



COMMISSION OF INQUIRY RESPECTING THE DEATH OF
DONALD DUNPHY

Transcript

Volume 5

Commissioner: Honourable Justice Leo Barry

Tuesday

17 January 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry open.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning. Today we'll be ending a little early, around 4 o'clock, because of a commitment that I can't get out of.

So we'll commence now with Ms. Chaytor, when you're ready?

MS. CHAYTOR: Good morning, Commissioner.

MR. SIMMONDS: Mr. Commissioner?

THE COMMISSIONER: Oh, sorry, Mr. Simmonds. Yes?

MR. SIMMONDS: I'm sorry, Sandy. Ah, and there may be not, there may be nothing we can do about this, but I think, your tweets yesterday that you received about the ability to hear? It is really, really difficult to hear back here, if there's any kind of a bit of – and the gentlemen here were good enough to close the doors for us –

THE COMMISSIONER: Right. Well, we'll just have to try and keep getting people – it's easy to forget and let the voice go down again, so we'll keep the witnesses and counsel, try and keep the volume up so—and get a bit closer to the mic might help as well.

MR. SIMMONDS: Does this mic actually – it also magnifies the voice as well.

MS. O'BRIEN: It does. It does amplify, but it's sort of unidirectional, so you have to kind of have it directed, you know, straight towards your mouth?

THE COMMISSIONER: You have to have your mouth close to the mic.

MR. SIMMONDS: Okay.

THE COMMISSIONER: I can hear you.

MR. SIMMONDS: No, my concern is, if I try to see the witness you have (inaudible).

THE COMMISSIONER: Right, I understand.

Okay, go ahead.

MS. CHAYTOR: Okay. Good morning, Constable Smyth.

CST. SMYTH: Good morning.

MS. CHAYTOR: Before we begin Commissioner, there is one other exhibit to have entered this morning, it is P-0233. And this is the Use of Force manual in place at the RNC at the time.

Constable Smyth, you told us yesterday that your counterpart from the RCMP was Doug Noel. How did you and Corporal Noel divide your duties? Did you overlap some days, were there days when both of you were working? What was your schedule, and did you divide your work at all in terms of jurisdictional?

CST. SMYTH: Our actual schedules were what we refer to as two and three schedule. We in essence had two days on, three days off, three days on, two days off. And that cycled that way, so we never officially overlapped. There tended to be some inherent overlap because the requirement of additional officers for specific duties, usually for specific events or special security details that we may need more than one person for.

MS. CHAYTOR: Okay. All right. So in that case then, again you would be the person who would make the call to bring in Corporal Noel or somebody else if you needed a second person?

CST. SMYTH: Correct. Or if Corporal Noel was working and an event came up, he would have had that autonomy as well.

MS. CHAYTOR: Okay. All right. So in the situation that you found yourself on April 5, 2015, it wasn't a situation where you and Corporal Noel were scheduled to work together the next day for example?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And what about the aspect of my question regarding jurisdictional division, did you ever divide your duties according to if you had to do a follow-up as part of your intelligence gathering in RCMP territory that that would be something, if it wasn't urgent, would be left to Corporal Noel?

CST. SMYTH: No, we didn't.

MS. CHAYTOR: Okay. And is there any reason for that?

CST. SMYTH: No, I think the workload was dependent on perhaps what your specific duties were that day coupled with when the complaint was received. Each case would be handled independently of the other and we'd have to take into, a number of factors into consideration as we assigned that. Jurisdictional boundaries weren't generally one of those.

MS. CHAYTOR: Okay.

CST. SMYTH: The only time I might assign a specific duty to our RCMP member related to jurisdiction might be to act as a liaison as we entered RCMP jurisdiction for specific events. So if we were attending an area in RCMP jurisdiction for a special political event, we may task our RCMP officer, if he's working and available, to liaise with RCMP members in that jurisdiction to advise of what our activities would be and to perhaps arrange any additional resources on site.

MS. CHAYTOR: Okay. And so that's your close protection duties?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay, all right. And I think you may have mentioned this already but you were reporting to your direct reporter, immediate supervisor at the time, was it Inspector Joe Gullage?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. And did you report directly to the chief of police regarding any matters related to the Protective Service Unit?

CST. SMYTH: We had occasion to report to the chief on some day-to-day functions that required the chief's approval, such as travel, outside the province travel, those kinds of things.

MS. CHAYTOR: Okay.

CST. SMYTH: So we could potentially bypass our inspector in those circumstances because it was an unnecessary step.

MS. CHAYTOR: Okay. And with respect to your duties in terms of intelligence gathering, your direct report there would be Joe Gullage, is that correct?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. All right. And in terms of that, we saw yesterday there was an operational plan and you also referred to quarterly reports that you prepared. Who would those be submitted to?

CST. SMYTH: They would be submitted through Inspector Gullage.

MS. CHAYTOR: Constable Smyth, I believe we also mentioned yesterday the RNC Electronic Filing System is referred as ICAN, is that right?

CST. SMYTH: That is correct.

MS. CHAYTOR: Okay. Do you know what that acronym stands for, just for the benefit of others?

CST. SMYTH: I believe it's Integrated Constabulary Automated Network.

MS. CHAYTOR: Okay. Thank you.

And that is the filing system that PSU was using at the time?

CST. SMYTH: At that time, yes.

MS. CHAYTOR: Okay. And did the PSU have any other type of filing system? Were there restricted or protected files as such?

CST. SMYTH: Prior to utilizing the ICAN system there was an internal database within the Criminal Intelligence Unit whereby intelligence related files, particularly the ones that were of confidentiality concern, were generated within that office and remained within that office and weren't available for specific database searching querying.

MS. CHAYTOR: Okay. So as of 2013 when the unit became more formalized – and we saw the policy yesterday – was it at that point that then the unit used the ICAN system?

CST. SMYTH: It was around 2011, I think, when the unit became a little more formalized and it was over that period that transition was occurring. We started to transition those files from the internal Criminal Intelligence Unit system to our broader ICAN system.

MS. CHAYTOR: Okay. So then by 2015 you're just using ICAN system.

CST. SMYTH: That's correct. We were no longer using that CIU filing system, no.

MS. CHAYTOR: Okay. When you received a message or information was received that you deemed warranted investigation, and particularly when it was received from someone in the Premier's office, would the Premier be advised?

CST. SMYTH: Generally, no.

MS. CHAYTOR: Okay. And under what circumstances would he or she be advised?

CST. SMYTH: If it determined that subsequent to completing a threat assessment that there might be some reason to brief the premier and his family, if there's a heightened security concern, or there were some indications where the premier was travelling to jurisdictions within the province, or sometimes outside the province where we wouldn't be with him or her. In which case, there would be a heightened reason to give a broader-based briefing on persons of interest that may impact that particular piece of travel.

MS. CHAYTOR: Okay. And if you did receive something that I take it you thought was an imminent threat or concern for the premier's security, he or she would be advised?

CST. SMYTH: Absolutely, yes.

MS. CHAYTOR: So I'm just going to move on now. The Commissioner has heard evidence of the tweet that you received from Donna Ivey on April 3, 2015, and of course you were here when Ms. Ivey gave that evidence. Was it a common occurrence that you would receive that type of communication or issues of that nature would be brought to your attention by the premier's staff?

CST. SMYTH: I think I would consider it relatively common, yes.

MS. CHAYTOR: Okay, so –

CST. SMYTH: It could come in various forms. Sometimes we might be told in person that they had received information or that there was another minister who had received information or disconcerting commentary from a constituent or elsewhere, and it could have come from any number of forms. Sometimes it was telephone calls to the Premier's office that we might receive a briefing from administrative staff there. So it was relatively common; it came in a number of different forms.

MS. CHAYTOR: Okay. So letters, telephone calls and sometimes social media messaging?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. And with social media messaging being passed along, had that happened before April 3?

CST. SMYTH: Yes, it had.

MS. CHAYTOR: Okay.

And was there ever an issue brought to your attention by the Premier's office that did not prompt a follow-up investigation or the opening of a file?

CST. SMYTH: So you're referring to similar information that we ultimately deemed to be benign in nature and then no –

MS. CHAYTOR: Yeah.

CST. SMYTH: – reason to generate a file.

Yes, that has occurred. Hard for me to recall specifically if it was determined to be of no concern.

MS. CHAYTOR: Okay, so would that be put through the same lenses and the same test as if it had come from some other source?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. Had you had a similar experience whereby you visited a person at their residence to discuss a social media posting as a result of notification by someone in the Premier's office?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay, and in that situation, did you attend upon the person by yourself?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And what was the outcome of that situation? Without giving us names, just generally, first of all, tell me, I guess, was this common; did this happen on more than one occasion. And if it is just the one occasion then if you could perhaps describe that situation.

CST. SMYTH: It was definitely more than one occasion. I think the outcome was often the same. I don't remember there being any particular occasion where the outcome was negative. The outcome was usually a positive response to that home visit.

Usually the – whatever the social media commentary was, I was given some context for it. Some of their own interpretation, what it is they intended. Sometimes the interpretation is very easy but there's an onus on us to perhaps examine the intent of that. Is the intent to cause fear? Is it an intent to, to intimidate or is it simply a misdirected effort to bring attention to their particular issue or grievance?

So usually when I spoke to the individual responsible, we were able to sift down through what the reasoning for it was, explain the nature of the inappropriate contact and perhaps what that could lead to if it, if it continued.

Usually we were dealing with harassment, potentially threats. There's been occasions where we investigated actual criminal threats and we would explain those consequences as well, if the behaviour continued because it was generally little or no appetite from the persons in political office to see criminal charges laid, if we could find alternative measures, it was usually our goal. And I don't remember any occasion where we weren't successful in yielding that end result.

MS. CHAYTOR: Okay. And so there was never a criminal charge laid following from any of your visits to individuals in following up on messages from the Premier's office?

CST. SMYTH: Not from the Premier's office, no.

MS. CHAYTOR: From any government official during your time in the PSU?

CST. SMYTH: I had dealt with one for the Crown Attorney's Office before. It was a case of a Crown attorney who was subjected to ongoing harassment and intimidation from an individual. We went through the same process, visited the individual. This was done when I was in Criminal Intelligence office, while I was doing both roles, and we attended with two officers in that occasion, but there was also the intention there that it may end up in an arrest.

Our first visit was the explanation and the warning of the behaviour and with the hopes that it would stop. It ultimately didn't stop. And our second visit was a caution statement and an actual arrest and charge.

MS. CHAYTOR: Okay. And that's not while you were with the PSU though? That's when you were in Criminal Intelligence?

CST. SMYTH: I was doing part-time duties at the time, I believe, yeah; a bit of both.

MS. CHAYTOR: Okay, but that was in your role as an officer in Criminal Intelligence.

CST. SMYTH: That's correct.

MS. CHAYTOR: Yes.

CST. SMYTH: Yeah, but the process was the same.

MS. CHAYTOR: Okay. Fair enough.

And so there was never a time in your time in the PSU where, based on anything you were following up with there, that a criminal charge was laid.

CST. SMYTH: I don't believe so, no.

MS. CHAYTOR: Okay. Was April 3, 2015 – that was Good Friday, I understand. Was that a workday for you?

CST. SMYTH: It was a scheduled workday. I had taken the statutory holiday that day. It was no specific requirements for duties that day so I had taken that day off.

MS. CHAYTOR: Okay, and how about Doug Noel? I noticed that the email went to both, or Donna Ivey's email went to both yourself and Doug Noel. Was he also off that day?

CST. SMYTH: He was off that day as well, yes.

MS. CHAYTOR: Okay. And so I take it, it wasn't a particularly busy day for your unit. There were no protective services required in terms of bodyguard-type work.

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. And there wasn't anything else that you needed to be following up on in the office in terms of intelligence gathering that day?

CST. SMYTH: No.

MS. CHAYTOR: Okay.

Constable Smyth, I noticed that there were – in reply to Ms. Ivey, there were two email that you sent back within a couple of minutes of each other and I'm just a little bit curious about that. It might not be anything but P-0075, please, and P-0076.

Okay, so P-0075, this is, this shows the tweet that you received at 10:21 a.m. And then you respond and say at 10:34, so pretty promptly: "Donna, do you know what the context of this is? May take a little time, but I will look into this asap. Twitter can often be a dead end. Thanks." And it's just Ms. Ivey that you included in that communication.

And if we could have then, please, P-0076. Okay, and then two minutes later we see that you replied to both Ms. Ivey and Doug Noel and you copied Joe Browne. And these are also the recipients of the original email: “Donna, do you know what the context of this is? May take a little time, but I will look into this asap. Although we’ve had some success in identifying some users, twitter can often be a dead end when proper effort has been made to conceal identity. I’ll advise asap if I have any success.” So thanks, J.

So this is a little more detail in your response two minutes later, and you’ve included Doug Noel and Joe Browne.

Can you just explain that?

CST. SMYTH: Initially I realized that I hadn’t replied all. I was sending the email from my BlackBerry, I sent it, realized I hadn’t replied to all her original recipients and, in essence, rewrote the email with some additional clarification and thoughts.

MS. CHAYTOR: Okay, thank you.

If we could have, please, P-0078. And Joe Browne weighs in at 11:30 a.m. and he says: “This guy seems to be an injured worker. His constant tweets are focused on that subject.” Then you reply very shortly after, within 15 minutes. “Ok, I am familiar with this individual. Will do some background work and move to speak with him. Thanks, J.”

So how is it that at this point in time you are familiar with Mr. Dunphy?

CST. SMYTH: It turns out I wasn’t familiar with him at all. When I saw the name Don Dunphy I thought it was in reference to actually another social media user who has a bit of a parody account, goes by the name of Donald Dumphy.

MS. CHAYTOR: I’m sorry, what is the last name?

CST. SMYTH: D-u-m-p-h-y.

MS. CHAYTOR: Okay.

CST. SMYTH: Sometimes these parody accounts drift over into the realm of making inappropriate comments. My first thought was this is this person that has a comedy-based account that was perhaps drifted over into making some inappropriate commentary.

MS. CHAYTOR: And is Donald Dumphy with the M, is he also an injured worker?

CST. SMYTH: I don’t know, I don’t think so. I don’t think that’s part of his shtick but that was my original thought. That was clarified fairly quickly; there wasn’t one in the same.

MS. CHAYTOR: Okay.

Had Mr. Donald Dunphy’s name ever surfaced in relation to your job at the time with the PSU?

CST. SMYTH: No.

MS. CHAYTOR: Had you ever heard of him at all in terms of your time with the RNC?

CST. SMYTH: No.

MS. CHAYTOR: Now, Ms. Ivey copied the chief of staff, Joe Browne, on her email. And if we could bring up, please, P-0079, Madam Clerk.

Oh, I'm sorry, that was also in the other email, but – "This guy seems to be an injured worker. His constant tweets are focused on that subject." So that's Joe Brown's reply; did you have any other communications with Joe Browne regarding this matter prior to visiting Mr. Dunphy on April 5?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Did you understand Joe Browne to have any knowledge about, or to state that the, that Mr. Dunphy had been bombarding the premier and other staff with grievances?

CST. SMYTH: I, I don't recall ever receiving that information from anybody.

MS. CHAYTOR: Okay. And do you recall telling that to Grant Little, who did the review for the RNC, that you thought Joe Browne had said something along those lines?

CST. SMYTH: I don't recall saying that. If that was told to me afterwards, that's a possibility but previous to visiting Mr. Dunphy, I hadn't heard that, no.

MS. CHAYTOR: Okay, all right. Well, maybe we'll just bring up so we're clear on what exactly you said and the context you said it in. If we could have P-0121, please. But your evidence is, Constable Smyth, that you had no discussions with Joe Smyth and the only communications between you and Joe Browne regarding Mr. Dunphy is the limited communications that we see in the email chain we have here.

CST. SMYTH: Before going to visit Don Dunphy, yes, you're correct.

MS. CHAYTOR: Okay. And I'm looking for page 42, please. Can we make it larger? If we can make it larger, please? Okay. And here we see and – it's 42; I think it's 43. There – 42, 43, 44. Okay, if we could just find this, I'm sorry. I thought I saw it there.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Yeah, okay. All right, yeah, okay, we'll just have a look at that because I want to put the actual quote to you.

Okay, but in the meantime you did identify in your email – okay, this is it here, I think, yeah.

So the reply to them was: I said I think it was the chief of staff that came back and said no, he's, you know, we know who this guy is, he's, you know, constantly bombarding the premier and other staff with the grievances around.

So that's where that part of the intel came from, not from the tweets, is what Little says. Oh no, and we go, when you, once you look at his twitter profile. Yeah. It was obvious – right – what his grievance was and who he was.

So this was the part here, Constable Smyth: So my reply to them was, as I just said, I think it was the chief of staff that came along and said no, you know, this guy, he's, you know, constantly bombarding the premier.

CST. SMYTH: I think what I'm saying here, unfortunately, it's in conversation and they should probably be separated by a period, making reference to that the chief of staff had said that we know who this guy is, that's where Joe Browne said we know who he is; he's an injured worker.

Separate from that, I had determined that there has, perhaps, and this may not be the appropriate term, but bombarding the Premier's office with grievances. And that was what I learned through a more extensive search of his Twitter feed, and perhaps what I learned well after some of his conversations and communications with Minister Kent's office.

MS. CHAYTOR: Okay, and –

CST. SMYTH: But I was never told that word from Joe Browne. The only communication I had with Joe Browne is – before meeting Mr. Dunphy – is what you've seen here, it would have been via email.

MS. CHAYTOR: Okay. And so you did see on Mr. Dunphy's Twitter account that he had been sending other posts to the premier over a period of time?

