure that there's no misunderstandings, we let her know why we're going down, when we're going down, who's going to be there so that if she happens to come up in the middle of it, she doesn't run smack dab into the middle of Constable Smyth.

S/SGT. OSMOND: There was no decision made or no intention to disrespect Ms. Dunphy. If she feels that way, I apologize; there was never any ill intent. And, you know, it never occurred to me that she would pull her consent because, in my opinion, she wanted the best for her father and the investigation. It never occurred –

MR. SIMMONDS: She most definitely did.

S/SGT. OSMOND: Yeah.

MR. SIMMONDS: (Inaudible.)

S/SGT. OSMOND: So it would never occur to me that she would say, no, I don't want you in that house.

MR. SIMMONDS: But wouldn't it be appropriate, again, for the purpose of the liaison which Officer Galway was, and for an instance like this, to have some kind of protocol to ensure that the person who is most likely going to be hurt by these things is given some level of protection or to cover off a concern that might arise like it did here?

S/SGT. OSMOND: I agree with you but I also would like to say that I believe overall our treatment of Ms. Dunphy was exceptional.

MR. SIMMONDS: You won't be surprised if Ms. Dunphy doesn't feel the same.

S/SGT. OSMOND: Well, I would be sorry to hear that.

MR. SIMMONDS: I just have one – one last question.

S/SGT. OSMOND: Sure.

MR. SIMMONDS: Can you offer any insight as to why Superintendent Sheppard, who was the liaison person between the RNC and the RCMP –

S/SGT. OSMOND: Uh-huh.

MR. SIMMONDS: – was allowed to go into the site that day with – he went down, he drove down with Inspector Cahill.

S/SGT. OSMOND: Okay.

MR. SIMMONDS: Why he would – I understood the whole purpose was to keep the two forces separate and this was a conduit or a liaison, so one piece of information could be passed along to the other. Can you offer any insight for Ms. Dunphy as to why he was allowed to go in there?

S/SGT. OSMOND: That decision –

MR. SIMMONDS: What was the purpose of that?

S/SGT. OSMOND: I really can't. That decision was not – I was not consulted on that. You'd have to ask – I think – did he go down with Andrew Boland or ...?

MR. SIMMONDS: He went down with Inspector Cahill.

S/SGT. OSMOND: Inspector Cahill. You can ask him, I guess.

MR. SIMMONDS: Thank you very much, Staff Sergeant.

THE COMMISSIONER: Who's going next?

Mr. Kennedy.

MR. KENNEDY: Turn on my mic.

Staff Sergeant Osmond, my name is Jerome Kennedy; I'm counsel for Constable Smyth.

Good afternoon.

S/SGT. OSMOND: Good afternoon.

MR. KENNEDY: I understand, Staff Sergeant Osmond, that you have been involved in a number of homicide investigations in this province. Is that correct?

S/SGT. OSMOND: That's correct.

MR. KENNEDY: How many would you have been involved in, Sir?

S/SGT. OSMOND: You mean – like, because we have various roles.

MR. KENNEDY: Okay.

S/SGT. OSMOND: So you know when you go right from tasker to statement taking, that kind of thing?

MR. KENNEDY: Yeah, how many homicide investigations have you been involved in?

S/SGT. OSMOND: Fifteen or so.

MR. KENNEDY: And with homicide I start out – it could be either –

S/SGT. OSMOND: Culpable or not.

MR. KENNEDY: – culpable or non-culpable but it's a homicide investigation to begin with.

S/SGT. OSMOND: Correct.

MR. KENNEDY: And how many have you been the team commander in?

S/SGT. OSMOND: At least 10, I guess.

MR. KENNEDY: How many have you been the primary investigator?

S/SGT. OSMOND: Three or four.

MR. KENNEDY: Okay.

Now, for what period of time, Sir, have you been involved in these homicide investigations?

S/SGT. OSMOND: From 2000 – I think I went to my first homicide investigation in 2002, so then when I left Major Crime in 2015, so 13 years or more.

MR. KENNEDY: Okay.

And, Sir, in terms of your courses or your training in homicide investigations, you would have your general training but then there would be specialized Major Case Management courses?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Interviewing courses?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Homicide courses?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Homicide investigation course? Okay.

Sir, how long have you – you've been a police officer, I think, 27 years?

S/SGT. OSMOND: Yeah, that's right.

MR. KENNEDY: Okay.

And in terms of the province here, are you aware of any RCMP officer who would have been involved in more homicide investigations?

S/SGT. OSMOND: Currently?

MR. KENNEDY: Yeah.

S/SGT. OSMOND: Not at my current rank. Perhaps our upper management; because they tend to be more senior, they may have done that. But I would suggest I'm probably one of the more experienced in the province.

MR. KENNEDY: Sir, I also understand that you have been involved in other police officer use-of-force investigations?

S/SGT. OSMOND: Yeah.

MR. KENNEDY: How many of them have you been involved in?

S/SGT. OSMOND: Fourteen or 15.

MR. KENNEDY: Has there been any – is there any overlap between the police officer use-of-force situations and a homicide investigation? In other words are –

S/SGT. OSMOND: Well, you're looking at reasonableness of use of force, so yes.

MR. KENNEDY: Yeah, were there – I guess my question is: Were there any homicide investigations that involved police officers, officer related?

S/SGT. OSMOND: No.

MR. KENNEDY: No.

So the homicide investigations, the approximately 15, they would be – none of them would be officer related?

S/SGT. OSMOND: Correct.

MR. KENNEDY: Then you would have done officer-related use-of-force investigations?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Have you been involved in officer-related shootings investigations (inaudible).

S/SGT. OSMOND: One.

MR. KENNEDY: Okay.

And that would have been the one I think we've heard about in Labrador in which the RNC were called in to investigate, September 2015?

S/SGT. OSMOND: No, no.

MR. KENNEDY: No?

S/SGT. OSMOND: This was a different one altogether.

MR. KENNEDY: Okay.

So when would that have been, Sir?

S/SGT. OSMOND: 2013.

MR. KENNEDY: Is that the RNC –

S/SGT. OSMOND: At MUN.

MR. KENNEDY: The one involving the RNC here in St. John's?

S/SGT. OSMOND: Memorial University.

MR. KENNEDY: Okay.

So, Sir, in terms of the officer-related investigations, were they involving police officers in the RCMP or the Royal Newfoundland Constabulary?

S/SGT. OSMOND: RCMP.

MR. KENNEDY: How many charges of these investigations that you'd done, how many times did you or your team lay charges?

S/SGT. OSMOND: We didn't.

MR. KENNEDY: Okay. So there's no charges were laid in terms of the use-of-force investigations.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Okay.

Sir, in terms of the giving of statements in officer-related use-of-force situations, is it common for officers to – or the subject officers to be, to give statements to the police?

S/SGT. OSMOND: It varies. Some do. Some prepare a statement through a lawyer and submit that.

MR. KENNEDY: Out of the 15 use-of-force officer-related – approximately again, Sir, we're using approximately – cases, how many would actually come in and sit down for an interview without a lawyer?

S/SGT. OSMOND: In those investigations that I did, the only statements I received from police officers in those 15 were by way of pre-prepared statement from a lawyer.

MR. KENNEDY: Did you ever have a situation where a police officer sat down and gave you a face-to-face interview?

S/SGT. OSMOND: No.

MR. KENNEDY: No.

So Constable Joe Smyth is the first time you've encountered a police officer who gives you a statement?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Who does not give you a statement through a lawyer?