CST. SMYTH: Certainly to government officials, yes.

MS. CHAYTOR: And was that of anything that caught your attention of concern or was it more, you know, expressions of discontent and disgruntlement of a political nature, political commentary by him.

CST. SMYTH: A lot of it was certainly just general voicing a discontent, a dissatisfaction with how his situation was being dealt with, both via government and WorkplaceNL. There was some commentary that I felt was aggressive in nature and certain things that were questionably not founded in reality as well.

MS. CHAYTOR: Okay. And nothing, though, that had ever been brought to your attention before?

CST. SMYTH: No.

MS. CHAYTOR: You did your own review of his Twitter account.

CST. SMYTH: And, and I should maybe even clarify my statement about whether or not something is founded in reality. I may have questions on that but I would want to speak to the person to try to get an interpretation of that. Because it doesn't necessarily mean that that person is, is not founded in reality or that they have confusion about that, they just may be expressing themselves in such a way that's ambiguous in nature. But I need to speak to the person; I don't necessarily make judgments at that time when I read it. I want to be able to speak to the person and permit them the opportunity to give their interpretation.

So when comments, say, are made that WorkplaceNL caused my wife's death, that could be somebody that truly believes WorkplaceNL killed his wife, but it may also be just an expression that you created – you were the foundation of the circumstances that have created a very challenging living environment and that very challenging living environment lent to the death of my wife, which would be more reasonable for us to examine.

MS. CHAYTOR: Okay. But that was never anything that WorkplaceNL brought to your attention.

CST. SMYTH: No, no, no.

MS. CHAYTOR: They had determined in their review of his tweets that there wasn't anything that warranted bringing to the attention of the police.

CST. SMYTH: That's correct, but I had noticed that on Saturday in my review of his tweets items like that.

MS. CHAYTOR: Okay. And so that was something that caused you concern and added to your decision to go visit Mr. Dunphy.

CST. SMYTH: Correct.

MS. CHAYTOR: You also mentioned in answering the question that Mr. Kent's name, and I understand that to be Steve Kent.

CST. SMYTH: Yes.

MS. CHAYTOR: Had Steve Kent ever raised with you any issue – prior to you visiting Mr. Dunphy, had he ever raised with you any issue regarding Mr. Dunphy?

CST. SMYTH: No, he had not.

MS. CHAYTOR: Okay. And when did you become aware that Mr. Kent may have been in communication with, or had received communications from Mr. Dunphy.

CST. SMYTH: It was after the shooting.

MS. CHAYTOR: And how did you become aware of that?

CST. SMYTH: From Minister Kent.

MS. CHAYTOR: And what did he tell you?

CST. SMYTH: He had sent me a message indicating that he had heard what happened, expressed some, I think, empathy for me and asked if I was okay or hope you're okay, and made me aware that he had actually been dealing with Dunphy for some time.

MS. CHAYTOR: Okay. And did Minister Kent – Minister Kent at the time – did he actually use the word that Mr. Dunphy had been harassing him for some time?

CST. SMYTH: I believe he did use those words, yes.

MS. CHAYTOR: And was there any follow up or discussion with Mr. Kent about that?

CST. SMYTH: By me?

MS. CHAYTOR: Yes.

CST. SMYTH: No.

MS. CHAYTOR: Nobody (inaudible) by anyone?

CST. SMYTH: I don't know. I think that would form part of the police investigation or the role of PSU at the time. I was involved in neither one.

MS. CHAYTOR: Okay. And but your evidence is he never brought that to your attention, that wasn't part of the equation for why you were visiting Mr. Dunphy at that time?

CST. SMYTH: No, it was not.

MS. CHAYTOR: Joe Browne is on the reply that we just saw a few minutes ago where you say that you will move to speak to Mr. Dunphy. So he was at least aware that you're putting into action a plan with a view to go speak to Mr. Dunphy, either visit him or speak to him. Did you actually tell Joe Browne that you were going to go pay a visit to Mr. Dunphy?

CST. SMYTH: I didn't speak to Joe Browne via telephone or in person, no. So whatever I – I don't have the email here in front of me but whatever it was I said to him there is what I said.

MS. CHAYTOR: Okay. And did you have any communications with Paul Davis between the time that you received the tweet from Ms. Ivey on April 3 and visiting Mr. Dunphy on April 5?

CST. SMYTH: Regarding Mr. Dunphy?

MS. CHAYTOR: Any communications with him?

CST. SMYTH: I don't believe so. I don't recall any. If I had have had communications with Premier Davis during that period they would have been our regular check in with him to ensure there's been no change to his schedule and requirement for duties. It would have been – if I didn't do that, I should have. It would have been normal for me, especially if I was going to be a distance away from him, to reconfirm what his schedule was.

MS. CHAYTOR: Okay. So, for example, the next day, April 4, is a workday for you again.

CST. SMYTH: Yes.

MS. CHAYTOR: And would it be normal that you would check in with him when you're coming on your shift to determine whether or not he needed any protective services that day?

CST. SMYTH: It would be normal, yes.

MS. CHAYTOR: Okay. And do you recall – does it seem likely that you would have done that if that's your normal practice, that you would likely have spoken to Mr. Davis that day?

CST. SMYTH: I probably wouldn't have spoken to him because we would have probably communicated that type of quick information over text or BBM, but I don't recall specifically doing it that day. I may have been told specifically on Friday: I'm not doing anything, I'm going to be busy with family, don't bother me, type thing. So I wouldn't necessarily, you know, overstep my bounds as well. I would let him know that if anything changes, let me know. I don't want to pester him either.

MS. CHAYTOR: Okay. And how about April 5 then, that morning would you have checked in with him to see if he needed your services or not?

CST. SMYTH: I don't recall doing it. I suspect if I did it would be in the text and BBM records that you have.

MS. CHAYTOR: Okay. All right. And do you recall what you told Sergeant Grant Little regarding that?

CST. SMYTH: No.

MS. CHAYTOR: Okay. Could we bring up – actually we have that exhibit here – P-0121, and this is earlier in the exhibit, page 18. Let's see if I have my page numbers right this time. I think it's because they're usually one ahead. Okay.

And this comes up in the context; you're asked what you're wearing on the day that you visit Mr. Dunphy. And you say that was also a day I had been talking to the Premier, I think that morning or the day before – which would be April 4 – and I knew there was no close protection specific duties, right? That day.

And for you, you were doing that, would that be, for want of a better term, appropriate dress. So it looks like you're telling Sergeant Little that you were dressed casually that day because you – that day or the day before you had been in touch with Premier Davis and knew that you weren't going to be required for protective services.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. So does that – and that seems in keeping with what your practice would have been.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

CST. SMYTH: But I still don't recall actually talking to him.

MS. CHAYTOR: Fair enough. So when you spoke with Premier Davis, would you not have told him that you had a matter referred to you by his staff and that you would be following up on that matter?

CST. SMYTH: That would have been very unlikely for me to do that.

MS. CHAYTOR: And why is that?

CST. SMYTH: It wasn't my practice to bring these types of matters to the attention of the Premier if there wasn't specific reason to at that time, i.e. we've reached a point where we felt he needed to be briefed or aware.

MS. CHAYTOR: So I take it the nature of what you were following up on was not anything of any concern to the security of the Premier.

CST. SMYTH: Not at that stage, I did not feel so, no.

MS. CHAYTOR: Did you receive any other communication from the Premier's staff, or the Premier or anyone else, on the behalf of the Premier about Mr. Dunphy prior to meeting with him?

CST. SMYTH: I had some discussions with – I shouldn't say discussions, some email discussions with some of his staff as I was trying to locate telephone numbers for persons at WorkplaceNL.

MS. CHAYTOR: Okay. And would that have been with Donna Ivey?

CST. SMYTH: It was some with Donna and some with Heather MacLean, I believe.

MS. CHAYTOR: Okay. And what did you and Heather MacLean discuss?

CST. SMYTH: There had been some reference to Mr. Dunphy being a regular caller into open line shows. So while I was trying to confirm which Mr. Dunphy I would be going to see, I was making efforts to both attempt to get transcripts, if any available, from conversations that he may have had on open line shows, and I would have also been looking to confirm exactly which Mr. Dunphy we were talking about.

MS. CHAYTOR: Okay. And did you have discussions with Donna Ivey or that would have put in touch with Workers' Compensation, or how did you go about getting those contacts?

CST. SMYTH: It was either Heather MacLean or Donna Ivey that got me in touch with, I think it was the chair of the board, with Ralph Tucker, and he was able to put me into contact with Mr. Tom Mahoney.

MS. CHAYTOR: Okay. And so on April 3, that's the extent of your dealings on this matter, I take it, and you had booked out – it was a statutory holiday, so you took that day. So did you do anything else then in relation to following up on this matter on April 3, other than what we've already discussed?

CST. SMYTH: Sorry, I think I'm actually talking about April 4, now.

MS. CHAYTOR: Okay. So you're into April 4.

CST. SMYTH: Yeah.

MS. CHAYTOR: So nothing else on April 3?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And April 4, we can bring up, please, P-0079. And I think this would be an email exchange that you did have on April 4. And I don't know if I can really call it an exchange because I don't see that anyone got back to you, but we can talk about that.

So I take it April 4 then is a workday for you?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And what shift did you work that day?

CST. SMYTH: I don't recall.

MS. CHAYTOR: What would your normal shift be?

CST. SMYTH: Our normal dayshift could range, depending on what the requirements were. If we didn't have specific scheduled requirements, our shifts were usually pretty flexible.

MS. CHAYTOR: Okay. So where were you on April 4?

CST. SMYTH: I was at Confederation Building by the time I was making some of these queries.

MS. CHAYTOR: Okay. And where had you been earlier that day?

CST. SMYTH: Earlier that day I had travelled back from my cabin, which is in the central area of Newfoundland.

MS. CHAYTOR: Okay. So you arrived for work around midday, is that right?

CST. SMYTH: Yeah, it was a bit before lunch.

MS. CHAYTOR: Okay.

CST. SMYTH: It is the Clarenville area, sorry, where my cabin is.

MS. CHAYTOR: Okay. So then the first work that you did on this would be around the time we see this email, 1:38 p.m. on April 4?

CST. SMYTH: It would be in that range, yeah, it was shortly after lunch.

MS. CHAYTOR: Okay. And this email you sent to Joe Browne and Donna Ivey. And the only things redacted there, Commissioner, would be the email addresses. You do start by saying, “Heather, I understand this individual has had multiple conversations on Open Line; do you have the ability to obtain transcripts without knowing exact dates and times? Thanks J.” But we don’t see Heather – the Heather, I take it, is Heather MacLean that you’re intending this for?

CST. SMYTH: It would have been Heather MacLean. So either I neglected to actually put her in as a recipient or it’s not shown here. I notice three dots are at the end of the list of recipients. That may indicate there’s more, I don’t know.

MS. CHAYTOR: Yeah. No, according from what’s printed off for us or what was provided to us, I didn’t see that her address was included. But in any event, did you get a reply back from Joe Browne, Donna Ivey or Heather MacLean regarding this?

CST. SMYTH: I never did get any transcripts, I know that. And I can’t recall if Heather or Donna got back to me specifically on that request on whether or not they were, would be looking into it or not.

MS. CHAYTOR: How did you learn that Mr. Dunphy had had multiple conversations on *Open Line*?

CST. SMYTH: I can’t recall.

MS. CHAYTOR: Did you, yourself, come across that information somehow? By this point in time, had you looked at his Twitter account?

CST. SMYTH: I may have. I may have gleaned that from his social media account or if sometime in the day I had had, I believe, a verbal conversation with Heather MacLean. But through some way, shape or form I learned that he was a regular *Open Line* caller. I don’t recall –

MS. CHAYTOR: Okay.

CST. SMYTH: – without being able to refer to that file in its totality where I got that info.

MS. CHAYTOR: And you didn’t keep any notes of any of this?

CST. SMYTH: Not regarding that particular piece, no.

MS. CHAYTOR: Okay. And we’ll talk a bit later about what you did record.

Why would you want to have transcripts of his *Open Line* discussions? What was your purpose? What –

CST. SMYTH: I’ve –

MS. CHAYTOR: Why did you need that?

CST. SMYTH: For the same reason I’d want to review his social media commentary or any other forms of communications to determine if there’s any information within that, that might lend to the threat assessment. So the factors that we referenced yesterday: the root of the grievance, inhibitors, justification, those elements.

MS. CHAYTOR: Okay. So it’s part of your investigation that you’re carrying out.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And did you obtain those transcripts?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. And to your recollection, did anyone reply to your email?

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

MS. CHAYTOR: Okay. What else did you do, then, on April 4 to follow up or continue your investigation into Mr. Dunphy?

CST. SMYTH: I had made some general queries on social media. I had spent some time reviewing his social media feed. I had done some queries with our Motor Registration Division to try to identify where Mr. Dunphy might be residing and I had also initiated contact with WorkplaceNL to try and marry up those two.

MS. CHAYTOR: Okay.

All right, let's bring up, please, P-0136. And this is a call that you placed to the RNC Comm Centre and this is at 13:56, so it's almost 2 p.m., shortly after your email that we just looked at about *Open Line*. And you're having some discussion here.

Can we just make this a bit bigger, please, Madam Commissioner? Thank you. Madam Commissioner, Madam Clerk. Excuse me, Commissioner. Thank you.

Okay. So you're having communications here with, the Comm Tech is Owen Todhunter, and you identify yourself to him and you ask him to do a "28 check for me." And then he says, "Yep." And then you say, "Or 27 sorry. 27." So what are you looking for in a 27 check?

CST. SMYTH: They're referring to 10 codes. The 10-28 check would refer specifically to registered vehicle information. The 10-27 would refer to driver's licence information.

MS. CHAYTOR: Okay. And then there's some discussion back and forth. You're trying to identify the appropriate Don Dunphy I think here, so we'll see some redactions in our document.

Then there's further communication which ends with – here we go here, it's skipping. Okay. So there's a Donald James. And what, and where are those ones. There's a Donald James, Main Road, Mount Carmel, and then there's another individual. And where is it again, you ask. And you get a date of birth. And what was the other one you mentioned before – Donald born in '56 and he's in Mount Carmel; '56 and you get his date of birth '56. And then he tells you 08 23. So that'd be August of 23, I would take it.

MR. KENNEDY: Just one question, Commissioner. Do you have the un-redacted version?

THE COMMISSIONER: Do I have the un-redacted version of the document?

MR. KENNEDY: Yeah.

THE COMMISSIONER: I don't have it here in front of me there now but I have access to it.

MR. KENNEDY: Okay, because there are a number of Donald Dunphys referred to in this.

THE COMMISSIONER: Right.

MR. KENNEDY: Yeah, I just wanted –

THE COMMISSIONER: I think there were four or five, weren't there?

MR. KENNEDY: Yes.

MS. CHAYTOR: That's right.

THE COMMISSIONER: All right.

MR. KENNEDY: I just want that to be clear.

MS. CHAYTOR: That's right, yeah. So there are a number of Donald Dunphys?

CST. SMYTH: Yes, that's correct.

MS. CHAYTOR: Yes. We've redacted their names, okay.

And then at the end of this Constable Smyth, were you clear as to which Donald Dunphy that you were looking for?

CST. SMYTH: Not at the end of that exchange.

MS. CHAYTOR: Okay. And this is – again, it's on April 4.

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay.

Did you do an ICAN search on Mr. Dunphy?

CST. SMYTH: I thought I did. I realized that there doesn't appear to be any record of that, but I would have thought I did and that would have been my normal course of practice.

MS. CHAYTOR: Okay.

CST. SMYTH: Although, I may have been waiting to confirm his date of birth.

MS. CHAYTOR: Okay. And perhaps you can explain to the Commissioner, when I say an ICAN search, and to the rest listening, but what's an ICAN search. What is it that you're looking for and what are you doing?

CST. SMYTH: So that would be a search of the internal RNC database and that would capture pretty much any interaction an individual would have with the police.

MS. CHAYTOR: Okay. All right. And so – and your purpose in doing that is to determine, I take it, whether or not, for example, he has a criminal record. Would that show on an ICAN search?

CST. SMYTH: Well, it could show elements of that, but I didn't need that particular search to identify a criminal record but it would show any interaction, whether it be for mental health reasons, car accidents, complaints of – he could be the complainant; he would be the victim. It would show any interaction at all where his name was recorded within RNC jurisdiction.

MS. CHAYTOR: Okay. And do you recall, did you check anyone else's name in ICAN as part of your investigation with respect to Mr. Dunphy?

CST. SMYTH: I know I had been trying to attempt to get both contact information for persons with WorkplaceNL and also VOCM.

MS. CHAYTOR: Okay. And if we could bring up then please, P-0138.

This is a document that we've been provided, which I understand – page 10 of this document, just make this a bit better please, Madam Clerk?

Okay. And from what I understand, this says an RMS Query. Can you tell what, tell us what an RMS Query is?

CST. SMYTH: RMS would be the ICAN system.

MS. CHAYTOR: Okay. Regiment Number, your Regiment Number and this is you, and this is log dates between April 1 and April 7, what you would have done. And we see a number on April 4 in the names of, mostly looks like Paddy Daly and then we come down and Ralph Tucker is there. So what was your purpose again in querying those names?

CST. SMYTH: I'm still trying to pin down exactly which Don Dunphy that I'm looking to speak to, so WorkplaceNL would hopefully be able to say the Don Dunphy that has a particular grievance with our organization, lives in Mount Carmel, that would hopefully eliminate, efficiently anyway, the other names that I had.

If I was unsuccessful in speaking to somebody at WorkplaceNL, someone like Paddy Daly may be able to give me the same information. If he was indeed a regular caller, Paddy Daly might be able to anecdotally say, yeah, I believe he's from the Salmonier area, or Mitchells Brook, or somewhere in that region that would also assist me in eliminating the other Don Dunphys that I had confirmed live in the province.

MS. CHAYTOR: Did you glean any information from these queries about Mr. Dunphy?

CST. SMYTH: No.

MS. CHAYTOR: Okay. So there was no, none of these are any records of complaints by Paddy Daly or Ralph Tucker with respect to Mr. Dunphy?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And I see that your communications – or sorry, your searching in the name of Ralph Tucker happens around 2:30 on the 4th? So I take it at that point in time you hadn't received contact information from him, from anyone else.

CST. SMYTH: No, I had received his name, which is why I had then taken it upon myself to try to see if I could get his contact information while, I think it was Heather Maclean was also making efforts to get his contact information.

MS. CHAYTOR: And you're not sure if the name is provided to you by Ms. Ivey or Ms. MacLean.

CST. SMYTH: Right. I think it was Ms. MacLean.

MS. CHAYTOR: Okay. And were you able to get Mr. Tucker's contact information through the search you did on ICAN?

CST. SMYTH: I believe I did have contact information there, but I also believe I received an email from him before I needed to actually speak to him personally. I don't believe I ever had a telephone conversation with Mr. Tucker.

MS. CHAYTOR: So you received an email from Mr. Tucker before you sent him an email?

CST. SMYTH: I believe so. Or I may have been given the email address from Heather MacLean and sent him an email; I can't recall exactly how that was initiated –

MS. CHAYTOR: Okay, 'cause I think the reference we have suggests that you initiated the contact to Mr. Tucker through an email –

CST. SMYTH: Okay, then Ms. MacLean must have given me the email address and then I followed up with him.

MS. CHAYTOR: And it could be that there is an email out there where he emailed you first, but my recollection is, and we'll see, that I think you start an email to him, okay. But obviously, you've had some communication with someone at that point in time to get email information.

CST. SMYTH: That is correct.

MS. CHAYTOR: Okay.

Did you know Mr. Tucker before, before this – had you had any prior communications with Mr. Tucker?

CST. SMYTH: No, not that I can recall; I don't believe I know the man.

MS. CHAYTOR: Okay. And did you also speak to him on the phone regarding this matter?

CST. SMYTH: I don't recall having a conversation with him on the phone. If I did, it would have been just along the lines of here's my email address, send me an email as to what it is you're looking for and he'll forward it to the appropriate person. That may have happened. But other than that I, I didn't get any information from him.

MS. CHAYTOR: Okay. And if we could bring up, please, P-0185. Okay, and this is the communication we have and it happens at 2:46 p.m. on that day to Mr. Tucker from yourself.

You say: Sorry to bother you on a long weekend; however, I'm looking to speak to Mr. Don Dunphy as soon as possible and I suspect your office may be able to assist me in confirming who he is. Mr. Dunphy has made some disconcerting comments via social media directed towards elected officials. Dunphy is apparently an injured worker, which is the source of his grievance towards government. And it's likely he was in regular contact with workers – work health, safety commission at that time and I'm hoping someone in your department could provide contact information. And you indicate there are multiple Don Dunphys throughout the province.

So you're trying to figure out at this point in time, which Don Dunphy –

CST. SMYTH: Correct.

MS. CHAYTOR: – and get contact information for him.

THE COMMISSIONER: Just – I'm not sure I follow. And I know I've read it before, but I forget. How did you get the names of the four or five Donald Dunphys that you were trying to – you were trying to identify the right one? Where did the names come from?

CST. SMYTH: That was through our Communications Centre. So RNC Communications Centre –

THE COMMISSIONER: Right.

CST. SMYTH: – who have access to the Motor Registration Division. So I would request that they do a query. They can do a broader-based query such as they can just –

THE COMMISSIONER: So was that for the whole province that you queried?

CST. SMYTH: The entire province.

THE COMMISSIONER: Hmm?

CST. SMYTH: Yes, for the entire province.

THE COMMISSIONER: For the entire province. And they came up with four or five Donald Dunphys in Newfoundland and Labrador who had a motor vehicle.

CST. SMYTH: Correct. Or have had – that would be inclusive of anybody who has a government-issued ID. It could be an expired licence.

THE COMMISSIONER: Right.

CST. SMYTH: They would, they would all be contained there as well.

THE COMMISSIONER: Yeah.

CST. SMYTH: But anybody that's, at any point in time, had a government-issued ID.

THE COMMISSIONER: But where you'd get the information about Mitchells Brook or Mount Carmel?

CST. SMYTH: That had actually come from them. So –

THE COMMISSIONER: From, from Motor Vehicle Registration you had a list, one of which was Donald Dunphy from Mount Carmel, was it?

CST. SMYTH: Correct.

THE COMMISSIONER: As opposed to Mitchells Brook. Okay.

CST. SMYTH: That's correct.

THE COMMISSIONER: And then you, you wanted to zero in on the correct Donald Dunphy so you called Workers' Comp – workers, WorkplaceNL –

CST. SMYTH: Correct.

THE COMMISSIONER: Contacted Mr. Tucker. I said called, you communicated. And he was able to indicate that there was a Donald Dunphy from Mount Carmel or Mitchells Brook, I forget which.

CST. SMYTH: Correct.

THE COMMISSIONER: Is that right? Yeah.

MS. CHAYTOR: Mount Carmel, I think.

THE COMMISSIONER: Sorry?

MS. CHAYTOR: Mount Carmel.

THE COMMISSIONER: Mount Carmel.

MS. CHAYTOR: Workers' Comp information we have is Mount Carmel.

THE COMMISSIONER: And I take it that Mitchells Brook is a suburb of Mount Carmel, is it? I have to confess, I was never able to figure out where one community stopped and the other began. Okay, I'm following it now.

MS. CHAYTOR: Okay. So your purpose in – and I guess we should also clarify then, Constable Smyth, arising from the Commissioner's questions: How is that you arrived at the name Don Dunphy? We looked at his Twitter account and it talks about Donahue. How and when did you conclude that it was Don Dunphy that you're looking for?

CST. SMYTH: It's indicated in his social media feed that he's Donald Don Donahue Dunphy. So I derived from that he is likely a Don Dunphy of some sort. And when I had – you may note there in the conversation that I had with Owen Todhunter that I didn't necessarily know at that time what his full name was. That he may be Donald, he may be Donahue or he may be just Don on MRD, if he was even on MRD.

MS. CHAYTOR: Okay.

So at the point in time you're speaking to your Communications Centre and I believe that's close we saw to 2 p.m. on the 4th, at that point in time you are still trying to figure out even his name. And by the end of that conversation, you have at least a couple of contacts of Don Dunphy, but you haven't narrowed it down to Donald Dunphy in Mt. Carmel.

CST. SMYTH: Correct. I was able to narrow it down pretty closely just based on date of birth –

MS. CHAYTOR: Right, okay.

CST. SMYTH: – but I hadn't arrived specifically or definitively, no.

MS. CHAYTOR: Okay. So and then your intent in contacting Workers' Comp is to get contact information for the person who you know to have a grievance with Workers' Comp.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay.

THE COMMISSIONER: It might be an appropriate place to mention what seem to be a bit of confusion. I saw the reporting of when Mr. Tucker was on the stand and he indicated he given –

MS. CHAYTOR: Mr. Mahoney.

THE COMMISSIONER: Mr. Mahoney, and had given the contact information, which I believe was only the address, the community name and phone number – was it?

CST. SMYTH: Well, I had, in actuality, had that information.

THE COMMISSIONER: Sorry?

CST. SMYTH: I did have that information.

THE COMMISSIONER: You had it; you just, you didn't know which one was –

CST. SMYTH: Confirmed who it was.

THE COMMISSIONER: Right.

I just want to mention there for public information that there is that section in the ATTIPA act – section 39, is it? Anyhow, it refers to, authorizes the release of information, which is likely to result in a law enforcement proceeding, I think it is. In that statute, law enforcement proceeding is defined and while I don't think too much turns on it, I think before there is too much criticism brought down on Mr. Mahoney's head, it's worth pointing out that Mr. Mahoney interpreted that section as – in terms of a law enforcement proceeding – as including, I think, criminal intelligence activity where the police was seeking to obtain information that might lead to a charge, or might not lead to a charge. And that may, in some case, have to be finally adjudicated as to what the exact meaning is. But for now, I think Mr. Mahoney stated that he interpreted the act in a certain way and complied with the act in his opinion. And you had communicated to Mr. Mahoney that you were in the process of an investigation, I believe, Constable Smyth.

CST. SMYTH: Yes, I did.

THE COMMISSIONER: Yeah.

MS. CHAYTOR: Thank you, Commissioner.

Okay. Before I leave this exhibit, P-0185, I notice that you're apologizing to Mr. Tucker for bothering him on a long weekend. Was there a sense of urgency around this matter, Constable Smyth?

CST. SMYTH: I'm sorry, what's the connection between the apologies?

MS. CHAYTOR: I'm just – you're apologizing for interrupting him or bothering him, you say, on a long weekend. And I'm just wondering, was there a sense of urgency around this matter such that you – as you say here, you bothered him on a long weekend.

CST. SMYTH: Right. I think that's just a sentiment of being polite. I realize not everybody works like we do on a long weekend and I was just trying to be polite.

MS. CHAYTOR: Okay. So my question then is, was there a sense of urgency around this matter?

CST. SMYTH: I don't think urgency would be the proper categorization. Something that's urgent for me in policing would mean that I don't get to go home, it needs to be completed immediately, it's worked on until it's finished. In this case, I would consider it as soon as practical, that as long as I'm working, available and it's reasonable, then I would carry out my duties.

MS. CHAYTOR: Okay. And you had indicated to the people in the Premier's office that you would follow up on it ASAP.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And you were here and heard Mr. Mahoney give his evidence. And he said that he gathered there was a sense of urgency and he was basically waiting by his phone. You were here when you heard him say that?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. But from your perspective, did you see this as an urgent matter that needed to be followed up on right away?

CST. SMYTH: It did need to be followed up on, sure.

MS. CHAYTOR: But right away?

CST. SMYTH: As soon as practical, as I've said. I think what can happen sometimes, when people hear from the police they inherently perceive there to be a sense of urgency, when I think I would probably define those things a little bit differently. There's still an onus on me to follow up as soon as practicable. That may be perceived by others as being urgent because they're hearing from us on a long weekend or a holiday.

THE COMMISSIONER: I think, if I recall Mr. Mahoney, he testified that he placed particular urgency on it because a request had come from the chairman.

MS. CHAYTOR: Yes.

THE COMMISSIONER: And as a director receiving a request from the chairman, he considered it of particular urgency to obtain the information.

MS. CHAYTOR: Yes.

THE COMMISSIONER: So I didn't understand that he got any sense of urgency from Constable Smyth, but I may be wrong.

MS. CHAYTOR: Okay. Fair enough, yes.

Yes, it was the chair contacted him and –

MS. SIMMONDS: Mr. Commissioner, the record will reflect this, but I –

THE COMMISSIONER: Sorry?

MR. SIMMONDS: I don't have the actual notes of everything Mr. Mahoney said but I clearly understood him to say he took it was urgent or time sensitive from Officer Smyth.

THE COMMISSIONER: Well, I don't recall that. I'll check the record, but I do definitely recall his saying that when he gets a call –

MR. SIMMONDS: I cannot recall the exact words he used, but it was –

THE COMMISSIONER: Yeah, let me finish.

MR. SIMMONDS: – that it was from Officer Smyth and it was time sensitive. It had to be dealt with right away.

THE COMMISSIONER: Yeah, let me finish. I don't recall hearing that. I'll check and see, but I do recall him saying that when he got a call from the chairman he perked up and said, well, I better attend to this.

Okay, go ahead.

MS. CHAYTOR: Yes and my recollection on it was a combination, I think, of both. But again –

THE COMMISSIONER: We can check.

MS. CHAYTOR: – we can certainly check the record. Okay.

If we could, please, bring up P-0089. Okay. And this is an exhibit that we referred to with Mr. Mahoney and it's the information that he obtained from Craig Noseworthy regarding the contact for Mr. Dunphy. And he says that his evidence was basically that this is what he would have relayed to you and he got the sense that you already had some information regarding Mr. Dunphy at the time that he's relaying this information to you. And I just wanted to ask you about that.

At the time you spoke to Mr. Mahoney, had you already gathered some information on Mr. Dunphy in terms of contact information?

CST. SMYTH: I had his address. I don't believe I had phone numbers at that stage.

MS. CHAYTOR: Okay. And where did you get his address?

CST. SMYTH: That would have been through the Motor Registration Division.

MS. CHAYTOR: Okay. So he was one of the Don Dunphys that you had an address for in Mount Carmel.

CST. SMYTH: Yes, that's correct.

MS. CHAYTOR: Okay. And so the information that we have here from Mr. Mahoney is a P.O. Box in Mount Carmel and then there are two phone numbers. Is this all of the information that you obtained from Workers' Compensation?

CST. SMYTH: I believe it is. Well, well he gave me some insight, Mr. Mahoney did, into interactions that he had – WorkplaceNL had had with Mr. Dunphy. But in terms of specific contact information, that's as much as I got.

MS. CHAYTOR: Okay and I will follow up with you on that point. So in terms of contact information, though, this is all you would have received from Workers' Compensation.

CST. SMYTH: Yes.

MS. CHAYTOR: So no mention of a street number, no mention of Mitchells Brook?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And there's two telephone numbers there, but I believe ultimately, Constable Smyth, we'll see that you had a third phone number as well for Mr. Dunphy. Is that correct?

CST. SMYTH: Yes.

MS. CHAYTOR: So are you able to tell the Commissioner where you got the information of Mitchells Brook and the third telephone number.

CST. SMYTH: I believe that came from the RCMP.

MS. CHAYTOR: Okay. And you do have conversations later the next day from, with a Constable Cox I understand. Is that correct?

CST. SMYTH: That's correct.

MS. CHAYTOR: So would that have been your source, you think, of that information?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

Okay, so tell us then about what Mr. Mahoney told you regarding Workers' Compensation dealings with Mr. Dunphy and whether or not they had ever received any threats in the lengthy time that they had been dealing with him?

CST. SMYTH: He never indicated to me that he had received any specific threats. He did give me some indication that there had been some long-standing issues and dealings with Mr. Dunphy and his staff. And they had had previous concerns for him and his behavior and some of his commentary, but it didn't get too much beyond that.

MS. CHAYTOR: Okay. And in dealing or in your discussions with him and his – and also, not just your discussion with Mr. Mahoney because you also did some of your own research on Mr. Dunphy's Twitter account and determined that he did have this long-standing grievance with Workers' Compensation. Did that have any impact on the assessment that you were carrying out and, if so, how?

CST. SMYTH: It did. And I guess back to some of what I talked about yesterday, that long-standing unresolved grievance lends to a person's perceived sense of injustice being done by a particular person or a group and what actions they have taken or could potentially take as a result of that.

Mr. Mahoney had given some indication that Mr. Dunphy had targeted specific staff for his comments and that that had given rise to concern. That type of behaviour can be taken into consideration as a person potentially moves into a pathway of violence. We deal with some ideation issues but, again, it would be very early on in that type of threat assessment, and within and of itself, within a silo, it can mean nothing as well.

MS. CHAYTOR: So did any of the information that Mr. Mahoney told you, any of that information affect your decision as to whether or not you felt it necessary to visit Mr. Dunphy?

CST. SMYTH: I think it added to it. It firmed up what I had already learned from his social media feeds and commentary.

MS. CHAYTOR: Okay. In terms of the review of Mr. Dunphy's Twitter account, then, how far back did you go with that?

CST. SMYTH: I think it was in around a year. I know there was a lot of tweets and a lot of information that was on there. But I think I got back to him around a year, if I recall.

MS. CHAYTOR: Okay. And so you had read enough to get a general idea as to what the source of his grievance was?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And it's apparent, of course, that he seems to be quite unhappy with his perceived treatment by Workers' Compensation, and frustrated that he seemed to be getting nowhere with government officials that he had approached for assistance. Is that –

CST. SMYTH: Yes.

MS. CHAYTOR: – is that there? Yeah, okay. All right.

And did you have any concerns based on what you read for your own risk assessment in going to see him? You're in the role of – you're an officer assigned to the protective service unit to protect government officials. Did you have any concern, and did that factor into the risk assessment for your own safety?

CST. SMYTH: At that stage, I hadn't identified any specific concerns for myself, to act out violently. And I should, you know, make very clear that in reviewing the information I had at that stage, I didn't have any specific concerns that Mr. Dunphy was clearly on a pathway to violence.

THE COMMISSIONER: On a path to what?

CST. SMYTH: On a pathway to commit an act of violence. It would be way too early for me to make any type of definitive determination on that.

MS. CHAYTOR: Okay.

And we'll hear evidence that when you did speak with Constable Cox, the RCMP officer, did he offer to go with you?

CST. SMYTH: Yes, he did.

MS. CHAYTOR: Okay, and you turned that offer down?

CST. SMYTH: That's correct.

MS. CHAYTOR: And why?

CST. SMYTH: Primarily, I felt, based on what I had been read on Mr. Dunphy that having a uniformed officer presence, coupled with an additional officer may not lend to my efforts to try to build a rapport, get him at ease, and to speak to me openly and frankly.

MS. CHAYTOR: Okay. And what is it about a uniformed officer that might cause him to not be at ease with you? What is it about the uniformed officer?