S/SGT. OSMOND: Correct.

MR. KENNEDY: Constable Joe Smyth, Sir, is he the first officer who then agrees to a re-enactment without a lawyer being present?

S/SGT. OSMOND: In all fairness, the other investigations I did were not conducive to a re-enactment.

MR. KENNEDY: Okay, fair point.

So were there any requests made of officers in other investigations that didn't go through a lawyer? In other words, had the involvement of a lawyer or a lawyer corresponding with you.

S/SGT. OSMOND: Well, several of them were use-of-force incidents that were well documented on the file itself.

MR. KENNEDY: Okay.

S/SGT. OSMOND: So I went and I interviewed the complainants, compared it to the file material, received a pre-prepared statement through a lawyer and sort of went that way with it.

MR. KENNEDY: So, Sir, one of the things that you know from your previous experience in this investigation is that you've got to build rapport with the officer.

S/SGT. OSMOND: Absolutely.

MR. KENNEDY: So with Constable Smyth, what may be perceived as favouritism can also be perceived as the building of rapport in order to get him to co-operate.

S/SGT. OSMOND: In this particular investigation it was more important than most to have him co-operative because he was the only witness.

MR. KENNEDY: Yeah.

And, Sir, on the date in question there was no reasonable suspicion to detain him.

S/SGT. OSMOND: None.

MR. KENNEDY: There were no reasonable grounds to arrest him.

S/SGT. OSMOND: None.

MR. KENNEDY: If Constable Smyth said I'm not going back to the police station, there's nothing you could do.

S/SGT. OSMOND: Absolutely nothing.

MR. KENNEDY: There was no basis to keep him in the police station that night.

S/SGT. OSMOND: None.

MR. KENNEDY: There was nothing to compel him to give you a statement the next day.

S/SGT. OSMOND: No.

MR. KENNEDY: No.

So when Constable Smyth gives a statement that day, a re-enactment – a statement on Monday, a re-enactment on Wednesday, re-enactment on Friday, there's nothing in law him to compel him to do that, is there?

S/SGT. OSMOND: No, there isn't.

MR. KENNEDY: In fact, that was one of the issues that arose in your April 8 statement with Meghan Dunphy. She wondered why Constable Smyth wasn't forced to give a statement. Again, I've paraphrased somewhat –

S/SGT. OSMOND: Yes.

MR. KENNEDY: – but that was essentially the question, wasn't it?

S/SGT. OSMOND: Correct.

MR. KENNEDY: Yeah.

Did you find Constable Smyth to be co-operative throughout this investigation?

S/SGT. OSMOND: I did.

MR. KENNEDY: Have you ever had a situation where you've had as many statements provided by a subject police officer?

S/SGT. OSMOND: I've never had anybody provide a statement before other than pre-prepared.

MR. KENNEDY: Yeah.

Did you at any time, other than when the ASIRT – after the ASIRT review came in, was there at any time that a lawyer contacted you on behalf of Constable Smyth?

S/SGT. OSMOND: Yes. It was following the briefing on the ASIRT report.

MR. KENNEDY: Yeah. That's what I said, other than that.

S/SGT. OSMOND: Oh, I'm sorry; other than that, no.

MR. KENNEDY: No.

S/SGT. OSMOND: No.

MR. KENNEDY: Were there any letters – did you have any letters or receive any letters from lawyers on Constable Smyth's behalf prior to the ASIRT review?

S/SGT. OSMOND: No, I didn't.

MR. KENNEDY: No.

Sir, you know one of the arguments that's been put forward – it was put forward during the investigation in Ms. Breen's letter, it's been put forward here – is that the police, in investigating the police, also protect each other.

S/SGT. OSMOND: Uh-huh.

MR. KENNEDY: That's been put to you, hasn't it?

S/SGT. OSMOND: Actually, I can't say that it has.

MR. KENNEDY: Okay.

S/SGT. OSMOND: Not yet.

MR. KENNEDY: So I'm going to put it to you. I'm going to ask you, Sir: Is that a fair assessment of what you did and what your team did in this case?

S/SGT. OSMOND: Not at all.

MR. KENNEDY: In fact, Sir, I'm going to read you a couple of excerpts from your interview with Ms. O'Brien. At page 75 to 76, when you're asked a question about early in the investigation – you remember going through with Mr. Simmonds: To date, the investigation –

S/SGT. OSMOND: Yes.

MR. KENNEDY: – is closed is the news release of April 7.

S/SGT. OSMOND: Yes.

MR. KENNEDY: And you indicated, well, that's what we have to date.

S/SGT. OSMOND: Correct.

MR. KENNEDY: You say at one point: You know, I want to be crystal clear – this is at page 75 of your interview – that if any evidence had ever arisen that even gave pause for thought, then we would have explored the criminality of that, but it never did.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Were you saying there, Sir, that if any evidence had arisen which had led you to form reasonable grounds to lay a charge against Constable Joe Smyth, you would have done that?

S/SGT. OSMOND: Of course.

MR. KENNEDY: You go on, Sir, a couple of pages over, and basically that kind of discussion is going on. And you're asked whether or not Constable Smyth got special treatment.

S/SGT. OSMOND: I don't recall it but –

MR. KENNEDY: Okay, but you are.

S/SGT. OSMOND: Okay.

MR. KENNEDY: You are asked whether Constable Smyth got special treatment. And I think at one point you, in your discussion, you talk about, well, we're trying to build rapport.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Now, you do agree that Constable – or you told Constable Henstridge and Corporal Burke that they were too friendly or could be perceived as being too friendly in the first investigation.

S/SGT. OSMOND: That's correct.

MR. KENNEDY: That they shouldn't have given the types of information they gave to Constable Smyth.

S/SGT. OSMOND: Correct.

MR. KENNEDY: But do you remember also saying in terms of the amount of information that you gave to Meghan Dunphy in your interview of April 8 – you were asked about this during your interview with Ms. O'Brien – you would never have told anyone else on the planet – anybody else on the planet – the amount of detail I told Meghan Dunphy.

S/SGT. OSMOND: That's correct.

MR. KENNEDY: Do you remember that?

S/SGT. OSMOND: I do.

MR. KENNEDY: You actually went too far in terms of the information you gave Ms. Dunphy on that night, didn't you.

S/SGT. OSMOND: I think my bosses would say, yes.

MR. KENNEDY: Yeah, and we'll go through it in a second. But what I'm trying to establish here is that an investigation is a fluid affair, it's a dynamic affair. There's an ebb and a flow and things change daily. Is that correct?

S/SGT. OSMOND: Yes.

MR. KENNEDY: So when Mr. Simmonds asked you about the first interview of Ms. Dunphy on August – on April 5, I mean, that's not the one that's carved in stone, there's various opportunities to interview her and/or anyone else as you move through this investigation. Correct?

S/SGT. OSMOND: We can't ask people fully comprehensive, intelligent questions until we learn all the facts ourselves. So we ask based on what we know. When we gather more fact we go back. Oftentimes it's several times.

MR. KENNEDY: Sir, in terms of – and this – and, again, I think you touch upon this. There seems to be, whether it's a misconception or a perception that's out there, but police interviewing techniques have changed a lot in the last decade, haven't they?

S/SGT. OSMOND: Almost a complete one-eighty.

MR. KENNEDY: Yeah. You go from the Reid technique of the good guy-bad guy and one guy shouting, the other guy being your friend to now the – more the pure version statement or the – do you know what I refer to when I talk about the PEACE model?

S/SGT. OSMOND: Absolutely, yeah.

MR. KENNEDY: Yeah, so it's more: Get the information from the suspect, ask questions, follow up, hope they'll keep co-operating with you.

S/SGT. OSMOND: Correct.

MR. KENNEDY: That's almost 100 per cent turnaround – excuse me, turnaround from the way it used to be done, isn't it?

S/SGT. OSMOND: It's a far departure. I mean I have to be honest that in the units that I've been involved in we abandoned that type of interviewing technique quite a while ago. The –

THE COMMISSIONER: Sort of the Reid technique you're saying?

S/SGT. OSMOND: Well, we never really used the Reid technique, Mr. Commissioner; it was a form of it. You probably disagree.

MR. KENNEDY: Yeah, I certainly do.

S/SGT. OSMOND: But it was – it could be confrontational, but a long time ago our unit in Major Crime in Newfoundland took the approach that if you're going to talk to people, you're going to talk to people you like and we've been very non-confrontational for quite a long time.

MR. KENNEDY: Yeah.

Because one of the things here in this particular case, one of the unique aspects – and there are going to be a lot I'll go through with you – but one of them is that you need Constable Smyth's co-operation. And one way you could look at it, it worked, didn't it? Your approach to him worked.

S/SGT. OSMOND: Our investment in the relationship with Constable Smyth paid off over time. I believe it did.

MR. KENNEDY: Yeah, because he kept coming back and coming back whenever asked, didn't he?

S/SGT. OSMOND: He did.

MR. KENNEDY: In fact, you and I think Corporal Burke had expressed some concern about his well-being in terms of the second re-enactment and how traumatic that could be.

S/SGT. OSMOND: We did.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: You know, and this is – once again, this is not because he's a police officer.

MR. KENNEDY: Sure.

S/SGT. OSMOND: This is – I've had experience with having people that have committed serious crimes do re-enactments and there's a very visceral reaction to this. And don't get me wrong, I'm not suggesting Constable Smyth committed a crime, but he did participate in a violent act. And I've had people gag, try not to throw up; it's not an easy thing to go through.

MR. KENNEDY: But Constable –

S/SGT. OSMOND: And that's true whether you're a police officer or not.

MR. KENNEDY: But Constable Smyth, my point is Constable Smyth agreed immediately upon being asked.

S/SGT. OSMOND: He did.

MR. KENNEDY: Yeah, no hesitation.

S/SGT. OSMOND: Now, it was Corporal Burke that talked to him.

MR. KENNEDY: Okay. I –

S/SGT. OSMOND: I was never aware of any hesitation.

MR. KENNEDY: Yeah. Were you present at the second re-enactment on April 10?

S/SGT. OSMOND: I was at the scene. I did not go in.

MR. KENNEDY: Okay, so do you know what took place in the house?

S/SGT. OSMOND: Yes, I viewed it.

MR. KENNEDY: Okay. No, in terms of what – as Constable Smyth was doing the re-enactment, did you, were you – could you actually see that?

S/SGT. OSMOND: Once they went in the house, no.

MR. KENNEDY: Okay.

So you don't know whether or not Justice Riche asked him any questions or what –

S/SGT. OSMOND: I know he asked him questions.

MR. KENNEDY: Yeah. Do you know, Sir, of Constable Smyth's – at one point a reaction, whether or not it was to the smell or to whatever it was in the house, but at one point he noticeably stops. Do you remember that in the re-enactment?

S/SGT. OSMOND: I remember a point where he starts coughing and – but I don't know if that's what you're referring to.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: It seemed like he was having trouble with the air in the room, I guess, is the best way to describe it.

MR. KENNEDY: Did you actually go in that room, Sir?

S/SGT. OSMOND: Yes.

MR. KENNEDY: And how would you describe the room?

S/SGT. OSMOND: Unsanitary.

MR. KENNEDY: Was there any particular smell in the room?

S/SGT. OSMOND: Ammonia, cat urine.

MR. KENNEDY: How would you – was it overwhelming? Was it – how would you describe it?

S/SGT. OSMOND: Yeah, it was overwhelming to say the least.

MR. KENNEDY: Yeah.

Sir, if we now look at what the information you know on April 5, and it is basically Mr. – or some will say or some will argue: Well, Constable Smyth, as the only witness you got to look at what he's saying, which is correct.

S/SGT. OSMOND: Yeah.

MR. KENNEDY: But you're also going to have forensic evidence. You know that there will be forensic evidence that will assist you. Is that correct?

S/SGT. OSMOND: Absolutely.

MR. KENNEDY: Whether it comes from the scene, the autopsy, ballistics or other types of forensic evidence. Correct?

S/SGT. OSMOND: Correct.

MR. KENNEDY: So it's not simply that you rely on what Constable Joe Smyth tells you, you know that you're going to be able to test his credibility against scientific evidence which will eventually unfold.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Now, Sir, in terms of the scene – and much ado has been made of the scene, the release of the scene – how often in your experience, in the homicide investigations you've been involved in, especially as team commander, how long do you maintain a scene?

S/SGT. OSMOND: Usually once the *Fatalities Investigations Act* portion is done it completely varies. Because, I mean, in a criminal investigation if you want to retain it –

MR. KENNEDY: Yeah.

S/SGT. OSMOND: – after that or even before that, I mean you're into search warrants and those kind of judicial authorizations. In a situation where you don't have it you may rely on consent. Sometimes it can be two days; sometimes it could be five or six days.

MR. KENNEDY: Okay.

In this particular scene, Sir, there's been talk about contamination and wearing protective gear into the scene. The scene was pretty well contaminated as it is. Would you agree with me?

S/SGT. OSMOND: Yeah.

MR. KENNEDY: So in terms of a normal – or not a normal, but a scene that could be pristine or one where anything could be noticed, that's not the situation here, is it?

S/SGT. OSMOND: No, it'd be more difficult here.

MR. KENNEDY: Yeah.

Sir, on the night in question, Constable Smyth wanted to give a statement. In fact, he said to you: I want to give a statement. I think your words were: With every bone in my body.

S/SGT. OSMOND: Correct.

MR. KENNEDY: But he was advised to wait 24 or 48 hours, whatever –

S/SGT. OSMOND: Not by us.

MR. KENNEDY: Not – no, no, no, but he's advised to wait –

S/SGT. OSMOND: Yes.

MR. KENNEDY: – by his RNCA representatives.

S/SGT. OSMOND: Correct.

MR. KENNEDY: And you didn't disagree with what he was saying there.

S/SGT. OSMOND: There was no point in disagreeing. He had been asked and he declined.

To argue with him about it at that point, like I said, we were trying to build rapport. He committed to me that he was going to give a statement; he looked in my eyes and said it. That's a social contract and that's something that's very difficult to go back on. And I was very satisfied that we were going to get that statement.

MR. KENNEDY: And you got that statement.

S/SGT. OSMOND: And I wasn't – that was not the hill I was going to die on.

MR. KENNEDY: And you got that statement, didn't you?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah.

Sir, so we've heard all kinds of allegations of preferential treatment. Now, one of the things in a case like this, you look for evidence to either refute or confirm what Constable Smyth says in his version of events. Correct?

S/SGT. OSMOND: Correct.

MR. KENNEDY: So by Wednesday of that week when the press release was put out, had you made up your mind that there had been no crime committed or that Sergeant Joe – or Acting Sergeant Joe Smyth would not be charged with a criminal offence?