CST. SMYTH: I think the uniform is a more symbol of authority, pending arrest, that kind of thing.

MS. CHAYTOR: Okay.

If we could bring up, please, P-0195. It needs to be a little larger, please. Okay.

This is an email that you sent to Jason Sheppard, and perhaps that might be the first time we've identified Jason Sheppard; you could tell the Commissioner who Jason Sheppard is, please.

CST. SMYTH: Jason Sheppard is the superintendent in charge of the Criminal Investigation Division of the Royal Newfoundland Constabulary.

MS. CHAYTOR: Okay.

And this is a week or so after the incident, April 13, 2015. And you have some concerns that you are looking to raise in terms of communications, I understand, Constable Smyth, is the purpose that you're writing this, in terms of communications about the event.

CST. SMYTH: Yes.

MS. CHAYTOR: Yes. And so you've drafted something that you're contemplating sending to the chief and you're bouncing it off Jason Sheppard first. Is that fair?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

And one of the things is point 2: "Why did the officer attend the residence alone?" And I take it at this point in time this is the source of some discussion in the public around that issue, isn't it?

CST. SMYTH: That's correct.

MS. CHAYTOR: Yes, okay.

And: "Again, a simple and reasonable question from our community. The broad answer is of course easy within itself – the Police go to dangerous situations all the time alone. However, in this case, we have even more reasoning. For me, I do not want to bring a Uniform – the ultimate symbol of government and authority – to the home of a man that is clearly disenfranchised with both; since my goal is to develop a rapport with him to complete a thorough risk assessment. I also had the luxury of doing a cursory risk assessment on him; the fact that it was wrong is irrelevant. The fact of the matter is, police respond to unknown situations every day, and they are often alone. Hence, why we complete exhaustive training."

So, Constable Smyth, I have a couple of questions for you on that.

THE COMMISSIONER: Right. Could I see the top of that again, please? That's good. Thank you.

Okay, thank you.

MS. CHAYTOR: Okay.

And it seems that you had turned your mind to the fact that Mr. Dunphy would see a uniform presence as a symbol of government and authority. Did you not consider that he might see you in that light, that you are, in fact, a symbol of government and authority?

CST. SMYTH: Sure.

MS. CHAYTOR: Okay.

And nonetheless you decided to go visit him alone.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. Do you –

CST. SMYTH: But that was (inaudible) the reason for not taking the uniform, as I even articulate here, wasn't because it was a heightened concern for safety for myself. It is because I felt it might have an impact on my efforts to have him speak freely to me. Maybe a second officer in uniform by my side at his door carries a different perception and he might be inclined to say, look at that and view there's something more going on here than you just wanting to speak to me. Why would you take a uniformed officer with you if you just wanted to have a cordial conversation?

Which I think is a legitimate question. And that might turn into: no, you're not coming, call my lawyer, doors close and I get nowhere.

MS. CHAYTOR: Okay. But you're going there in your role, again, as an officer assigned to the Protective Service Unit for government officials, you're going there to speak to him about what he has said about government officials. How did you reasonably expect that might be received by Mr. Dunphy?

CST. SMYTH: He may very well not like it.

MS. CHAYTOR: And if we could bring up, please, P-0218. And I guess my other question around that, Constable Smyth, is why is it, why is his long-standing – and for you to explain this, please – why his long-standing grievance at this point in time is an issue that the police should discuss with him as opposed to another government official who might be able to address his concerns.

CST. SMYTH: Well, another government official, arguably, probably should speak to him about that from a different viewpoint. My viewpoint is to determine if that long-standing grievance has gone unresolved and what his expectations are of it. And if his expectations are not going to be met, then what are his intentions from there? Does that potentially lead into him acting out violently?

MS. CHAYTOR: Okay. So your concern from a security point of view is that you have an individual who appears to have had this grievance for a long time, it doesn't appear that there has been any resolution to it, and you're looking at it from the lines of a police officer who's tasked with the protection of government officials as to whether or not this will now escalate into something that would be a risk to their security. Is that a fair summary?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. Then page 100; yes, thank you. And this is back to – I don't know if I have the right page again.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Right, I mean page 100 in my document.

This is your – we looked at this yesterday. This is your course material from the Managing Targeted Violence course that you did.

Okay, and here on – it's actually page 100 of the material but it's 103, and it talks about Subject Interviews. And one of the disadvantages of doing a – one of the advantages, I guess, we could start with is that you will get information directly from the subject, which was part of what you were intending to do.

CST. SMYTH: Yes.

MS. CHAYTOR: You would have an opportunity to discuss and stop problem behaviours. Had you determined if there were problem behaviours with Mr. Dunphy? Was his use of Twitter, was that a problem behaviour?

CST. SMYTH: No, I wouldn't consider his use of Twitter a problem.

MS. CHAYTOR: Okay. All right. Was there any other problem behaviour that –

CST. SMYTH: The inappropriate communications, I think, would be problematic.

MS. CHAYTOR: Inappropriate communications.

CST. SMYTH: Uh-huh.

MS. CHAYTOR: And allows for direct confrontation with the subject. So those are identified as advantages.

Disadvantages are – excuse me – physical danger high, may anger the subject, potential for complaints and gives subject threat manager’s contact information. So one of the disadvantages that’s identified is that, I take it your physical safety could be compromised.

CST. SMYTH: Yes.

MS. CHAYTOR: And that Mr. Dunphy could be angered.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And based on what you had read about him and his long-standing posts and grievances directed towards government officials, in terms of taking all of that into consideration for your own safety, your risk assessment that you did for your own safety, I take it you’re doing a risk assessment for your own safety before you ever go there and knock on his door.

CST. SMYTH: That’s correct.

MS. CHAYTOR: Okay. It wasn’t such that you thought you were going to be in any danger.

CST. SMYTH: No.

Mr. Commissioner, it’s important to put this piece of that training into context. A disadvantage of physical danger being high by conducting a subject interview is compared to not conducting a subject interview inasmuch that physical danger of not being physically close to somebody is inherently low. They cannot cause you danger physically if you’re not in contact with them. If you are in contact with them, then by virtue of that contact it is naturally higher than if you are not. That is what that refers to.

And it’s also important to bear in mind that this training is for other – people other than law enforcement. It’s for persons in workplaces that carry out threat assessments within that workplace; persons, for example, such as Tom Mahoney, that if – that have to take these kinds of things into a different level of consideration than police who they would probably generally rely on to carry out that type of home visit if there’s any consideration of violence because we have the tools and the training to mitigate that type of situation.

MS. CHAYTOR: Okay. So this course that you did wasn’t specifically geared towards police officers?

CST. SMYTH: No, it wasn’t.

MS. CHAYTOR: Okay. What about the bullet: May anger the subject.

CST. SMYTH: Pardon me?

MS. CHAYTOR: May anger the subject. Did you –

CST. SMYTH: Say bullet may anger a subject?

MS. CHAYTOR: I’m sorry; it’s the second bullet on the slide.

CST. SMYTH: Well, sure –

MS. CHAYTOR: I didn't mean bullet, bullet –

CST. SMYTH: Okay.

MS. CHAYTOR: – but second bullet on the slide. So the second point, let's use that word, May anger Subject.

CST. SMYTH: Well, your mere presence may indeed anger the subject. If you address or confront a person who has that grievance that you've determined to be a potential threat to an entity or a person, the fact that you're confronting them on it will probably, likely, have a possibility of angering them.

MS. CHAYTOR: Okay. And in the context of what you had gleaned about Mr. Dunphy before you went to see him, did you form the opinion that your presence attending to ask him about his Twitter account and comments made by government officials that that's likely going to anger him?

CST. SMYTH: I think it would be irresponsible for me to go as far as to say likely. I would consider that to be a possibility anytime we go confront or speak to an individual about a complaint against them.

MS. CHAYTOR: Yes, but what about an individual who has posted, as you've said, about his grievance, his long-standing grievance towards Workers' Compensation and government officials. You read over a year's worth of his tweets. An individual like that is more likely, I would take it, to be angered by someone coming then to speak to him about those tweets.

CST. SMYTH: Sure, absolutely.

MS. CHAYTOR: Okay. And so did that factor into your assessment in terms of your own safety?

CST. SMYTH: No. Maybe to the end that I should be on a little bit of a higher alert myself, but not so much that I should take additional resources. To me dealing with angry, agitated people is a very regular occurrence for police officers.

MS. CHAYTOR: Okay. If we could look at then, P-0114, and these are some of the tweets. If you reviewed a year you would have seen those tweets. P-0114 are messages from March 3, 2015, from Mr. Dunphy.

Okay. So we didn't have to go back a year. This is only the month before where Mr. Dunphy is posting, "Now they murder us especially in Newfoundland, Canada."

"Every working person in Newfoundland should carry a gun so they can shoot themselves if seriously hurt on the job."

And this one here, he's saying, "its better to shoot yourself if seriously hurt on a job in Newfoundland Canada, cause Whscc in NL will make u suffer more."

Do you recall, did you see these in your review of his account, Constable Smyth?

CST. SMYTH: I believe I did, yes.

MS. CHAYTOR: Okay. And would those, did those cause you any concern that perhaps Mr. Dunphy might have a gun?

CST. SMYTH: No.

MS. CHAYTOR: Okay. Did these type –

CST. SMYTH: His reference, they should have a gun. I took that more of a continuation of his, I don't know if rhetoric is the right word but the, you know, the constant voicing his concerns, trying to make his point. It lent more to ideation versus an actual statement that I have a gun. If I had a picture of him with a gun or, that would give me a heightened level of concern but –

MS. CHAYTOR: Okay. So this didn't factor into your personal risk assessment in going to see him?

CST. SMYTH: Not at that time, no.

MS. CHAYTOR: Okay.

In terms of interpreting Mr. Dunphy's message, the – and in particular the message of April 3, 2015, or that you received on April 3, 2015. Did you, did you do that on your own? Did you consult with anyone, anyone else as to what do you think this might mean?

CST. SMYTH: No, I didn't consult with anybody, no.

MS. CHAYTOR: Okay. And Ms. Ivey only sent you the one tweet. Did you review the context of that tweet in terms of his other messages in the chain?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And you've been present, I think, when we've gone through that with other witnesses and asked them to review the messages, in what we understand would be the order that Mr. Dunphy would have posted them.

How did you go about doing that when you looked at his messages? Did you put them in any particular order? How did you read his chain of messages?

CST. SMYTH: I would have read them in all directions.

MS. CHAYTOR: Okay. And what did you understand Mr. Dunphy to be saying in his chain of messages?

CST. SMYTH: I wasn't completely sure. I certainly took the statements about dead MHAs as being a reference to previous members of the House of Assembly who had died.

MS. CHAYTOR: Okay. Did you, so you didn't see that piece as being, you know, that he's going to cause harm to any MHAs. What about the piece where he says about may have family members, or will not name names, "might have family members I may hurt." Was there something in that that caused you concern?

CST. SMYTH: I think initially when you read that by itself it gives a heightened cause for concern, yes.

MS. CHAYTOR: Okay. And what about when you put it in context and read the entire chain, did that cause you any concern?

CST. SMYTH: It lessens it a bit more for sure. It takes away from – it shows a little more about the intentionality of it.

MS. CHAYTOR: And explain that. What do you mean?

CST. SMYTH: Well, if you have that statement by itself, it could be inferred that there are families that he may hurt, that he has the intention I may hurt those people. When you try to put it into broader context, he is clearly referring to perhaps feelings of those families that he may hurt.

MS. CHAYTOR: The feelings, okay.

CST. SMYTH: Yes.

MS. CHAYTOR: And is that how you interpreted it when you read it that day?

CST. SMYTH: That's how I felt it was very likely intended, yes.

MS. CHAYTOR: Okay.

CST. SMYTH: But bear in mind, you know, there's a heightened expectation on us in that role to not necessarily rely on our own interpretation. Even though that's likely what I believed, I still need to give and want to give the opportunity for the author to offer and provide their interpretation of it. What are their intentions? Which is more to even just what's in the actual words, what is your intention of sending that tweet?

Because when you tag certain users, or mention certain users in Twitter's case, then we take that as a particular effort to ensure that that person is now privy to what it is you're saying. So what is your intention of doing that? Is it simply to make a point that you have concerns that you would like this person to address, or is it more deeply rooted in wanting to harass, cause fear or to insight certain reactions from that person. Not necessarily what's exactly in the words.

MS. CHAYTOR: Okay. And when you say tag at that time, he's – it was the Premier's public account, @PremierOfNL account, and I think it was Sandy Collins. Is that the individuals?

CST. SMYTH: Yes, I believe it was.

MS. CHAYTOR: Okay. And he's replying, I understand, to a post that Sandy Collins had made.

CST. SMYTH: Right.

MS. CHAYTOR: And that's, I take it, why those people would be included in what he's saying?

CST. SMYTH: Right.

MS. CHAYTOR: And that was your understanding?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

CST. SMYTH: By leaving them in there, that intention remains. He can easily delete those persons from that reply, or one person, and replace them with others if he wants, or include others. So he has full autonomy to control that, regardless of whether he's replying or generating a new tweet.

MS. CHAYTOR: Okay. So in terms of what you mean by tagging them – so in that sense are you suggesting that the comments –

CST. SMYTH: Mention, I think, is the proper word for twitter tag would be another platform, but mention –

MS. CHAYTOR: I'm sorry.

CST. SMYTH: Mention, I think, is the proper word for that platform.

MS. CHAYTOR: Mention, yes, okay. All right.

And so when he does that you're taking from that that he clearly intends for the premier and for Sandy Collins to see what he's saying.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And in that sense, it's directed at them; is that what you're saying?

CST. SMYTH: Right. It would kind of be the real-life equivalent of shooting out in their direction: Hey, Premier, and whatever else you say.

MS. CHAYTOR: Okay.

And Constable Smyth, I want to allow you an opportunity then to explain that – and this is how I'm hearing what you're telling me, is that you're going to – in your role and your mandate to protect the premier and government officials, you're going to err on the side of caution. Is that fair?

CST. SMYTH: Yes, always.

And by err on the side of caution, are you referring to that we need to take a more responsible role in interpretation in that it's not necessarily up to me – if Mr. Dunphy wasn't willing to provide me with any interpretation, I would simply include that I had made the effort to provide Mr. Dunphy the opportunity to interpret and tell me what his intentions were; he refused to do so. However, based on the exact words that are being used, then I would provide my own interpretation based on, perhaps, just common sense and understanding of the English language.

MS. CHAYTOR: Right.

Yes, so what I meant by that is that even though you interpreted that it's likely this is what he meant – don't want to hurt the families' feelings by naming names. Even though you interpret that is likely what he meant, you weren't prepared to just sit on that and monitor for anything else. You felt it necessary to go visit him because you're erring on the side of what if I'm wrong.

CST. SMYTH: Plus the significant amount of other information contained within his social media feed. If he had a social media feed that consisted of no other tweets directed at government, no other tweets that suggested a long-standing unresolved grievance, and there were no tweets that referenced a government agency being responsible for his wife's death, that there were no tweets that referenced he might be at the end of his rope, that there might be a lack of inhibitors in his life, then that tweet alone, within a silo, and depending on what his other background information may not yield a personal visit.

MS. CHAYTOR: Okay. Did you –

THE COMMISSIONER: It's 11 o'clock or just about, so we'd normally take a break there if – is that a good time?

MS. CHAYTOR: Yes, that's fine.

Thank you, Commissioner.

THE COMMISSIONER: Okay.

Thank you.

We'll recess for 15 minutes.

MS. SHEEHAN: All rise.

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

THE COMMISSIONER: Thank you.

Go ahead when you're ready, Ms. Chaytor.

MS. CHAYTOR: Thank you, Commissioner.

Constable Smyth, when we broke I was asking you about your interpretation of the tweet and that that was sent to you by Ms. Ivey. And your – and the chain of tweets that you then read and you took upon yourself to get – put those tweets in context, I take it.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

All right, did you interpret what Mr. Dunphy was saying as a threat?

CST. SMYTH: No.

MS. CHAYTOR: Okay.

At any point in time do you recall telling anyone that you were investigating threats?

CST. SMYTH: That is probably language I would use as a means of simplifying what it is we're doing, but I don't recall telling people specifically. I was generally careful not to confuse the situation, but also not to over complicate it.

MS. CHAYTOR: Okay. And so – and I won't necessarily take you to it, but, unless, again, at any point in time if you wish to be taken to anything, let me know and we can certainly do that.

But we had put into evidence, and for the record it was P-0081. And at page 24 of Mr. Mahoney's statement to the RCMP, he said: They became aware of – and he's referring to, I think, the Premier's office. They became aware of a tweet that threatened, generally, some government officials and their families. He didn't tell me what the tweet was – and the he in this situation, we understand, is yourself. He was –

THE COMMISSIONER: Sorry, who's saying that? Mr. –

MS. CHAYTOR: This is Mr. Mahoney –

THE COMMISSIONER: Oh, okay.

MS. CHAYTOR: – and what he told the police in his statement.

THE COMMISSIONER: All right.

MS. CHAYTOR: He didn't tell me what the tweet was; he just sort of described it in a very general way. So I'm – I was not aware of the nature of the threat, but he say he was investigating a threat that was made.

Do you recall saying that to Mr. Mahoney?

CST. SMYTH: I don't recall saying those words to him. A person in his position is somebody that I would generally be a little bit more direct on his understanding of the threat-assessment process. And I would be more inclined to say I'm following up on comments or I might go as far to say I am conducting a threat assessment.

MS. CHAYTOR: Okay. So – so you would have –

CST. SMYTH: People – oh sorry, go ahead.

MS. CHAYTOR: No, no, sorry, you go ahead. I cut you off.