S/SGT. OSMOND: Absolutely not.

MR. KENNEDY: Sir, in terms of the giving of the caution and there's some – again, this is open for interpretation, but it's your view that the avenue chosen by Corporal Henstridge or Constable Henstridge – two Corporals, were they, I think, at that time?

S/SGT. OSMOND: Yeah. Yeah.

MR. KENNEDY: They – you agree with that position?

S/SGT. OSMOND: I did. I was consulted on it.

MR. KENNEDY: And I think you indicated that in terms of letting him know there was a live chamber in the rifle, you did that from a humanitarian perspective and you didn't see it as affecting the investigation?

S/SGT. OSMOND: We didn't. And it's because whether or not the rifle was loaded, if he pointed it, loaded or not, it doesn't affect the criminal outcome.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: And so, you know, we could see he was struggling. We didn't see how it could have any implication on the file. And, like I say, it wouldn't have affected the criminality of his act anyway.

MR. KENNEDY: Yeah, because under section 25 – or whether we're under 25 or section 34 in terms of self-defence provisions, the pointing of a firearm is, what, is very important. Correct?

S/SGT. OSMOND: Yes.

MR. KENNEDY: In terms of the –

S/SGT. OSMOND: That would –

MR. KENNEDY: Yeah.

S/SGT. OSMOND: – instigate fear of death or grievous bodily harm.

MR. KENNEDY: Now, Sir, there's been issues raised and, again, there's all kinds of best practices, I guess, looking in hindsight we could employ, but there's been questions raised as to why Constable Smyth wasn't given an alcohol or asked for an alcohol or blood test. Was there any indication there was any alcohol or drugs or anything involved in this case?

S/SGT. OSMOND: He had been dealt with by multiple officers including our own. We had no indication of drug or alcohol use.

MR. KENNEDY: Uh-huh.

S/SGT. OSMOND: And that was not a path that was logical to go down.

MR. KENNEDY: But he wasn't asked?

S/SGT. OSMOND: No, he was not.

MR. KENNEDY: He wasn't asked to do the polygraph. I know the RCMP –

S/SGT. OSMOND: We discussed it.

MR. KENNEDY: Yeah, you discussed it but he wasn't asked to do it?

S/SGT. OSMOND: No, he wasn't.

MR. KENNEDY: Okay.

He wasn't asked to provide DNA of any sort?

S/SGT. OSMOND: No.

MR. KENNEDY: No.

So allow these – do you take exception to these allegations of preferential treatment? Or looking back on now do you realize, well, there could be some prefer – what could be perceived as preferential treatment?

S/SGT. OSMOND: I don't take exception to it because I really believe that a lot of people don't understand the provisions in section 25 of the *Criminal Code*. And it's very difficult to explain the difference between being treated differently and being treated specially or preferentially.

Section 25 of the *Criminal Code* is a protection that's given to police officers. And we have to work within the confines of the legislation we're given. And I can understand why the public may perceive things that way but it is just simply not true.

MR. KENNEDY: In terms, Sir, of the decision for the RCMP to investigate this matter, you wouldn't have had any input into that. You would simply have been provided – we're doing the investigation.

S/SGT. OSMOND: Absolutely, I would have been told where to go and what to do.

MR. KENNEDY: Now, there was some discussion earlier, I think it might have been with Chief Superintendent Boland, but as you sit there in this – in the witness box there now, hindsight is always a wonderful thing in police investigations, isn't it?

S/SGT. OSMOND: Yes.

MR. KENNEDY: And when you're doing a particular investigation, Sir, are you looking towards the fact that there's going to be or there could be an inquiry in the future, or do you simply just do the investigation as best you can?

S/SGT. OSMOND: It didn't take a lot of insight to figure out that there was going to be an inquiry, but it didn't influence what – the steps remain the same.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: An investigation is an investigation; we try to do a professionally 100 per cent every time. And, you know, having the knowledge that there was probably going to be an inquiry doesn't change the methodology in what we do.

MR. KENNEDY: Okay.

But you knew, and I think you've indicated before the Commissioner here today that it was pretty clear that if there – there was one or two things going to happen: there would either be a charge laid and a trial would proceed or there would be some kind of inquiry into what occurred.

S/SGT. OSMOND: Well, you know, there were also comments made in the media by provincial politicians that, you know, clearly seem to indicate that that was going to be the way to go.

MR. KENNEDY: Mr. Simmonds pointed out; he talked about the unique nature of the investigation. Now, I want to point out a few other factors and see if you agree with me, Sir, as to either unusual or unique aspects of this particular investigation. One, we know it's a police officer shooting which are not, thankfully, that common in our province.

S/SGT. OSMOND: Thankfully.

MR. KENNEDY: We've had – the last inquiry would have been Reid/Power around 2004, 2005, I think.

S/SGT. OSMOND: Yes, that's correct.

MR. KENNEDY: Okay.

Now, would you agree with me, Sir, it's very unusual for you to give Ms. Dunphy the details of the investigation three days into the investigation?

S/SGT. OSMOND: It was. Yeah, it was a very unique situation because there were no witnesses to the event. There were implications that there were links to provincial politicians. It was very topical. Social media has changed the way everything happens now and we just felt that we should give Ms. Dunphy as much information as we possibly could.

MR. KENNEDY: But you basically gave her all of the details that you knew on that date, didn't you?

S/SGT. OSMOND: We gave her most of the information we had been told.

MR. KENNEDY: Yeah. That's what I said, whatever information you possessed. I'm not saying evidence, whatever information you possessed quite to the point of the officer saying he saw the gun come from the right-hand side. You told her all of that.

S/SGT. OSMOND: Yes.

MR. KENNEDY: And that led to a discussion with her, didn't it?

S/SGT. OSMOND: Well, it was quite a lengthy interview.

MR. KENNEDY: Yeah, the interview goes on for a period of time but a lot of it is you providing information to her about what you've been told about the incident to that point.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay.

Sir, had you ever done that before? The amount of details you provide to Meghan Dunphy, have you ever done that before in that detail?

S/SGT. OSMOND: I have but not in that stage of an investigation.

MR. KENNEDY: Okay.

S/SGT. OSMOND: Sort of, talked to people that weren't satisfied with investigative outcomes and went through it.

MR. KENNEDY: Yeah. That's later though.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Much later.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah, not three days in.

S/SGT. OSMOND: No.

MR. KENNEDY: Sir, so it only makes sense that you would ask her to maintain confidentiality in that particular circumstance, doesn't it?

S/SGT. OSMOND: Well, like I said in my earlier testimony, I mean we weren't finished the investigation and we felt that we had most relevant witnesses in the neighbourhood spoken to but, I mean, nothing's a guarantee. And she lived in the community, she has friends there, I presume, and family and it was a risk.

MR. KENNEDY: Yeah, you told her the number of shots.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: I'm not, I'm not sure that she didn't already know that. I think she knew that from viewing her dad's body actually.

MR. KENNEDY: Well, you said there were four shots, so basically –

S/SGT. OSMOND: Yeah.

MR. KENNEDY: My point is, is that there was information there that the police usually like to keep to themselves, don't they?

S/SGT. OSMOND: Yes.

MR. KENNEDY: So whereas with a subject being interviewed like Constable Smyth, there's also reasons to give information to someone or, I'm not saying lie but, I mean, there's reasons to give information that you –

S/SGT. OSMOND: (Inaudible.)