CST. SMYTH: I just – it's often misconstrued when people hear the police are following up on comments and looking into comments. I often have heard that automatically be confused as being we're investigating threats because people don't have a thorough understanding of what is a very in-depth threat-assessment process. People – there's more of a familiarity with the traditional you make a threat and the police respond accordingly and follow up on it.

So if I say, as a police officer, I'm following up on comments or I'm investigating comments, there does tend to be that tendency to think that we are following up on threats.

MS. CHAYTOR: Okay, and so that might be a misunderstanding from someone who is not a police officer?

CST. SMYTH: It could be, but, as I noted, I would admittedly use that language on occasion.

MS. CHAYTOR: Okay, because several RCMP officers that you communicated with on April 5th both before – some before, Constable Cox certainly before you visited Mr. Dunphy – and after the shooting, they understood as well that you were investigating a threat and they recorded that in their notes. So I just wanted to bring that to your attention, that, you know, police officers seemed to have interpreted what you were doing as investigating a threat as well. And I can bring up the statements, if you wish, but I can refer you to P-0175, and this is Constable Adrian Cox who – that's the officer at the RCMP Holyrood detachment that you spoke to before you went to see Mr. Dunphy, and you obtained some information from him, right?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And he wrote in his notes: "He" – being you – "He informed Cst. COX that he was going to the residence of Donald DUNPHY ... as he had to speak to him about threats that he made against the Premier."

Do you recall saying anything along those lines to Constable Cox?

CST. SMYTH: I think that would likely be an interpretation that he made of me telling him I'm doing a threat assessment. Some people infer that doing a threat assessment is actually an assessment of a specific threat in terms of a statement or of intention to cause harm, which is not what a threat assessment is.

MS. CHAYTOR: Okay.

Constable Smyth, how did you communicate with Adrian Cox on that day?

CST. SMYTH: Telephone.

MS. CHAYTOR: Okay. On your cellphone?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay, and were you talking to him on his cellphone?

CST. SMYTH: I don't know.

MS. CHAYTOR: Okay, or you don't know if he was in the RCMP detachment or where it was. Did he call you or did you call him?

CST. SMYTH: I originally called him; he may have called me back.

MS. CHAYTOR: Okay.

CST. SMYTH: At my request.

MS. CHAYTOR: Okay.

I didn't see a record of that, just, you know – we had a lot of documents to review, but I didn't see a record of your communications with him. We certainly have a record of – in terms of on your cellphone, I mean, in terms of calls to or from him, so it was just a little bit of a gap there for us. We have here –

CST. SMYTH: It's possible that I made a phone call to the RCMP, their main line, and they may have transferred my call through to him, which probably wouldn't be picked up on phone records. It may appear just as a call to the RCMP.

MS. CHAYTOR: Okay, now we do –

CST. SMYTH: I don't know that –

MS. CHAYTOR: Yes.

CST. SMYTH: – but that may have been how that unfolded.

MS. CHAYTOR: Right. And we do have a communication, and we'll see that it, where you did call the Comm Centre, looking first to which depart – which detachment would have jurisdiction over Mount Carmel area.

CST. SMYTH: Yes.

MS. CHAYTOR: And you were told Holyrood. And then there's a communication with the Comm Centre, a discussion where you give your cellphone number and Constable Cox is going to call you. But then there's nothing in terms of the Comm Centre records with the RCMP to show that you and Constable

Cox had the communication through the Comm Centre where there would be a recording of course of what was said.

CST. SMYTH: Right. So he would have likely then called me back from either his cellphone or from a line that's not captured under their recorded numbers.

MS. CHAYTOR: Okay. But it would have been your cellphone; it wouldn't have been your office phone by the time you spoke to him?

CST. SMYTH: No, by the time I spoke to him I was in the vehicle.

MS. CHAYTOR: You were in the vehicle by then.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. All right.

CST. SMYTH: Yeah.

MS. CHAYTOR: So, so Constable Cox, then, said that he thought it was threats that had been made against the premier. Trevor O'Keefe, Corporal Trevor O'Keefe – and again this is P-0174 and we can bring it up if you wish.

And he's saying that "Cst. COX advised Cpl. O'KEEFE that he had spoken to Sgt SMYTH and that he was going to speak with Don DUNPHY in Mitchell's Brook regarding threats to the Premier over Twitter." So again – and this is Corporal O'Keefe recording what he understood from Constable Cox. Okay?

And then we have P-0173 and these are notes of RCMP Constable X. And I understand Constable X is, for your benefit, that's the officer who drove you from the scene on April 5.

CST. SMYTH: Yes. I know who it is, yes.

MS. CHAYTOR: Yes, okay.

All right, so we won't speak his name or her name. But Smyth then stated that he was part of the close, the close protective unit – this is what he records, he or she records in their notes. Smyth, Smyth then stated that he was part of the close – close, sorry – protective unit. He said that what was, what brought him there were threats on social media.

So this officer also recorded in his or her notes that were – I guess it's his, his notes. His notes – that there were threats on social media. Do you recall saying that to that officer?

CST. SMYTH: This is post-shooting?

MS. CHAYTOR: This is on your way from the scene to Holyrood detachment on April 5 after the shooting.

CST. SMYTH: I probably said that.

MS. CHAYTOR: Okay.

CST. SMYTH: I was in no state to get into the complexities of the threat-assessment process at that point, but I probably would have said that.

MS. CHAYTOR: Okay. Constable Smyth, is there any significance to whether or not you perceived the comments to be a threat?

CST. SMYTH: To me – like to the threat assessment?

MS. CHAYTOR: To what you're doing. Like, would you have conducted yourself any differently in following up on this if, in fact, you had interpreted Mr. Dunphy's comments as being a threat or threatening?

CST. SMYTH: Yes, I would have approached the situation a bit differently. If there had been a definitive threat made, then I would have to take into consideration that we may also be making an arrest, whether that be an arrest and release or an arrest followed by detention. But if there was any possibility of criminal charges being laid, then I would take additional resources. In which – in that, in that that case, I would want a uniformed officer.

MS. CHAYTOR: Okay, so in that case you would have taken another officer with you and –

CST. SMYTH: A uniformed officer.

MS. CHAYTOR: – and a uniformed officer, if you're –

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So if you had interpreted it as a threat, you weren't going to go there alone?

CST. SMYTH: No, ma'am.

MS. CHAYTOR: Also, if you had perceived this as being threatening, and it's been mentioned to the premier – not tagged, but mentioned to the premier – would you have ensured that the premier was aware of this message?

CST. SMYTH: At that stage?

MS. CHAYTOR: Once you've made a determination. If you had made a determination that it was threatening, would you have made – alerted the premier?

CST. SMYTH: If I felt that that comment was an actual threat to cause harm to him, then yes, I would make sure he was aware. I would seek to immediately get a photo of the person.

I would find, locate that person on Motor Registration Division. I would solicit, probably call in a person on overtime to get the Motor Registration Division picture and ensure the premier and his family were briefed on that. And we may also augment security measures for the premier for that period until we could conduct the actual threat assessment.

MS. CHAYTOR: Okay. And did you provide any security to the premier between April 3 up until April 5 when the shooting occurred?

CST. SMYTH: No, I did not.

MS. CHAYTOR: Okay. So I take it you didn't perceive that Mr. Dunphy's messages were such that the premier need to be notified or security put in place for him.

CST. SMYTH: No, I did not.

MS. CHAYTOR: And, Constable Smyth, I want to give you an opportunity to explain. If you didn't interpret it as being a threat, did you interpret it as being more of the same type of criticism that Mr. Dunphy had been espousing for quite some time?

CST. SMYTH: I think it was similar to a lot of the commentary he had made. Certainly, when you do – regardless of what the context is, when you start making reference to dead MHAs and using words “hurt” within the language, it does give some heightened concern and heightened attention to that, especially when you're mentioning the, the people at the, at the source of it, I guess the premier in this case and the minister. Because it speaks to perhaps what their, their intentions are in terms of what they intend to be the result of that tweet, i.e. is it to harass, to intimidate, to elicit a certain response from that person or group.

MS. CHAYTOR: Okay. And, Constable Smyth, you're aware of the tweet for two days up to the time you go visit Mr. Dunphy and you've explained some of the background checking that you've done in that time period. You didn't see any need, you've told us, to alert the premier to this issue. Why do you go visit him, Mr. Dunphy, on Easter Sunday? Why – why did you do it that day?

CST. SMYTH: That was the day that was available to me to do it. I was working a regularly scheduled day. Other duties permitted me the ability to do it. It was the responsible thing for me to do. If I didn't do that, I left that duty for another member who, then, perhaps the following day had other duties, protective duties, they may in fact have to solicit resources from, from other units to fulfill a task that I could have and should have done. The fact that it was Easter Sunday or a holiday, it can't play into the reasoning whether we go or don't go visit somebody.

MS. CHAYTOR: Okay. And I understand that, but I also understand you to say that you didn't – you're going to follow up on this as soon as you practically can but you didn't – there was not a sense of urgency as such to it.

CST. SMYTH: That's correct.

MS. CHAYTOR: And I understand that Easter Sunday is a workday for you, but did you give any consideration to the fact that it is a holiday for – and it is you know, maybe a, a religious holiday for the person that you're going to go visit.

CST. SMYTH: I didn't know what Mr. Dunphy's religion was and if he celebrated Easter Sunday or any other religious holidays. As I said, that, that wouldn't be a responsible reasoning for the police to take into consideration when they're conducting an investigation.

MS. CHAYTOR: Okay, so that's not a factor. You don't think about, well, this is not something I really need to do today and it's a bit of a special day, perhaps. You, you, you go when you can go.

CST. SMYTH: No – that's correct, if I told my supervisor that I didn't carry out certain duties because of possibly infringing on somebody's religious sensibilities, I could likely be reprimanded for something like that.

MS. CHAYTOR: Okay. And Doug Noel was scheduled, I think you told us, to work the next day.

CST. SMYTH: That's right.

MS. CHAYTOR: And he was included in the original email we saw from Donna Ivey. Did you and Corporal Noel have any discussions before you went to visit Mr. Dunphy?

CST. SMYTH: I don't think specifically. I kept him in the loop on, via email on those kinds of things, as we generally did as an FYI know what the other one is doing. Given there's only two of us there's, there

is that understanding you could get called in at any time. So we try to keep each other in the loop as to what we were doing, what our duties were.

MS. CHAYTOR: Okay. And we'll hear from Corporal Noel and I think there may have been a, a messaging, SMS type of messaging back and forth between you on, before you went basically telling him that you were going to go see Mr. Dunphy.

CST. SMYTH: Right.

MS. CHAYTOR: Okay.

Did you give any consideration to leaving the matter for Corporal Noel to follow up on, on the next day, particularly because Mr. Dunphy resided in RCMP jurisdiction and Corporal Noel is an RCMP officer?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And perhaps you can explain why not.

CST. SMYTH: Because that wouldn't – I think I probably explained it even before, but it wouldn't, it wouldn't be responsible for me to delegate duties based on that for me to potentially have to argue that I'm doing easier, more rudimentary administrative work and I'll leave the more arduous time-consuming work because it's Easter Sunday or because it's, it's outside of our designated jurisdiction. Because jurisdictional lines are, you know, while they're in place, they largely refer to, you know, resource allocation and who responds to what, when. It doesn't impact our ability to enter those areas to conduct our duties.

MS. CHAYTOR: Okay. What time did you finish your shift on April 4th and then what did you do that evening?

CST. SMYTH: I think I finished up maybe around 5:30 or 6 o'clock. And I went to a friend's cabin for Easter where my children and family were and we had Easter supper.

MS. CHAYTOR: Okay. And where was that cabin?

CST. SMYTH: Whitbourne.

MS. CHAYTOR: Whitbourne. Okay.

Did you consume any alcohol or use any recreational drugs that evening?

CST. SMYTH: I didn't use any drugs, but I did have a couple of glasses of wine.

MS. CHAYTOR: Okay, a couple of glasses of wine.

CST. SMYTH: Yes.

MS. CHAYTOR: And that's it?

CST. SMYTH: That would be it.

MS. CHAYTOR: Okay. And then the next day, April 5, is a workday for you. So Easter Sunday is a workday.

CST. SMYTH: That's right.

MS. CHAYTOR: Okay. And what time did you get up?

CST. SMYTH: I would have gotten up pretty early. We have small children and it was Easter Sunday so there was some Easter activities early that morning, probably 7 a.m. It had been an early night to bed too.

MS. CHAYTOR: I'm sorry; I'm going to ask you if you could speak up a little up, please.

CST. SMYTH: Sorry, it had been an early night to bed as well, especially in recognition that we all had small children.

MS. CHAYTOR: Okay, so you weren't up late the night before.

CST. SMYTH: No, it was actually quite early. I went to bed around 9 or 9:30 which is, sadly, a fairly normal bedtime for me. And we were up around, I think maybe even earlier than 7 – 6:30, 7 – and did some of the standard Easter Sunday children routine. And when that was done, I left and made my way into St. John's to return to work.

MS. CHAYTOR: Okay, so you left Whitbourne then and travelled back to St. John's to –

CST. SMYTH: That's correct.

MS. CHAYTOR: – to report for work.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Did you have your own car and your wife have a car as well?

CST. SMYTH: She had travelled out on her own.

THE COMMISSIONER: Right.

CST. SMYTH: And I had my own – took my own personal vehicle as well.

THE COMMISSIONER: Yeah, I was just wondering why you went back to St. John's instead of going –

CST. SMYTH: Right, because I had to go back and get the work vehicle. I would have got my use-of-force equipment. That's required to stay at headquarters. And I believe there was also some additional follow up that I was doing.

MS. CHAYTOR: Okay. And your intention, though, in getting up that day is that you're going to go visit Mr. Dunphy.

CST. SMYTH: Yes, it is.

MS. CHAYTOR: Okay. And so what time, then, did you start your shift that day?

CST. SMYTH: I think it was probably around 11 a.m., 10:30, 11 a.m.

MS. CHAYTOR: Okay. And I think we saw in the – we saw in one of the records P-0136, that you, you sign in at 11:40. Does that sound about right?

CST. SMYTH: So that would be signing on with our Communications Centre, letting them know that we are now active duty; I'm in the vehicle. And the point was to let them know where I was going and what I was doing.

MS. CHAYTOR: Okay.

CST. SMYTH: So I could potentially be, I could potentially work for a full day and never actually do that. I, I don't believe at any point in time on Saturday, for example, that I signed in with our Communications Centre because I wasn't engaged in any duties outside of my office.

MS. CHAYTOR: Okay, just explain that then. So when, when it says you phoned and I think it's Owen Todhunter that you phone and you ask him to sign you on.

CST. SMYTH: Yes.

MS. CHAYTOR: When is it that you have to do that?

CST. SMYTH: Well, I think, I think you're supposed to do it every day you work. I had a tendency not to necessarily do that when I knew I was primarily engaging in administrative duties. But any time I was engaged in duties outside of my office utilizing a work vehicle, I would sign on.

MS. CHAYTOR: Okay, so in terms of making the telephone calls or the inquiries that you made the day before that we reviewed, you wouldn't have to sign in to work to do that.

CST. SMYTH: That's right.

MS. CHAYTOR: Okay. It's supposed to happen, but what you're saying is it wasn't necessarily your practice –

CST. SMYTH: That's right.

MS. CHAYTOR: – and you didn't do it on that day.

CST. SMYTH: I don't believe I did.

MS. CHAYTOR: Okay. All right.

And I didn't see any communications where that happened but – so when you ask Owen Todhunter to sign you in, are you already at headquarters at that point in time?

CST. SMYTH: I think I was probably doing that from the vehicle.

MS. CHAYTOR: Okay.

Okay. So just explain again, because you told us yesterday that your office was located in Confederation Building.

CST. SMYTH: Right.

MS. CHAYTOR: Did you have to go to Confederation Building to get your vehicle and equipment or you have to go to headquarters? Where did you go that day?

CST. SMYTH: Both. I'd have to go to Confederation Building to – at the time that's where I had kept the vehicle and my files, but our use-of-force equipment was maintained at headquarters building.

MS. CHAYTOR: Okay. And so first you went to Confederation Building and got the vehicle, is that it?

CST. SMYTH: Correct.

MS. CHAYTOR: And then you went to headquarters?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. And then is it after that, that you ask Owen Todhunter to sign you on?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. All right.

And when you did the ICAN searches, the day before that we looked at, on April 4, where did you do those from? Were those done from Confederation Building or were those done from headquarters?

CST. SMYTH: From Confederation Building.

MS. CHAYTOR: Confederation Building, okay. And would you have had access there to do other types of searches as well, background searches?

CST. SMYTH: We, we had a little bit more limited access there but I still had ICAN. I would have had CPIC as well via our MS interface.

MS. CHAYTOR: Okay.

CST. SMYTH: And most other – and of course the open-source queries, I would have had access from anywhere, but anything else I would have done via our Communications Centre.

MS. CHAYTOR: Okay, so your work that you did that day on April 4 was done from Confederation Building?

CST. SMYTH: That's right.

MS. CHAYTOR: Okay. You didn't go to headquarters on April 4?

CST. SMYTH: No.

MS. CHAYTOR: Okay. All right.

So just take us, then, through your – you wake up, you're in Whitbourne, you travelled in to St. John's. What did you do that morning? Tell me where you ate, when you ate.

CST. SMYTH: I ate in Whitbourne. I had breakfast there. Likely had a cup of coffee and I don't remember exactly what I had for breakfast but – sorry, is that –

MS. CHAYTOR: Okay.

CST. SMYTH: – all you're looking for?

MS. CHAYTOR: Yeah.

So you – so you ate breakfast with your family in Whitbourne?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay and a cup of coffee. Any more than one cup of coffee?

CST. SMYTH: I don't know. I probably had two.

MS. CHAYTOR: Okay. All right.

So you're not the type of person who needs, you know, four or five cups of coffee to get up and on the go in the morning?

CST. SMYTH: No, I usually have a cup of coffee and if it's in a more social setting, I might have two.

MS. CHAYTOR: Okay, and what about any other beverages that day? That morning before you go to visit Mr. Dunphy, did you consume any Red Bull or drinks like that?

CST. SMYTH: No.

MS. CHAYTOR: What about alcohol?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And did you take any prescription medications like cold medications, anything like that?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And no other type of drugs I take it.

CST. SMYTH: No.

MS. CHAYTOR: Okay. And in 2015, then, leading up to the time that the shooting occurred, were you using anything in the way of steroids or supplements, for example, for an exercise regime?

CST. SMYTH: No.

MS. CHAYTOR: Okay. When the RCMP interviewed you did they ask you any of those questions?

CST. SMYTH: I can't recall specifically if they asked anything about taking drugs. No, I don't recall.

MS. CHAYTOR: Okay. Or consuming alcohol that day, any of those types of questions that I just asked you?

CST. SMYTH: I don't believe it was asked of me.

MS. CHAYTOR: Okay.

Okay –

CST. SMYTH: It may have, if they have in their reports that they did. Right after the incident I may not have caught that.

MS. CHAYTOR: Okay. Fair enough.

Okay, so then on April 5 you arrive at headquarters and the purpose of that is to retrieve your use-of-force equipment.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. Did you carry out any other background or database searches with respect to Mr. Dunphy that day?

CST. SMYTH: I did and I requested that through our Communications Centre.

MS. CHAYTOR: Okay. And so you requested it through by calling up the Communications Centre, is that right?

CST. SMYTH: That's, that's correct.

MS. CHAYTOR: Okay. And what were the results of those searches?

CST. SMYTH: The query with our Communications Centre?

MS. CHAYTOR: Yes.

CST. SMYTH: They were negative. It showed that there was no information on file.

MS. CHAYTOR: Okay.

I'm going to bring up, please, P-0136. And I apologize, my – I'm fighting a cold but, so my voice is fading a bit. Or start of a cold I think.

Okay, if we could make this a little bit larger please.

Okay. And this is the second recording it's indicated to be, because I understand the first recording would have been your communication with Mr. Owen Todhunter when you signed on. So this one is your second recording or second recording of your communications with your Comm Centre, RNC Comm Centre that day and this is happening at 11 hours, 14 minutes.

No, actually maybe that's not right then because let's just go back and see here. Let's get the top of the document. Yes, April 4. These are all in – these are your communications with the Comm Centre and they're all in the same document. That's the one that we looked at earlier where you're getting some information about Mr. Dunphy.

Okay. All right.

Anyhow, this one is, says to be the second recording, April 5, and it's 11 hours 14 minutes. I had recorded to you as having signed on at 11:40 so we can check that time.

But anyhow, you're speaking with a Mark Oram this time. And independent of this record, do you – you do recall that you understood from what Mark Oram communicated to you that there was nothing, nothing on file regarding Mr. Dunphy?

CST. SMYTH: That's right.

MS. CHAYTOR: And what –

CST. SMYTH: That's right.

MS. CHAYTOR: – did that indicate to you, Constable Smyth?

CST. SMYTH: It meant that he had no recorded interactions or active court orders, any cautions that had been put in place, any cautions for violence or drugs or weapons, and that there was no current criminal history.

MS. CHAYTOR: Okay.

THE COMMISSIONER: You're asking – where, where's the reference there? You're asking for –

MS. CHAYTOR: I asked him what he understood. Without reviewing this –

THE COMMISSIONER: Oh, you just done a general – okay.

MS. CHAYTOR: – what he understood to have been. And I'm going to take him through some detail now of what we have here.

CST. SMYTH: He had referred to him as being not on file. And that indicates that he doesn't have a, a CPIC record per se.

MS. CHAYTOR: Okay. All right.

And I'm just going to ask if you could speak up a bit. And I'm struggling with that too, Constable Smyth, but if we can both just speak up a bit.

You phone in and you say Joey Smyth here, I'm looking for a 27, 28 and 29. Now, we saw earlier where you had asked for, I believe, was it a 28 the day before?

CST. SMYTH: Yes, that's right.

MS. CHAYTOR: Okay. So tell, please tell us, what does it mean? And again I understand from what you said earlier that these are 10 codes that the police use. What is a 27, 28 and what's a 29?

CST. SMYTH: So a 27 would be the MRD check, the Motor Registration Division check, as it relates specifically to vehicles. So if I give him a person's name and their date of birth, they can input that data and determine what vehicles, if any, are registered in their name.

The 10-28 information can do the same but yields information related specifically to the drivers licence, what their current licence is, the class, any restrictions, whether it's active, expired or any prohibitions in place, fines that may exist, outstanding fines and current address.

MS. CHAYTOR: Okay. And what's the 29?

CST. SMYTH: The 29 would refer to the CPIC check which is the Canadian information police system.

MS. CHAYTOR: I'm sorry, can you say that again? Canadian –

CST. SMYTH: Canadian Police Information Centre.

MS. CHAYTOR: Okay. And what do you understand a CPIC check will give you?

CST. SMYTH: It's your national database that would contain interactions with police at current court orders, any histories of violence or history of use of weapons, firearms. It will give you reference to

existing criminal records, any aliases or any current warrants that be outstanding for their arrest, and it also inclusive of when you indicate the appropriate box for the Canadian Firearms Registry.

MS. CHAYTOR: Okay. Did you have any conversation with Mr. Oram other than what we're going to see recorded here in this document?

CST. SMYTH: No.

MS. CHAYTOR: Okay. So it's not a situation where you're both in headquarters and you popped down and chatted with him or obtained any further information that way.

CST. SMYTH: No. I was in the vehicle at this time. I think I was actually on my way to Mitchells Brook.

MS. CHAYTOR: Okay. And did you do any of your own searches? And what I mean by that is CPIC search. You've told us about the ICAN search. Any of your own searches or did you rely strictly on what Mr. Oram told you?

CST. SMYTH: I didn't do any of my own.

MS. CHAYTOR: In terms of your work at the PSU, would it be common for you to call into the Comm Centre and request this type of information?

CST. SMYTH: Yes, it would.

MS. CHAYTOR: Okay. And in doing this and requesting this information, is this part of your threat assessment on Mr. Dunphy?

CST. SMYTH: It would form a portion of it, yes.

MS. CHAYTOR: Is it also part of your risk assessment for yourself in vising Mr. Dunphy?

CST. SMYTH: Yes, it is. That would have been the primary reason for that at that stage. While it is dual purpose, that's the primary reason at that point.

MS. CHAYTOR: Okay. So let's just look down through, then. So contact Mark Oram, asked you for your badge number. And I take it that's so he can make sure that he is in fact speaking to a police officer. And then you give him the name. You say Don Dunphy, he lives in Mount Carmel, he's around 50, should be only one on MRD, I believe, there from Mount Carmel. And you would have gotten that information from the day before I take it?

CST. SMYTH: That's correct.

MS. CHAYTOR: Yes. Because you had, in terms of your discussion with the Comm Centre you had narrowed it down to a couple of people.

CST. SMYTH: Yes, a couple with my conversation with Tom Mahoney.

MS. CHAYTOR: That's right. And now you know from speaking with Workers' Comp it's the Mount Carmel Don Dunphy, correct?

CST. SMYTH: Right.

MS. CHAYTOR: And then there's some miscommunication. He's thinking John at one point here, and then there are a couple of other people. And then on this page it says, "Ah Donald, yeah, I got him here." And this is blacked out, but I understand this would have been his date of birth. And you ask him, what's the master? And he says 015. Can you just explain for us, what is it that you're asking there? What's the master –?

MR. KENNEDY: Excuse me, Commissioner. Can we confirm that that date that's blacked out is actually Mr. Dunphy's birthday?

MS. CHAYTOR: I think we should do that, and actually that shouldn't be blacked out. That is, I understand, Mr. Dunphy's date of birth? Yeah. So we will get – yeah, it should be August 23, '56. So I think we probably – our staff was very conscious to be blocking out dates of birth. But in terms of Mr. Dunphy's –

THE COMMISSIONER: So you'll get that (inaudible).

MS. CHAYTOR: We'll get that un-redacted. Yeah.

Thank you, Mr. Kennedy.

And here you say: What's the master? And you say: 015, so just – or he responds, sorry, 015. So can you just explain what you're asking for there?

CST. SMYTH: The master number refers to the last three digits of your driver's licence number.

MS. CHAYTOR: Why would you need that information?

CST. SMYTH: Just for note-taking purposes at that time. If I have to go back and reference his driver's licence number for any reason, it's easier if I have that, that information at that point.

MS. CHAYTOR: Okay. So you would have jotted that down, would you?

CST. SMYTH: I should have, yes.

MS. CHAYTOR: Okay. And so then he says – he tells or you say: Has he got a valid DL. Driver's licence, I take it?

CST. SMYTH: Yes.

MS. CHAYTOR: And he responds: Yeah, he looks like he's a tractor-trailer driver and – because he's got a one, two, three, four, five, eight and nine.

CST. SMYTH: Right.

MS. CHAYTOR: And what did you understand that to mean?

CST. SMYTH: They're the various classifications with your driver's licence. So everybody that's issued a licence would get a class five. For other designations, such as motorcycle or tractor-trailer or other vehicles, you would get other designations and they would be indicated on your licence.

MS. CHAYTOR: Okay. And then you say: Okay, right on. Ah, your one is the elder. Would you see if he got, what vehicles he got registered and what is showing there, give any street address for Mount Carmel or just the P.O. Box.

What did you mean by your one there, one is the elder?

CST. SMYTH: I'm not sure. I'm not sure if previous in the conversation he had made reference to a different Don Dunphy that was younger.

MS. CHAYTOR: Okay. All right. And then he says: Hang on. No, it's P.O. Box Main Road. And then he asks you: Anything in particular you're looking for. And you say: I'm looking to see now if he got any vehicles registered to 'em and then I need a 29 on him and a CFRO check.

Now, you've explained what you meant by a 29. What's a CFRO check?

CST. SMYTH: A Canadian Firearms Registry office.

MS. CHAYTOR: Okay. And that's to determine if he had any registered firearms, I take it.

CST. SMYTH: Or even a valid firearms licence, possession acquisition.

MS. CHAYTOR: Okay. And that would show in a CFRO check?

CST. SMYTH: Yes, it would.

MS. CHAYTOR: Okay. And then he comes back to you and tells you: Yeah, he got a Honda and a Saturn. Tags gone out on the Saturn, so it looks like he's got a valid Honda. And you ask: What is it? And he says: A gray 2003 four door, probably a Civic, and then the plate number. And you say: Okay.

And it's registered to him, he tells you. And you want a 29, too, do ya? And you say: Yeah, please. And then he asks: What's your rank now. And you say acting sergeant.

And then he comes back and says: Ok, ah, error, what, yeah, he's not on file there. And then you say: Nothing there and no, no CFRO either.

And then for some reason there's a break in the recording but then it picks up where it seems to have been. He's not on file there, comm tech Mark Oram. Acting Sergeant Joe Smyth: Nothing there and no, no CFRO either, no firearms registered. And he replies to you: Ah, not on file, no. All right, Sir. Good enough. Appreciate your help. Yeah. Bye, bye.

Was there anything else missed where there seemed to have been like a third recording here? Was there any other information that was relayed to you other than what I've just read out to you?

CST. SMYTH: No.

MS. CHAYTOR: Okay. When you asked for a 10-29, Constable Smyth, are you expecting that to include a CNI?

CST. SMYTH: Yes.

MS. CHAYTOR: And can you, please –

THE COMMISSIONER: And CNI being?

MS. CHAYTOR: Yes, a CNI – please explain that acronym to the Commissioner.

CST. SMYTH: The Criminal Name Index. I believe that's the acronym and it would indicate histories of certain criminal activity. So if there's a history of drugs and violence and/or if there's a particular caution

that's inputted, a caution for violence or a caution for firearms, caution armed and dangerous or a caution escape risk. These kinds of things would be inputted in CPIC based on previous interactions with police anywhere in the country.

MS. CHAYTOR: Okay. Could we bring up, please, P-0215.

And while Madam Clerk is doing that, Constable Smyth, what's your understanding of what a P – or what a 10-29 involves? How would you have learned that?

CST. SMYTH: Sorry, you have to explain the question.

MS. CHAYTOR: What's your understanding of the 10-29 and what it includes? Was that part of your training or was there some communication within the RNC on that?

CST. SMYTH: Yes, it was inclusive of our training. We, we did have exposure to CPIC, conducting CPIC queries, yes.

MS. CHAYTOR: Okay. And this document we have here is what I understand would have been in effect at the time for RNC 10 codes. And if we just scroll down there, 10-29 is shown right here – 10-29 and it says background checks. Okay, so that's – is that consistent with your understanding that a 10-29 is background checks?

CST. SMYTH: We use 10-29 specifically for a CPIC check.

MS. CHAYTOR: Okay. And do you see here where it says 10-30, danger/caution codes: Victor, violence; Echo, escape; Mike, mental; Sierra, suicidal. Did you understand – did this mean you had to ask for a 10-30 to get any flags on his record?

CST. SMYTH: No, no, they would use that when communicating back certain cautions, especially when you were potentially around unauthorized listeners. So sometimes you could find yourself in a setting whereby there are members of the public, or even the person who is the subject of your query is privy to what you're hearing from the Communications Centre, perhaps via your radio. So the communications technician, instead of saying caution, they are violent, they may say 10-30, Victor; 10-30, Echo. So I understand that to be then caution, there is a history of violence; caution, there is a history that this person has attempted to escape.

MS. CHAYTOR: Okay, all right.

And would it surprise you to learn that Mark Oram would not consider a CNI check to be included when you asked for a 10-29, that you would have specifically requested it?

CST. SMYTH: That would be surprising to me, yes.

MS. CHAYTOR: Had you ever had to do that in requesting this type of information of the Communications Centre before; that you would have to say 10-29 and please include CNI?

CST. SMYTH: No.

MS. CHAYTOR: Have you ever experienced any difficulty in getting back from the Communications Centre CNI information when you requested a 10-29, to your knowledge?

CST. SMYTH: No, not to my knowledge, no. It wasn't my practice and I hadn't been given any reason to do otherwise.

MS. CHAYTOR: Okay. Thank you.

If we could bring up, please, P-0137. And I guess while we're bringing this up, how often would it be that you would be making these requests from the Communications Centre?

CST. SMYTH: As PSU or as police officers?

MS. CHAYTOR: Well, in PSU, you'd been there for three or four years, I guess, up to this point in time. So how often up to that point in time had you made these types of requests?

CST. SMYTH: It was a fairly regular occurrence, you know, easily probably 50 times.

MS. CHAYTOR: Fifty, over the course of the three or four years leading up to this.

CST. SMYTH: I would say, yeah.

MS. CHAYTOR: Okay.

THE COMMISSIONER: Sorry, what did you say it was?

MS. CHAYTOR: He said 50 times –

THE COMMISSIONER: Fifty?

MS. CHAYTOR: – over the course of his time at the PSU.

CST. SMYTH: Sometimes I would be able to do them through our Criminal Intelligence office as well. If we were out on a specific task –

MS. CHAYTOR: I'm just going to ask you to speak up a little more now.

CST. SMYTH: I didn't always have to go through our Communications Centre to do that. If it was generally CIU hours, Criminal Intelligence Unit, we're in the office between 9 and 5, I would often call the administrative persons in that office and request that they do those checks. So it wasn't always through the Communications Centre. I would generally call the Communications Centre during off hours.

MS. CHAYTOR: Okay. And, okay, so in terms of communications people, then, and in communicating – because I understand those are civilian members that you'd be asking that of, right?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So around how many times would you have had to make that type of a request in the three or four years that you were at the PSU – how many times would you have had to make that request of the Communications Centre?

CST. SMYTH: Probably half of the times that I did it, so you could probably safely say in the area of 25.

MS. CHAYTOR: Okay.

CST. SMYTH: But that's something communications staff deal with all day long.

MS. CHAYTOR: Right, okay, fair enough.

Okay. And so the document we have before us here now, Constable Smyth, I'm going to ask you if you could please – we can see here this is an audit which was created, and this was created after a line of questioning that I posed to another witness. And we asked for a check to see what, in fact, Mark Oram would have had available to him that day after he had completed the searches that you had requested.

So this is an archived item that the RNC was able to come up with and provide to us. So this audit had been created on April 5, 2015 at 11:18 and 15 seconds, and so that, as we saw in the previous exhibit, is around the time that you were speaking with Mark Oram. And Mark Oram's – this is just his number, I understand.

And if you could then take us through some of this, please – and we can see here that there's an error query pers, and invalid keyword: Sergeant Smyth, and then it's correct and resubmit. And we did see in the transcription where Mr. Oram had mentioned an error, and then it looks like there's a resubmission. And we'll have other evidence exactly, you know, on what that might mean. But then we have the, if you come down through, we have a query value 29. Are you able to say what that means, query value 29?

CST. SMYTH: I believe the query value is out of 30. So if you have a high query value, there is a high indication that you are, in fact, dealing with the same person. So if you are able to provide the maximum amount of information in the query, i.e., first, last, middle name and a date of birth, you're very likely to get a response of the person you're looking for, versus entering an alias and a last name and no date of birth. You could end up with a lot of results with a low query value.