MR. KENNEDY: – mightn't otherwise give to someone. Correct?

S/SGT. OSMOND: Yeah, I mean, you can make strategic disclosures, for sure.

MR. KENNEDY: Yeah and sometimes there's holdback evidence, you don't give anyone the evidence.

S/SGT. OSMOND: Yeah.

MR. KENNEDY: You keep it to yourselves and see what comes out and what they say in interviews.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay.

So now, Sir, were you surprised that basically within days or within a week of this investigation – we've got all the letters here if you want to go through them. And perhaps you can tell me the date so I have it correct. Were you surprised that there was a letter from a lawyer representing Ms. Dunphy alleging bias and tunnel vision so early in the investigation?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Do you know when that first letter came to you alleging that there was a bias and tunnel vision?

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

MR. KENNEDY: Okay.

S/SGT. OSMOND: I know there was one. The very first one, I think, was the 16th or 17th.

MR. KENNEDY: Okay.

S/SGT. OSMOND: Yeah. But I don't know that that was the allegation on that letter.

MR. KENNEDY: And in that particular – the allegation of bias and tunnel vision related to the glasses, didn't it?

S/SGT. OSMOND: It's the only thing I know, yes.

MR. KENNEDY: Yeah.

Sir, the Major Case Management model, one of reasons that that's brought in, I'd suggest to you, is to try to prevent against tunnel vision.

S/SGT. OSMOND: Absolutely.

MR. KENNEDY: And that's one of the reasons as a team commander you don't get down in the weeds, is that correct, but take a more objective view of the steps being taken by your officers?

S/SGT. OSMOND: Absolutely.

MR. KENNEDY: Yeah.

The Major Case Management model is used throughout this country is my understanding.

S/SGT. OSMOND: Oh, yeah, everywhere.

MR. KENNEDY: Yeah, not only by the RCMP but other police forces throughout the country.

S/SGT. OSMOND: No, it's practiced right across Canada.

MR. KENNEDY: So that would also be – it would be unusual that this early in the investigation a lawyer is writing you accusing the police of tunnel vision and investigational bias. Correct?

S/SGT. OSMOND: It would be unusual, period. I've never had anything like that.

MR. KENNEDY: Have you ever had that before?

S/SGT. OSMOND: No.

MR. KENNEDY: No.

Sir, then we get the independent – use of the independent observer which you had never seen utilized in this province before.

S/SGT. OSMOND: No, but I was aware of the concept.

MR. KENNEDY: Yeah, but the concept – and we've heard some evidence from Chief Superintendent Boland – was used in First Nations communities and he gave us the examples of Manitoba.

S/SGT. OSMOND: Yes, I think primarily.

MR. KENNEDY: Yeah. So this is new to you also?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay.

Then we get the – the investigation in relation to the glasses and the emphasis placed on the same that was pretty strident in terms of the demands of Ms. Dunphy's defence counsel that you had to do this. And it showed that there was a struggle and it showed that the police had overlooked a critical piece of evidence.

S/SGT. OSMOND: No, I don't think – I didn't feel – I didn't feel that there was any explicit demand.

MR. KENNEDY: Okay.

S/SGT. OSMOND: Like, you will do this, you will do that, but –

MR. KENNEDY: No, and – excuse me. That's fair.

S/SGT. OSMOND: Okay.

MR. KENNEDY: Okay.

So, basically, you know early on, your first interview with Meghan Dunphy, she's alleging that the police officer basically shot her father and staged the scene. You're aware of that.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah. In fact, there's a discussion of the stick, and we'll come to it in a second, as to how – what Ms. Dunphy's theory early on is of the police officer lying.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay.

Sir, we have letters to the – being written to the ministers of Justice for Newfoundland and Labrador and for Canada, the commanding RCM – officer for the RCMP in St. John's, the commanding officer for the RCMP in Canada alleging that the investigation was biased.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Had you ever encountered that before?

S/SGT. OSMOND: Never.

MR. KENNEDY: Sir, the number of interviews with Constable Smyth – and let's just put aside the fact he's a police officer for a second – that would be usual in any homicide investigation for a person to be that co-operative. Is that correct?

S/SGT. OSMOND: Well, it would depend on their role. Like I said, it's more and more common that we go back to people repeatedly, that that's not that uncommon.

MR. KENNEDY: Okay.

S/SGT. OSMOND: It is uncommon for someone that's the subject of an inquiry into criminality, that they would – but, I mean, that's exactly what we're trying to change with our interviewing techniques is that we keep that line of communication open.

MR. KENNEDY: Yeah. And perhaps I wasn't clear on my question, the number of interviews of Constable Smyth as a subject of the investigation, not as a witness.

S/SGT. OSMOND: Right.

MR. KENNEDY: Yeah, so that would be unusual, the number of interviews of a subject of an investigation. Is that correct?

S/SGT. OSMOND: Yes, but I guess my point is that we're trying to change that through our interviewing techniques.

MR. KENNEDY: Sir, in terms of the public and media attention to this file, it was certainly very significant. Correct?

S/SGT. OSMOND: Yes.

MR. KENNEDY: You were aware of the social media attacks on the investigation, the politicians, Constable Smyth himself.

S/SGT. OSMOND: I haven't seen any myself but I'm very aware of them.

MR. KENNEDY: Okay.

In fact, I think you indicated to Constable Smyth, at one point – and I don't need to get into details – that you had been the subject of criticism on social media yourself.

S/SGT. OSMOND: It was beyond criticism.

MR. KENNEDY: It's pretty brutal, isn't it?

S/SGT. OSMOND: Yeah.

MR. KENNEDY: So were you aware that Constable Smyth had been called an assassin, a hit man, this was a – the premier had sent him out to kill Mr. Dunphy, all those allegations?

S/SGT. OSMOND: I wasn't aware of any specifics but I knew that, you know, the commentary was pretty varied.

MR. KENNEDY: Sir, in terms, then, of the – and I'll use this term – well, you tell me. If I were to describe it as problems with the independent observer, is that a fair description of your interaction – police interaction with the independent observer?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah, that's something you'd never encountered before.

S/SGT. OSMOND: No.

MR. KENNEDY: Then after the investigation closes the Commission of Inquiry is called. Then you get an anonymous letter which requires another investigation.

S/SGT. OSMOND: Yes.

MR. KENNEDY: That was a fairly extensive investigation, too, wasn't it?

S/SGT. OSMOND: Well, I had very little to do with that because I had moved on from OCU.

MR. KENNEDY: Oh. Okay, sorry about that. Okay.

Were you still there when the ASIRT review was ongoing?

S/SGT. OSMOND: No, but I was plugged into it. When we got the ASIRT report I was made privy to it and ...

MR. KENNEDY: I guess my main point is, Sir, is that you knew early in this investigation that every step taken by the RCMP would be criticized – or excuse me, would be scrutinized closely and potentially criticized.

S/SGT. OSMOND: Yes.

MR. KENNEDY: So did that cause you, Sir, to be extra careful or cautious in your approach or did you just approach it the way you would normally do your job?

S/SGT. OSMOND: No, everything we did we would normally do. The steps remained the same. Major Case Management is effective for a reason.

MR. KENNEDY: With everything that was going on, Sir, did you effect the – did you at any time become concerned that there was either outside interference or pressure on the police in the investigation in this case?

S/SGT. OSMOND: You'd have to be more specific. From whom?

MR. KENNEDY: From anyone whether it be politicians, public, media, lawyers, anyone at all.

S/SGT. OSMOND: Well, like I said, I mean I've never been the subject of, I don't know, I guess five letters. Some of them were very strong. I'd never had that happen to me before.

MR. KENNEDY: Did you perceive it as an attempt to influence the investigation or interfere with the investigation?

S/SGT. OSMOND: Well, I saw it as an attempt to remove the RCMP from the investigation.

MR. KENNEDY: Okay.

Sir, I now want to look at Ms. Dunphy's statement. If we could have P-0037 brought to the screen, please.

Okay, if we could go to pages 3 to 4 and, again, my page numbers might be a little off because of the – so it could be actually pages 4 to 5.

So in this particular, Ms. Breen is present at this interview?

S/SGT. OSMOND: Yes.

MR. KENNEDY: And Mr. Corcoran is also present at this interview?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Continuing, Madam Clerk.

Okay. So there's discussion here about Ms. Dunphy and the description of the gun being behind the couch?

S/SGT. OSMOND: Yes.

MR. KENNEDY: She was pretty clear in that interview that the gun was behind the couch and was flat on the floor behind the couch, snug or close to the wall, whatever. Correct?

S/SGT. OSMOND: Yes. Yes.

MR. KENNEDY: Page 7, please. And this is where there's discussion – page 7, yeah. This is discussion about the stick and Mr. Dunphy's comment that he had a stick in case anyone comes after me weed.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay?

Page 8 and I want to refer you specifically to – at page 7, if you could look at lines 12 on. This is where Ms. Dunphy is talking about the stick: "... I know the stick was there."

Line 20: "... but you know my dad could of pulled a stick on him and then if he sees the gun well how did you know he didn't put the gun there."

Do you see that?

S/SGT. OSMOND: Yes.

MR. KENNEDY: And then continue down, please, Madam Clerk.

There was – the stick was there for self-defence. So immediately or very early in this interview, Ms. Dunphy is putting out there the fact that her father could have pulled a stick –

S/SGT. OSMOND: Yes.

MR. KENNEDY: – on Mr. – on Constable Smyth, and that somehow or other he would have put the gun where it was found.

S/SGT. OSMOND: Yes.

MR. KENNEDY: In other words, the staging theory was there before you three days into the investigation?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Is that correct?

S/SGT. OSMOND: Yeah, that's correct

MR. KENNEDY: And this was discussed in much more detail as you went through the interview, this lengthy interview, with Ms. Dunphy. Is that correct?

S/SGT. OSMOND: I'm not sure how much it was discussed.

MR. KENNEDY: Okay.

If we go to pages 9 and 10, or it would be 10 and 11 here, please. Page 11 – down at the bottom of the page, please. No, sorry.

I'm sorry, Mr. Commissioner. What's happening is my page numbers are off a little because of the one page. Yeah, okay, up a little bit further, please. Okay.

"Like I know, you know the first thing my dad would do ..." – line 29 – "if buddy kept repeating himself saying well you threatened the Premier or you done this" my "dad would say no I didn't and then he'd say well you did or if he kept repeating himself and telling my dad that he done something that he didn't feel he done ... Well that would of set him off his head."

He would have eventually got up in arms and he would have got really up in arms and would have eventually told buddy to get the eff out.

S/SGT. OSMOND: Correct.

MR. KENNEDY: So basically she's describing the scenario that's also described by Constable Smyth two days earlier, isn't she? A similar scenario in terms of Mr. Dunphy getting agitated because of comments made by Mr. – Constable Smyth?

S/SGT. OSMOND: Other than him telling him – sorry.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: Other than him telling him to leave, yeah.

THE COMMISSIONER: Other than what?

S/SGT. OSMOND: Other than – sorry, other than Mr. Dunphy telling him to leave the house, that was never established.

MR. KENNEDY: Yeah. And Constable Smyth had no – when he gave his interview to the police, he wouldn't – this interview takes place two days later.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Yeah.

Page 20 or it could be page 21. Okay, keep going, please.

Okay, line 21, Ms. Dunphy – you're talking about his peripheral vision: "Did not happen in his peripheral vision." He probably saw his stick. No, he didn't even see a stick. I don't even believe now that anything was hauled out but my – "Because my father would be on the edge of his seat with his arms going like this if he was in a rage to do that. That's the type of person he was, he was flicking his arms and he'd be telling him off and that's how it would go."

So basically, again, there a description that Mr. Dunphy himself can get excited.

S/SGT. OSMOND: Yes.

MR. KENNEDY: Okay.

Do you remember – and, again, the reference at page 31 when you say, well, he – Constable Smyth says he was a puppet, that Mr. Dunphy called him a puppet of the government or something like that, a government puppet. And she says, yeah that's – I can 100 per cent see him saying that.

S/SGT. OSMOND: Yeah, that resonated with her.

MR. KENNEDY: Okay.

Now, if we could look at page 37. And this is where I would suggest to you the staging theory now becomes – is put right out there – page 37. Okay, right there, please.

Ms. Dunphy says: "How do you know that, that cop didn't put that rifle there? How do you know he didn't panic and just look for something to lay next to him and say he had a gun and moved the stick back where it was?"

Do you see that?

S/SGT. OSMOND: I do.

MR. KENNEDY: Now, that's similar to the theory that's developed by Justice Riche, retired Justice Riche later on, isn't it?

S/SGT. OSMOND: It is.

MR. KENNEDY: But you pointed out one of the problems with that theory is where did the gun come from? Is that correct?

S/SGT. OSMOND: Correct.

MR. KENNEDY: In other words that, for Constable Smyth either had to find the gun which is behind the couch.

S/SGT. OSMOND: Well, he would have had to have found a gun in a house that he no inclination there was a gun in.

MR. KENNEDY: Yeah.

Or he had to allow Mr. Dunphy to walk across the room, get the gun out from behind the couch, come back and sit down with the gun.

S/SGT. OSMOND: Correct.

MR. KENNEDY: So the most likely scenario, from an investigative perspective, is that the gun was by the side of the chair or somewhere around the chair as described by Constable Smyth. Correct?

S/SGT. OSMOND: I mean that's the way it appeared, given what was given to us but, for me, the theory that he was allowed to go get the gun and bring it back to the chair was – just doesn't, didn't make sense to me.

MR. KENNEDY: And so have you heard, Sir – have you followed this inquiry at all?

S/SGT. OSMOND: Only – I try not to.

MR. KENNEDY: Okay.

S/SGT. OSMOND: You can't live in a bubble. I see the news but –

MR. KENNEDY: Okay, so there have been a couple of – the staging theories evolved somewhat. We've now – we had the, Constable Cox testify today that when he came in the house the gun was on the blue bucket as demonstrated in the pictures.

S/SGT. OSMOND: Okay.

MR. KENNEDY: The two paramedics who come in after Constable Smyth and Corporal O'Keefe say that the gun was on the floor, thereby, I guess, implying that the RCMP must have put the gun back on the box, on the Rubbermaid tub, because Constable Smyth wasn't in the house anymore. Have you heard that one before?

S/SGT. OSMOND: Yes, I saw it in the news.

MR. KENNEDY: Sir, we've also then had another witness who said that the garbage was – must have been dumped out because the garbage container was there, wouldn't have been dumped on the floor like that. Do you remember ever hearing that in your investigation?

S/SGT. OSMOND: No, I didn't.