MS. CHAYTOR: Okay. Fair enough, and we can see here that it's a Donald James Dunphy and his date of birth being 1956/08/23, and so the 29 value tells you that, pretty certain, this is the gentleman you are looking for.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. Just take you to the next page then of this document. And up at the top here we have FPS and then a number. Are you able to tell us, please, what would this mean? I am sorry –

CST. SMYTH: Sorry, the FPS number refers to I believe, their fingerprinting, and it's the number that we would utilize then to query further for the details on their criminal record. The FPC and the following numbers refer to specific coding of each fingerprint. So there should be 10 there, and they would correspond to a certain pattern on each fingerprint.

MS. CHAYTOR: Okay. And so were you told that Mr. Dunphy's fingerprints were in the system?

CST. SMYTH: No, I wasn't.

MS. CHAYTOR: What does it normally mean if somebody's fingerprints are in the system?

CST. SMYTH: It means they've been charged criminally.

THE COMMISSIONER: Say again?

CST. SMYTH: It means they would have probably been charged criminally.

MS. CHAYTOR: Constable Smyth, then we see three asterisks, and then caution, three more asterisks and a V. What does that mean to you?

CST. SMYTH: That means the subject has been inputted as having a history of violence. Caution is due, for violence.

MS. CHAYTOR: Okay. Was that information conveyed to you by Mr. Oram?

CST. SMYTH: No, it wasn't.

MS. CHAYTOR: And then we have CR Query Recommended. Are you able to tell us what that means?

CST. SMYTH: They're recommending that you do an additional query for criminal records – CR stands for.

MS. CHAYTOR: And then we see file opened, a white male, his date of birth, his age, a description of him, his eyes are blue, his size, that there's a tip missing, and then there's a caution this is not a criminal record. File opened and it gives the date of a file opened May 23, 2001, and the last entry being 2005, and then violence, drugs.

What does that information mean to you, Constable Smyth?

CST. SMYTH: It indicates that for Mr. Dunphy the first file that was inputted and that's currently I guess now purged, was initiated in 2001, and the last entry related to Mr. Dunphy into CPIC for these matters was related to violence and drugs, and was entered in 2005.

MS. CHAYTOR: And was any of that information relayed to you?

CST. SMYTH: No, it wasn't.

MS. CHAYTOR: Constable Smyth, would the receipt of this information have made any difference in how you went about doing your visit with Mr. Dunphy on April 5th?

CST. SMYTH: Yes, it would.

MS. CHAYTOR: What would you have done differently?

CST. SMYTH: I would have been obligated to take additional resources, other officers.

MS. CHAYTOR: You would have been obligated?

CST. SMYTH: I feel it as an obligation and a responsibility that when we're seized with that type of information that we take it seriously and we go in such a fashion that we could address a person who is known to be violent.

MS. CHAYTOR: Prior to visiting Mr. Dunphy, did you nonetheless know whether or not he had a criminal record?

CST. SMYTH: Sorry?

MS. CHAYTOR: Prior to visiting Mr. Dunphy, did you know whether or not he had a criminal record?

CST. SMYTH: I had known from speaking with the RCMP that there had been charges laid.

MS. CHAYTOR: Okay, and what charges did they tell you had been laid against Mr. Dunphy?

CST. SMYTH: There was some drug-related charges, but were – I think that were resolved and determined that he had a medicinal license and also that, I believe, there was an additional search there. There was some allegation of drugs being sold to high school kids and there had been an uttering-threats complaint that was resolved with a peace bond.

MS. CHAYTOR: If somebody has been charged with uttering threats, do they automatically get a violent flag on their record?

CST. SMYTH: I'm not sure.

MS. CHAYTOR: So you knew he had been charged with uttering threats and you're saying that you learned that from the RCMP?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So that information didn't cause you concern; you still continued on and did your visit alone with Mr. Dunphy.

CST. SMYTH: That's correct, especially with the resolution being a peace bond. Usually that gives some indication that, you know, there's some reconciliation and that the uttering threats were probably on the lower end of seriousness, if you will.

THE COMMISSIONER: Sorry, is uttering threats considered and a peace bond considered to be a criminal record, a record of criminal activity?

CST. SMYTH: I'm not sure, Mr. Commissioner. I –

THE COMMISSIONER: I'm not either. I should know, but I don't. Okay.

CST. SMYTH: I think there may be – I think there can be a finding of guilt and then the resulting court order may be a peace bond, or the peace bond may be the resolution itself and that had been maybe stayed, but I'm probably not the best person to give you a definitive answer on that.

MR. SIMMONDS: I believe that to be incorrect.

THE COMMISSIONER: Sorry?

MR. SIMMONDS: I believe that to be incorrect.

THE COMMISSIONER: What to be incorrect?

MR. SIMMONDS: If the charge is withdrawn, it can be withdrawn and often a resolution is achieved through a peace bond, but a peace bond is not a criminal charge unless you violate the peace bond. That's considered – that can potentially be a criminal charge.

THE COMMISSIONER: All right, we'll check that out.

Thank you, Mr. Simmonds, yeah.

We'll get the law on that.

MS. CHAYTOR: Okay.

So you were aware that he had been charged with uttering threats in the past and your source of that information was through the RCMP. And I take it that was your discussion with Constable Cox?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. The fact that he had been charged with uttering threats, did that factor into your risk assessment? And when I say risk assessment, I mean your assessment, your primary assessment, that we discussed yesterday, before you knock on his door is for your own personal safety.

So did it – the fact that he'd been charged with uttering threats, did that make a difference to you in terms of your own risk assessment?

CST. SMYTH: I think at that time I had been given enough context that it had involved a domestic-related situation, perhaps a property dispute, which to me lessened the concern. Those types of situations are fairly common and don't necessarily categorize an individual to have a propensity for violence. It's sometimes a result of, you know, heated family exchanges and disputes.

MS. CHAYTOR: Okay. So if a further search had been conducted – we saw in the document that we just had up there that a CR was recommended, a criminal record check was recommended. If that had been completed and it showed that Mr. Dunphy had a past record for possession of cannabis, and that the matter of the uttering threats was on his record, which resulted in a peace bond, would that have changed your – if you had gotten that information and that was the extent of his record – would that have changed your decision to visit him alone on April 5?

CST. SMYTH: I think without any of the additional context that I had learned from the RCMP, it may have changed it, yeah, but I did get that context, of course.

MS. CHAYTOR: Okay. And just explain that because I want to be sure that I know what you're saying there. So the fact – would you have gone there still alone if you knew that?

CST. SMYTH: Within itself, and am I not privy then to other information or –?

MS. CHAYTOR: Well, all the information that I've now shown you. For example, there is the V-flag and it does mention drugs, but if the extent of his criminal record had been a possession conviction, sometime ago, and you know that he's – had been charged with uttering threats sometime prior and that resulted in a peace bond. With that amount of information, would that have changed your decision in how you visited Mr. Dunphy that day?

CST. SMYTH: If I had solely the caution violence, and not knowing exactly where that derived from, then I would have to assume that it could be from a history of violence that I'm not aware of, so I had to treat it seriously.

MS. CHAYTOR: Okay.

And –

CST. SMYTH: It could hypothetically be entered into it from a different part of the country, and while the incident may not have resulted in a criminal conviction that you'd find on their record, it may be an incident that indicates a propensity of violence that I don't know the details of, so I have to treat it seriously enough that I don't know the details.

MS. CHAYTOR: Okay.

And I understood you to say that you were aware from Constable Cox, the RCMP, that there may have been some charge regarding drugs, is that right?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

And what exactly was it that you understood from your discussion with Constable Cox regarding Mr. Dunphy in terms of the drug charge?

CST. SMYTH: It wasn't a lengthy conversation, just that he had a history of selling and possessing and growing marijuana, but he also had a medicinal permit.

MS. CHAYTOR: Okay, so were you aware that he had, in fact, been convicted at any time for possession and production of marijuana?

CST. SMYTH: I believe he had said that he had been charged with that, but the – I think the caveat was that he did have a medicinal permit. I think it was resolved is what I felt I learned from that.

MS. CHAYTOR: Okay.

So you weren't aware of any actual criminal record regarding drug usage, possession or production?

CST. SMYTH: No, not specifically, not beyond what he had told me anecdotally.

MS. CHAYTOR: Just that it was a charge and then it was withdrawn because he had a medicinal purpose – permit, sorry.

CST. SMYTH: Yeah, I don't think it was even that extensive of a conversation to refer to it, whether it be it was withdrawn state or dealt with in some other fashion.

MS. CHAYTOR: Okay.

All right.

And if we could bring up P-0124, please.

And this is another transcript. This one does not involve you, but this – P-0124, it does involve you. Oh yes, it does. I'm sorry, yes, it does.

This is your communications with the RCMP and this is where you get the information or you're calling in up there to say – let me see – it doesn't give the time here, but we do have that recorded elsewhere – and you say: It's Joe Smyth calling from the Constabulary. Can you tell me what detachment would cover the Mount Carmel area? And you're wondering if it's Holyrood or Whitbourne.

They put you on hold and they tell you on – they tell you that it's Holyrood detachment. And you ask: Is there an NCO out there working today that I can get in touch with, do you know? And: Why are you asking this, Constable Smyth?

CST. SMYTH: The intention was to – it was twofold, I guess: to inform them of what I was doing and where I was going; and to also solicit that information, that we've already spoken about, I got from Adrian Cox.

MS. CHAYTOR: Okay. And so is it protocol that you would contact the RCMP when you're going into their jurisdiction to do investigative work?

CST. SMYTH: It was my protocol. I don't know if it's definitively outlined anywhere in our policy.

MS. CHAYTOR: Okay. And so this again is the Communication Centre I understand with the RCMP. They're asking, what's the best number I can contact him, what's the best number I can get him to contact

you. And you give your cellphone number to the person you're speaking with. I'll have him give you a call. And you appreciate it, and that's the end of it. Okay.

And so – it's your evidence that then Constable Cox called you. You had passed along your cellphone number and he called you and you had a communication with him and he gave you further information.

CST. SMYTH: That's correct.

MS. CHAYTOR: Did you ask him to conduct any searches in Mr. Dunphy's name?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: And what type of search did he do for you?

CST. SMYTH: I asked him to check their PROS system, which is, I would say the equivalent to our ICAN system. It captures internally all their dealings.

MS. CHAYTOR: Okay. So a PROS search for RCMP is basically the equivalent your ICAN.

CST. SMYTH: Correct.

MS. CHAYTOR: If we could bring up P-0141, please.

And this document, I understand here Constable Smyth, would be the results of what the RCMP had on Mr. Dunphy. Now obviously this is conducted after his death because he's listed as being deceased. And then he's – you can see here is deceased subject of a complaint, and down here complainant victim. And then you can see here that he was a complainant and making a complaint regarding some mischief charge. Then we have arrested subject of a complaint production scheduled to cannabis marijuana.

UNIDENTIFIED SPEAKER: (Inaudible.)

MS. CHAYTOR: Okay, all right. I'm going to bring you back to that document at a later time, but basically when we review through that it does reference that he had –

MR. FLAHERTY: Mr. Commissioner, I'm going to have to ask what discussion was just had between (inaudible) for the RCMP Commission counsel.

MS. CHAYTOR: Okay sure.

THE COMMISSIONER: Pardon?

MR. FLAHERTY: I want to ask, what was the discussion that just took place between RCMP counsel and Commission counsel?

MS. CHAYTOR: Yes, and I have no difficulty speaking to Mr. Flaherty afterwards and telling him what the issue was with that document. And that document will be fully explored in terms of any relevant information with the witness, but I have no difficulty speaking off the record to Mr. Flaherty regarding that.

THE COMMISSIONER: Okay. Shall we come back – if you still have a problem, Mr. Flaherty, you can raise it after lunch.

MS. CHAYTOR: Okay. And so I'm going to come back to that line of questioning Constable Smyth. I apologize for that.

CST. SMYTH: Sure.

MS. CHAYTOR: But basically that would be what I understand to be the results of the information that you were given that day and it refers to Mr. Dunphy having been a complainant on two files and – now I shouldn't say that the information that you would have been given that day, but it's the information that I understand existed in the PROS system.

And my question to you is in terms of what information you were given. But what I understand to be in there is that he was a complainant on two files and there was an incident in 2012 in which he had been arrested but without charge on possession of marijuana and then it was confirmed that he had a medicinal permit.

CST. SMYTH: Right, and I think that's what I was led to believe as well.

MS. CHAYTOR: Okay. And when we bring the document back up you'll see that I don't think there's any mention of the uttering threats in the PROS system. So I'm just wondering it's your evidence, though, that Constable Cox would have given you that information, that he had been charged with uttering threats and it had resulted in a peace bond?

CST. SMYTH: I thought he did, but it's very possible that the first time I learned that may have been from Debbie Dunphy.

MS. CHAYTOR: Okay. And we'll talk about what you learned from him but I don't think – I can tell you, I don't think your recollection is wrong on that in terms of Constable Cox because if we could bring up P-0144.

This is the one that doesn't involve you, but this is a communication with Constable Cox and his Comm Centre which occurs after the shooting. He refers to having spoken to you. And I don't think – I don't know that you would have seen this document before, Constable Smyth. I didn't have it at the time I interviewed you. Or at least, I'm sorry I didn't bring it to your attention.

He refers to here at the bottom of the page that he's talking about you. "I just wanted to make sure because I left his name and everything at the office." So he's phoning back. He says, "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 years and years ago." "Yeah."

"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."

"What was he going down there for ...?" "Threats against the Premier." "Oh!" "Yeah. I guess that happens a lot now, right, so –" "Yeah. What happened when he got there then? He came out with a gun or what?"

Constable Cox: "I'm not 100 percent sure what happened, so I don't want to speculate."

So this seems to be Constable Cox calling back to his Comm Centre after the shooting and saying that he – confirming that he had talked to you earlier when you were going down, and that he did provide you with information regarding uttering threats. And that's in keeping with your recollection?

CST. SMYTH: Sorry; you're saying he did provide me with information regarding threats.

MS. CHAYTOR: Yes. Let's just look at it again, then.

Yes, he's saying that when he was coming down he called – you're the he. Constable Cox called to see if we had anything on him and he says we got some uttering threats and that's it, like, from years and years ago.

So he's saying that he told you there was an uttering threats (inaudible).

THE COMMISSIONER: So he's saying he got it, but I don't know if he goes on to say that he told Constable Smyth, did he?

MS. CHAYTOR: That's true. Good point, yes.

He says that we got one uttering threats and that's it. But your recollection is he told you that information.

CST. SMYTH: I think he may have.

MS. CHAYTOR: Okay. All right, and he certainly seems aware of it.

CST. SMYTH: Okay. He might be able to answer that more accurately –

MS. CHAYTOR: Yes.

CST. SMYTH: – because I was told it again there shortly after by Debbie Dunphy and I just don't want to be confusing the two.

MS. CHAYTOR: Fair enough. Yes, fair enough. Okay.

Yeah, that's right, okay. All right.

And so what you're saying is that you were aware of the uttering threats and it resulting in a peace bond. And you thought it might have come from Constable Cox but it may be from your discussion with Debbie Dunphy.

CST. SMYTH: That's right, or both.

MS. CHAYTOR: Okay. Or it could have been both.

CST. SMYTH: Yes.

MS. CHAYTOR: Right. It could have been both. Okay.

Now Constable Cox also says here that he asked you if you needed him to come down with him – with you, sorry. “He's, like, no, we don't want a marked unit to, you know, to set him off.”

Do you recall saying words of that nature to Constable Cox?

CST. SMYTH: That's not phraseology I would use, but no doubt, probably paraphrasing what I did say, probably in the same way he was paraphrasing what I was doing going down there.

MS. CHAYTOR: Okay. And I think we explored earlier your concern about having Constable Cox attend with you.

CST. SMYTH: Yes, he's – I mean, what he's saying is correct, I just don't think those verbatim are words I would necessarily use. But it generally means the same thing.

MS. CHAYTOR: You were concerned that having a uniformed officer would cause Mr. Dunphy to not be receptive to your visit.

CST. SMYTH: Right.

MS. CHAYTOR: Did you ask Constable Cox whether or not he or anyone at the Holyrood detachment were familiar with Mr. Dunphy?

CST. SMYTH: I believe I did, yes.

MS. CHAYTOR: Okay. And what were you told?

CST. SMYTH: He didn't have any recollection of past dealings.

MS. CHAYTOR: So he's not someone who was well known to the RCMP?

CST. SMYTH: Not to Constable Cox. I don't think I could safely speak for other RCMP members.

MS. CHAYTOR: Okay, but he hadn't heard of him and didn't know of him.

CST. SMYTH: That's my recollection of what Constable Cox told me.

MS. CHAYTOR: Okay. And I'm sorry I brought down the other exhibit before I directed you to, but an exhibit that I showed a little while ago or actually it's the one that we had to bring down so I'll bring you back to it. But on the top of the PROS search it did give a Mitchells Brook address and another cellphone number. Is it your recollection that you received – is that the information you would have received from the RCMP?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And so that's how you're able to determine his exact location is through the RCMP information?

CST. SMYTH: Yes, I believe so.

MS. CHAYTOR: Okay. So you were aware that Mr. Dunphy had a licence to grow medicinal marijuana before you went to visit him.

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. Did you have any other information regarding any other drug usage by Mr. Dunphy, whether prescription or otherwise?

CST. SMYTH: Nothing specific, no. I know he was an injured worker and perhaps on other medications, but there was nothing specific and nothing to give me any concern.