MR. KENNEDY: If I could just ask you to look at – if we could bring up Scene 044 very quickly, please. I think this is confidential.

MS. O'BRIEN: Did you say 034?

MR. KENNEDY: 044, please, a confidential exhibit.

Is that up yet, Staff Sergeant?

S/SGT. OSMOND: No. No.

MR. KENNEDY: Okay, so you see the white garbage bucket there.

S/SGT. OSMOND: I do.

MR. KENNEDY: Well, we've had a witness said she never saw that mess there so the garbage bucket must have been dumped out. Yet look on top of the white garbage bucket, there are papers and a Gatorade bottle. See that?

S/SGT. OSMOND: I do.

MR. KENNEDY: So Constable Smyth has to find the gun, put a bullet in it – find a bullet to put in the gun, stage the barrel in a way that's a bit unusual would you agree?

S/SGT. OSMOND: The position of the gun?

MR. KENNEDY: Yeah.

S/SGT. OSMOND: Yeah, I thought it was.

MR. KENNEDY: Yeah. If you were going to stage a scene it's not the way you'd put the gun, is it, from an investigator's perspective?

S/SGT. OSMOND: I wouldn't.

MR. KENNEDY: Yeah.

So was there any evidence that there was any bullets in these guns – in his gun, any evidence? Did you – did Meghan Dunphy give you any evidence that there was a bullet in the gun?

S/SGT. OSMOND: I don't know that that was ever explored with her.

MR. KENNEDY: Okay.

So this whole staging theory, Sir, that's put to you early on, did you investigate it or did your team investigate it?

S/SGT. OSMOND: Well, it was certainly – I mean, it's raised so you're going to consider it.

MR. KENNEDY: Okay.

So was it considered during the investigation?

S/SGT. OSMOND: Yes.

MR. KENNEDY: Was there any evidence at all found to substantiate the staging theory?

S/SGT. OSMOND: None.

MR. KENNEDY: No.

Sir, you – what you said to Ms. O'Brien at one point in terms of – and this was in reference to, I think, retired Justice Riche, but I'd suggest the comment would apply to any investigation.

I just want to read this to you and see if this is, if you would agree in terms of the staging theory also: Well, because he – page 233 – he was trying to develop theories about the scene, when the scene had not adequately been processed. With only one witness, you know, you're limited in how much fact you can get, actually get and whether or not that fact is consistent with what you're being told.

And until those measurements and opinions and evidence come back to you, you should refrain from trying to fill in investigational facts with theory. It's just not investigationally sound, it's improper. It's not the way investigations should be done.

If there are voids in evidence, then those voids have to be – sit as voids, as unfortunate and unpalatable as it is. You can't fill them in with things you think may have happened. Do you remember saying that to Ms. O'Brien?

S/SGT. OSMOND: I do.

MR. KENNEDY: Is that an accurate statement, Sir, of your approach to investigations in general?

S/SGT. OSMOND: They're my words.

MR. KENNEDY: Is it an accurate –

S/SGT. OSMOND: It is, yes.

MR. KENNEDY: – description of the approach to the staging theory?

S/SGT. OSMOND: Yes. I mean, we – there was no evidence to support it.

MR. KENNEDY: And Mr. Simmonds rightfully pointed out that there are problems with the timelines and that you are aware that when Justice Riche made his comments to the media one of the things he focused on was a 12- or 13- or 14-minute gap between the shooting and the phone call to the police. Correct?

S/SGT. OSMOND: No, I'm not – I remember seeing Judge Riche give his interviews but I don't remember that section of it.

MR. KENNEDY: And, Sir, your concern, though, with being able to do anything with Judge Riche – and I think the way you put it was that his job was to avoid us – to advise us, not the other way around.

S/SGT. OSMOND: That's correct.

MR. KENNEDY: That you couldn't go and tell him what to do because the optics of that could be horrible and that the person who's the independent observer is being told by the police what to do.

S/SGT. OSMOND: Especially when he's at odds with our investigational avenues and theories. Well, not that we had theories; he had theories. And when you're at odds and you feel that the person is off their mandate and you're the person that's supposed to be under scrutiny, it's a very difficult position to then try to put parameters around what you feel they should be doing.

MR. KENNEDY: Okay.

S/SGT. OSMOND: It just doesn't look right.

MR. KENNEDY: The way you said it, you – the comment you made to Ms. O'Brien was that if the relationship wasn't managed properly the optics would be horrible.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Sir, back to the glasses, the table in front of the glasses; there's no evidence of a confrontation in that house, is there, physical confrontation?

S/SGT. OSMOND: There's no evidence that a confrontation occurred and there's evidence that it didn't.

MR. KENNEDY: And the evidence that it didn't would be there's nothing disturbed on the table and on the –

S/SGT. OSMOND: There are no injuries to Mr. Dunphy. The glasses were damaged after the scene was released. Mr. Dunphy is sitting within inches of a table; things are upright on the table. They would have been disturbed.

Had a confrontation of some kind occurred, the access to Mr. Dunphy is very limited. He's got a table in front of him. He's got a bucket to his left, then a heater to the left of that and then on the other side a big garbage bucket on that side. So he's almost surrounded by items.

MR. KENNEDY: Yeah.

So, Sir, in terms of these kinds of issues that were being put forward by Ms. Dunphy by retired Justice Riche, did you investigate and consider them, you and your team?

S/SGT. OSMOND: I mean, in terms of like investigating whether or not a physical confrontation occurred –

MR. KENNEDY: Yeah.

S/SGT. OSMOND: – you know it went as far as we're looking at now. I mean we looked at the autopsy results, we looked at the scene, we looked at the glasses; there's just nothing there, absolutely nothing.

MR. KENNEDY: Okay.

Sir, in this particular case, gunshot residue couldn't be done on Constable Smyth's hands because he admitted to shooting the gun. Correct?

S/SGT. OSMOND: Right.

MR. KENNEDY: But there was a type of gunshot residue, I forget what it's called, that in terms of Mr. Dunphy's clothing would tell you how far, if there was gunshot residue the gun would have to be within a certain –

S/SGT. OSMOND: I think –

MR. KENNEDY: – distance.

S/SGT. OSMOND: Yeah, it enables you to judge distance. It's certainly not my expertise but I am aware of that.

MS. O'BRIEN: Darrell – Darrell Barr will be able to (inaudible).

MR. KENNEDY: No, no, I'm just – I'm talking about the kinds of tests that it's not simply relying on what Constable Smyth said, but you – some of this evidence can refute what Constable Smyth is saying. Correct?

S/SGT. OSMOND: Yeah, it will clarify either way.

MR. KENNEDY: Yeah. And, in fact, the types of forensic tests were done confirmed what Constable Smyth was telling you. Correct?

S/SGT. OSMOND: Correct.

MR. KENNEDY: Did not refute, in any way, or question what he was telling you in terms of the forensic science.

S/SGT. OSMOND: Not to my knowledge.

THE COMMISSIONER: How are you doing on your ...?

MR. KENNEDY: Yeah, I'm almost – I'm just finished.

THE COMMISSIONER: Okay.

MR. KENNEDY: I'm going to finish up, Commissioner. I'll just be ...

So the hands or Mr. Dunphy's hands, did they suggest anything to you? Or was there any investigational, anything from an investigational perspective that they suggested?

S/SGT. OSMOND: Looking at it as a layperson, it seemed remarkably similar to somebody holding a gun. I'm not trained in that but it was – I noted it the minute I saw the pictures.

MR. KENNEDY: Okay.

So he'd have to place his hands, so Constable Smyth would have to arrange the hands, too, I guess, if the spec– is that part and parcel of the staging theory?

S/SGT. OSMOND: I guess, yeah. I mean the pictures are what they are. It looked remarkable to me that they were in the position they were in.

MR. KENNEDY: Okay.

I'm just going to end with this now, Sir. In terms, then, of the – we know that Mr. Dunphy was not known for violence.

S/SGT. OSMOND: Correct.

MR. KENNEDY: There's no criminal record other than that uttering threats which have been withdrawn for a peace bond.

Sir, had you reviewed his tweets and comments of the previous months on social media, or you or your investigative team?

S/SGT. OSMOND: Did I?

MR. KENNEDY: Or some member of the team do you know?

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

MR. KENNEDY: Okay.

Were you aware, Sir, of any of his comments on social media and the contents of the same?

S/SGT. OSMOND: No. I do know, you know, the tweet of concern. I think everybody knows that by now. And I know that in the greater context I think, you know, it seems to be that it probably wouldn't have been a threat.

MR. KENNEDY: Sir, in terms then, were you familiar with a comment by Colin Dinn – and I don't know if this is in his statement Commission interview or here in this particular inquiry – that at one point Mr. Dunphy had said that something along the lines – and, please, counsel or Commissioner, correct me if I'm wrong – something along the lines that they might come to get me and let them come.

In the preceding months he had made a comment along those lines relating to his comments on social media or comments in general. Were you aware of that?

S/SGT. OSMOND: At some point I was.

MR. KENNEDY: Yeah.

S/SGT. OSMOND: It's not the first time I've heard that, yeah.

MR. KENNEDY: Okay.

During your interview at one point you explored the possibility or during – of Mr. Dunphy knowing that Mr. – Constable Smyth was coming.

S/SGT. OSMOND: Yes.

MR. KENNEDY: And there was no evidence of that really, at the time, was there?

S/SGT. OSMOND: No.

MR. KENNEDY: But we know now that at 1:39:39 Constable Smyth makes the last call to Mr. Dunphy's phone.

S/SGT. OSMOND: And this is the one I think was attributed to Mr. Dinn?

MR. KENNEDY: Yeah.

S/SGT. OSMOND: Okay.

MR. KENNEDY: Yeah.

We know at 1:46 that Mr. Dunphy texts Colin Dinn. We know, according to Constable Smyth, that after the 1:39:39 call he stayed in his car for a couple – his vehicle for a couple of minutes, then went to Debbie and Dick Dunphy's.

S/SGT. OSMOND: Okay. I'll have to take your word for that –

MR. KENNEDY: Okay, no, I'm just putting that out to –

S/SGT. OSMOND: Okay.

MR. KENNEDY: I'm fairly accurate on that. And we know that, I would suggest to you, there's a possibility that Mr. Dunphy actually saw the black Yukon or whatever the vehicle was. Was there ever any consideration given to that, that Mr. Dunphy actually did know that Mr. – Constable – that the police were coming?

S/SGT. OSMOND: If Mr. Dunphy knew that, I've never been made aware of it.

MR. KENNEDY: But then – so that's the first you've heard that that – that did not come out during the investigation during your – that you're aware of?

S/SGT. OSMOND: The time frame – well, I only recently learned that there was an error in the timeline.

MR. KENNEDY: Okay.

S/SGT. OSMOND: And I don't believe – it's never been, I guess, told to me that it was considered whether or not he may have seen the SUV. The only thing I'm aware of is that there was never any evidence that he knew he was coming. But, once again, like I say, I mean I've gone –

MR. KENNEDY: Yeah.

S/SGT. OSMOND: – been gone from the unit for a year and a half.

MR. KENNEDY: My last question, Sir, is that Mr. Simmonds questioned you about all the things that, you know, could have come out through Meghan Dunphy that weren't brought out in the first interview. On April 8, during that interview, there's no question that Ms. Dunphy provided a lot of information. Did she not?

S/SGT. OSMOND: She did.

MR. KENNEDY: That there was a lot of discussion as to what took place on the date in question in terms of what Constable Smyth said and what she thought could have happened.

S/SGT. OSMOND: Yes.

MR. KENNEDY: So that, at that point, there was no suggestion made that her father was disabled and couldn't reach the stick or the gun or anything like that, was there?

S/SGT. OSMOND: No.

MR. KENNEDY: There was no suggestion made, Sir, that the chair was such that it wouldn't allow for him to reach the stick or the gun.

S/SGT. OSMOND: No.

MR. KENNEDY: In fact, what Ms. Dunphy says, her position put forward at that one – what she put out as a possibility at that time was that her father – she could see her father basically either threatening or waving the stick, whatever way we want to put it, at Mr. – at Constable Smyth?

S/SGT. OSMOND: Yes. And her feeling was that he mistook that for a firearm.

MR. KENNEDY: What she couldn't see was her father taking the gun and pointing the gun at Constable Smyth.

S/SGT. OSMOND: Correct.

MR. KENNEDY: Okay.

So in that interview there was 90 pages. Do you know how long – we can find that out but do you know how long that interview was?

S/SGT. OSMOND: I think it was a couple of hours.

MR. KENNEDY: Yeah.

Would that interview serve – if information had come out in that interview that needed to be investigated, would you have investigated it?

S/SGT. OSMOND: Absolutely.

MR. KENNEDY: Okay.

I don't have any further questions. Thank you, Staff Sergeant.

THE COMMISSIONER: Or your last point was if that information, that's the ...?

MR. KENNEDY: Oh, the information, the kind of information that Mr. Simmonds had questioned –

THE COMMISSIONER: Sorry.

MR. KENNEDY: – had questioned Staff Sergeant Osmond on, if that had come out in the interview with Meghan Dunphy on April 8, would it have been investigated?

S/SGT. OSMOND: Yes.

MR. SIMMONDS: Mr. Commissioner, I just want to correct one thing. Ms. Dunphy did not say wave a stick, she said picked up a stick. Okay?

MR. KENNEDY: That's (inaudible).

MR. SIMMONDS: Yeah.

MR. KENNEDY: I'm not sure, Commissioner, the word "wave" I don't – I apologize, that's a – I don't remember her using the word "wave," but picked up a stick is certainly correct.

THE COMMISSIONER: All right.

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: Okay. How much time do we have? I think we probably have too much time just to carry on but unless counsel advise –

MR. AVIS: Commissioner?

THE COMMISSIONER: Sorry?

MR. AVIS: While I have, you know, much less to say, you know, I have appointments with witnesses; I got two major witnesses coming this week. I've got – they start at 5:30 with witnesses who are going to be appearing here. I have several other meetings and I really can't afford to be late. That's all.

THE COMMISSIONER: Join the club, Mr. Avis.

Yeah, I think we'll be pushing everybody fairly hard to meet our schedule. It's just sometimes to be over for five minutes or so that you can finish off, but that, I don't think, is the case here.

We have Mr. Flaherty – Mr. Drover, you have questions as well; Mr. Avis, yeah. Five minutes sort of expands if anything.

So you're all right to come back tomorrow morning?

S/SGT. OSMOND: I am, Mr. Commissioner.

THE COMMISSIONER: Okay. Thank you.

We'll adjourn until 9:30 tomorrow morning.

MS. SHEEHAN: All rise.

This Commission of Inquiry is now closed.