MS. CHAYTOR: Okay. So would knowledge of Mr. Dunphy's usage of marijuana or other drugs, is that, does that factor in to your risk assessment?

CST. SMYTH: It can. You mean in terms of my own safety?

MS. CHAYTOR: Yes.

CST. SMYTH: I think strictly a medicinal marijuana user doesn't give me a heightened level of concern.

MS. CHAYTOR: Okay.

Okay, there is another search that, the acronym is ACIIS, I think, Automated Criminal Intelligence Information System.

CST. SMYTH: Yes.

MS. CHAYTOR: Is that a check that you did?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And can you tell us why you didn't do that check?

CST. SMYTH: It would require a specific individual or individuals in the Criminal Intelligence office coming in to carry out that check. It's not generally a query that I would be overly concerned about at that stage of, of an assessment. I would have probably done it at a later date, but I wouldn't be expecting very much information from that. That's primarily a database used for organized crime, criminal intelligence-related matters to drugs, weapons transformation, that kind of thing.

MS. CHAYTOR: Okay. And would you have access to that database in your office at the PSU or is that something you would have to go into CIU to do?

CST. SMYTH: I would have to both go to CIU and have a specific person do it for me.

MS. CHAYTOR: Okay. And you didn't think this situation warranted that type of a check?

CST. SMYTH: No, definitely not.

MS. CHAYTOR: Okay.

Other than Constable Cox, then, did you speak to anyone else on April 5 en route to Mr. Dunphy's residence?

CST. SMYTH: Did I speak to anybody?

MS. CHAYTOR: Yes.

CST. SMYTH: I think I spoke to my wife. I think I spoke to a friend, Tim Buckle. I think you've spoken to him.

MS. CHAYTOR: Okay. Tim Buckle?

CST. SMYTH: Yes.

MS. CHAYTOR: And he's an RNC officer as well, I understand.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And I won't take you through that but there was somewhat of a lengthy conversation as you're driving along that day with Tim Buckle. And where was he at the time that you're having that discussion?

CST. SMYTH: I think he was in Corner Brook.

MS. CHAYTOR: Okay. And did you discuss with him anything to do with your visit to Mr. Dunphy?

CST. SMYTH: Nothing specific. I probably would have told him what I was doing and where I was going, but our conversation consisted of personal matters.

MS. CHAYTOR: Okay. And so, and he didn't provide you any information with respect to Mr. Dunphy or conduct any searches for you –

CST. SMYTH: No, no.

MS. CHAYTOR: – with respect to Mr. Dunphy?

CST. SMYTH: No, I wouldn't have even given his name.

MS. CHAYTOR: Other than your wife, then, and Tim Buckle and RCMP, was anyone else aware that you were on your way to Mitchells Brook to visit Mr. Dunphy? And –

CST. SMYTH: Doug Noel. You count Doug Noel?

MS. CHAYTOR: And your own Comm Centre.

CST. SMYTH: Yeah.

MS. CHAYTOR: You had called Noel and Todhunter.

CST. SMYTH: No, I don't think so.

MS. CHAYTOR: Okay.

When you arrived at Mr. Dunphy's home did you –

THE COMMISSIONER: Now, it's almost 12:30, Ms. Chaytor. I don't know if you're heading into another –

MS. CHAYTOR: No, just this one last question –

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: – and then it will be a new, a new area, please.

THE COMMISSIONER: Okay. Go ahead.

MS. CHAYTOR: Okay.

So when you arrived at Mr. Dunphy's home, did you then check in with your Communications Centre?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And would that be normal protocol?

CST. SMYTH: Yes, it could be.

A little bit different for investigative services because I basically told them where I was going and that I was busy. So I hadn't at that point told them, yes, I have arrived. That process is a little more utilized in

front-line operations for a patrol officer to ensure that they advise the Comm Centre when they're en route and at what stage they arrive at the scene, what their observations are there and when they go clear from the scene. That refers to just the availability of emergency operations. A little bit different than how I was conducting myself. But either way, no, I did not advise the Communications Centre that I had arrived at my destination.

MS. CHAYTOR: Okay. And from an officer-safety point of view would that be a prudent thing to do?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

Thank you, those are my questions for now.

THE COMMISSIONER: That was four or five questions.

MS. CHAYTOR: Sorry.

THE COMMISSIONER: Before we go, I'm just, I'm not quite sure on what you're getting from ICAN which is your – the RNC database. I thought you said it got all the interactions between an individual and the RNC but it wouldn't have picked up uttering threats and/or the charges concerning drugs et cetera?

CST. SMYTH: ICAN itself wouldn't because those particular occurrences never occurred in RNC jurisdiction. So, they may be captured on CPIC where there was – it could be because CPIC is a national database available to all police entities –

THE COMMISSIONER: Okay.

CST. SMYTH: It may be captured there if there was convictions entered or there was incidents of violence, but it was captured on PROS because the occurrences occurred in RCMP jurisdiction. So PROS being in essence the equivalent of our ICAN system, that's where it was captured.

THE COMMISSIONER: Okay.

All right. Thank you.

We'll adjourn now for lunch until 1:30.

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. CHAYTOR: Okay.

Thank you, Commissioner.

Constable Smyth, what time did you first arrive at Mr. Dunphy's house on April 5?

CST. SMYTH: I believe it was in the area of around 1:30 p.m.

MS. CHAYTOR: 1:30, okay. And did you record that anywhere?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. Did you have any difficulty finding his house?

CST. SMYTH: Some, yes.

MS. CHAYTOR: And how were you able to locate, ultimately, where he lived?

CST. SMYTH: I found 270 and the name Dunphy written on his mailbox.

MS. CHAYTOR: Okay. And did you then pull into the driveway to the house?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. Was there any other vehicle there at that time?

CST. SMYTH: There was what, what appeared to be an abandoned vehicle up on the lawn, but nothing in the driveway that appeared to be operational.

MS. CHAYTOR: Okay. And what did you see as you approached Mr. Dunphy's house? What condition was it in? What, what else did you observe, besides the abandoned vehicle?

CST. SMYTH: The house was in poor condition. There was boards missing from the exterior, what appeared to be cable wires running through holes in the house.

MS. CHAYTOR: I'm going to get you to speak up again, too, please.

CST. SMYTH: There was cables running through holes in the house. I noticed a sign on the front of the house that gave indication that it was a poverty house, as a result of living conditions due to Workers' Compensation and that no political figures allowed, something to that effect. I noticed a lot of garbage and refuse around the sides and the front, generally poor conditions.

MS. CHAYTOR: Okay. And you said that you saw an abandoned vehicle up around the house. So did you get out and walk around the house?

CST. SMYTH: No, I, I saw that from a distance. I made it to the side of the house and the front area. I approached the front window and I knocked on the window, but I hadn't done any other examination behind the home, no.

MS. CHAYTOR: Okay. And the window that you say that you knocked on is that the window that we now know to be the living room window?

CST. SMYTH: Yes, that's correct.

MS. CHAYTOR: Okay. And so you knocked on that window. And why did you do that? Why did you knock on the window as opposed to knocking on the door?

CST. SMYTH: The front step wasn't in what I considered to be good operational conditions, so I wasn't sure if maybe that was, maybe not the main door they would use there. So I choose to knock on the window.

MS. CHAYTOR: Okay. And were you able to look in the window? Were you tall enough that you could actually look into that living room window?

CST. SMYTH: Yes, I could. I could see in the house.

MS. CHAYTOR: Okay. And what did you see inside the house?

CST. SMYTH: I saw a lot of garbage. I saw some cats moving around the house; again, general poor living conditions.

MS. CHAYTOR: Okay. And did you see anybody?

CST. SMYTH: No, I did not.

MS. CHAYTOR: Okay. Did you also notice whether or not the house was equipped with any security or surveillance-type cameras?

CST. SMYTH: I did notice cameras on the exterior of the house, yes.

MS. CHAYTOR: On the exterior of the house?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And when you saw all of this, Constable Smyth, did that factor into your risk assessment?

CST. SMYTH: Yes and no. I mean, there's lots of people that live in poor living conditions and it doesn't necessarily correlate to violence, but perhaps could be considered a contributing factor to some instability, depending on what their situation is.

So it might have created some heightened awareness but certainly not enough for me to change my approach or what my goal was.

MS. CHAYTOR: Okay. So, enough to heighten your awareness but not heighten your level of risk, and when I'm saying that, in terms of your perception of your risk to yourself?

CST. SMYTH: Right. It hadn't gone up to the point where I was considering changing how I would approach the situation.

MS. CHAYTOR: So you were still prepared to visit Mr. Dunphy on your own?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And what about the, the presence of the cameras, the sign that you read that's not welcoming any government officials, did that factor into your risk assessment?

CST. SMYTH: Not so much for my own safety. The sign itself gave some credence and confirmation to the general threat assessment, in so much there being a long-standing unresolved grievance that he perceivably blamed government officials for.

MS. CHAYTOR: Okay. And this is before, of course, that we're gonna come to that you visit Dick and Debbie Dunphy, but this first visit to Mr. Dunphy's house happens before you go next door to his brother and sister-in-law's. Is this correct?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. All right.

So at this point in time, when you've observed the house and the conditions, you've seen inside as well, or a part of what you can see inside, is your risk assessment now at this point, is it still at low?

CST. SMYTH: For considering the potential for an act of violence towards myself?

MS. CHAYTOR: Yes.

CST. SMYTH: Yeah, I would still classify it as low, yes.

MS. CHAYTOR: Still at low.

CST. SMYTH: Yeah.

MS. CHAYTOR: Okay. And what about in terms of the risk assessment that you're doing for – against political officials?

CST. SMYTH: It hadn't changed, I don't think. It was – there were factors there that were perhaps confirmed and that would have eventually contributed to a broader threat assessment, but at that stage there hadn't been any particular change.

You know, the sign would give some solidification to what his perceived situation was but that was voiced fairly clearly within his social media feed as well.

MS. CHAYTOR: Did it start to make you think that perhaps you're – Mr. Dunphy has some mental health issues? Were you thinking there might be some mental health issues with respect to Mr. Dunphy, based on the conditions that you observed?

CST. SMYTH: I think that though would start to cross my mind when somebody can live in those level of conditions. Again, not knowing what their situation is, you know. I've learned a bit more about Mr. Dunphy since then that might – could perceivably contribute to those living conditions, but without being privy to those, I think you'd be remiss not to think that maybe their mental state doesn't play into that to some effect, yeah.

MS. CHAYTOR: Okay. And in terms of the presence of the cameras do, do those types of cameras sometimes alert police officers to certain kinds of activity?

CST. SMYTH: They can, yes. I think in that situation – I mean cameras are not uncommon outside of someone's home but, certainly, in a house that's in those deplorable type of conditions, we might consider that they would be the contributing factor to having drug operations in the house, but I also knew that. I knew there was a medicinal grow permit there so –

MS. CHAYTOR: Okay. All right.

And on that issue of what you perceived and how you interpreted it, I just want to take you to a part of your statement in P-0119 please, is the public exhibit. This is your first statement that you gave to the police the day after, so April 6, 2015.

I'm going to be looking at pages 6 and 7 of that exhibit, please. It's the bottom paragraph. Actually, it's the middle paragraph. It's – okay.

MR. SIMMONDS: Mr. Commissioner, the side monitor is not on.

THE COMMISSIONER: Sorry?

MR. SIMMONDS: The side monitors are not on, for some reason.

THE COMMISSIONER: Okay, thank you. They there now?

MR. SIMMONDS: It's on now – that one is.

THE COMMISSIONER: Both on? Okay, continue.

MS. CHAYTOR: Okay.

And it's on actually page 7, I think, here is where I wanted to take you. You talk about before that, about the, you see the sign, the signs on the house referencing particular politicians; no political figures welcomed here. And then you come down, you say that, and I looked – I walked up around the house, cats everywhere. I looked in the window and I see garbage all over the floor. Do you know, right off the bat I'm, I'm thinking there this guy's got, he got some issues of some sort, to be living in, in this type of situation. But it was empty. I felt, ah, Jesus Christ, you know, what are we – what is this person into?

That's what I was feeling. I was – 'cause my thought was, you know, if you're in a municipality, I don't think you would be subject to this. You wouldn't, you couldn't be living in this. This is not even habitable. But nonetheless I banged on the window and no sign of anybody.

Okay, so this is the day after, and this is how you're describing what you saw. And, Constable Smyth, so at this point in time, when I read this, it appeared that you're thinking that there might be some issues with Mr. Dunphy in terms of why he would be living in this, in terms of his stability or mental health issues and yet you went ahead and knocked on the window. At the time you were seeing all this, did you do a reassessment as to whether or not you should continue on and visit Mr. Dunphy by yourself?

CST. SMYTH: Not really, you know, as I state here – now they got empty, but the word is empathy is what I was saying –

THE COMMISSIONER: Sorry, can't hear you.

CST. SMYTH: They got empty written here at the last part of the statement –

THE COMMISSIONER: Right.

CST. SMYTH: – but the word I said was empathy. You know, while yes, I was feeling that there might be some perceived issues for his mental health, it wasn't he has mental health issues and he might do, act out violently towards me; it was he might have some mental health issues because the way he's living, the living conditions, didn't to me necessarily marry up with somebody who was otherwise not suffering from mental health issues.

THE COMMISSIONER: The empty is only referring to the fact that there's nobody home, isn't it?

CST. SMYTH: No, I –

THE COMMISSIONER: No?

CST. SMYTH: No, I'm saying here he's got some issues and some sort of living in this type – but it was empathy that I was – I'm trying to say I was feeling empathy.

THE COMMISSIONER: That you feel empathy?

CST. SMYTH: I'm feeling empathy for him. They were, I think had similar questions to Commission counsel in that did it give you cause for a heightened level of concern for yourself? And while, yes, it does put you on a heightened level of awareness, regardless of what type of mental health issue somebody might be suffering from, if there's a general level of instability, then yes, your concern might be heightened, but I was more feeling concern for this person, that it was hard to believe that they were living this way.

MS. CHAYTOR: Okay, so you're on a heightened alert, but still not enough to make you reassess and say maybe I should get somebody else with me.

CST. SMYTH: Sorry, can you ask that again?

MS. CHAYTOR: So you've said that you were on a heightened alert, but not to the point where you would, you reassessed and thought I should get another officer to come with me?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. All right, so Mr. Dunphy is not at home. What happens next?

CST. SMYTH: I eventually returned to my vehicle. I drove down the road. I think it probably would be west on the main route there, trying to, I guess, determine what my next course of action would be. Would I wait here for a little bit? Would I seek to speak to neighbours? At some point in time I pulled over on a beach area there, I think, and I recall now, actually, I was getting the –

MS. CHAYTOR: I'm sorry, I can't hear you.

CST. SMYTH: I recall now actually when I turned around there at one point, I think I almost got the vehicle stuck there in a, in an area that there was some gravel or sand.

THE COMMISSIONER: I think it'd be better if you had the mic directed right at your mouth, sort of over your shoulder.

CST. SMYTH: Sorry.

THE COMMISSIONER: It's not great for picking up, unless you're directly into it.

CST. SMYTH: So I pulled the vehicle west on the main route there in Mitchells Brook, again trying to determine what my next course of action would be. Would it be go back to St. John's, remain in the area for a little bit to see if Mr. Dunphy returned home, speak to neighbours – these are the kinds of things I'm thinking through. At one point in time, I turned the vehicle around. I recall now almost getting the vehicle stuck in like a sandy or beachy area.

Then I pulled up and parked on the side of the road, and at that stage decided to make a couple of phone calls to the numbers I had for Mr. Dunphy to see if I could determine where he was, whether it be home or out somewhere else. I didn't have any phone service, so none of the phone calls were successful. It just came back as call failed.

I stayed there for a little bit longer. I think I just kind of flipped through my phone and then I decided to go see his closest neighbour, which turned out to be Dick and Debbie Dunphy. So I pulled up into their driveway –

MS. CHAYTOR: Okay, I'm just going to stop you there then, Constable Smyth, because I want over what you've told us.

So you did attempt to call Mr. Dunphy before you went back to his house; is that right?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And you indicated that you didn't have any phone service?

CST. SMYTH: Correct.

MS. CHAYTOR: Were you equipped with a portable radio?

CST. SMYTH: No, but the vehicle has a radio.

MS. CHAYTOR: The vehicle did, but you on yourself, on your person, didn't?

CST. SMYTH: No.

MS. CHAYTOR: Okay. So did that factor into your risk assessment then when you ultimately go to Mr. Dunphy's and visit him, knowing that you didn't have cell coverage?

CST. SMYTH: Actually (inaudible) enough I – when I returned to his driveway, I was thinking the same thing. I did look at my phone and it had service in the driveway.

MS. CHAYTOR: Okay, so when you returned for the second time, you did have cell coverage.

CST. SMYTH: Yes, I did, yes.

MS. CHAYTOR: I take it you are alerted at this point in time that cell coverage is spotty in the area.

CST. SMYTH: Pardon me, sorry –

MS. CHAYTOR: You were alerted at this point in time, though, because you'd had difficulty just a little while before that in reaching him –

CST. SMYTH: Yes.

MS. CHAYTOR: So you were alerted to the fact that cell coverage is spotty in this area.

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay.

And did you make any inquiries before you decided to go down in that area that day whether or not the area had cell coverage, and whether or not it was reliable cell coverage in the area?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay.

And are you – is there an option for you to carry a portable radio?

CST. SMYTH: Yes, we have access to portable radios, yes.

MS. CHAYTOR: Okay. But that's not something you considered that day?

CST. SMYTH: Not that day, no.

MS. CHAYTOR: Okay.

And in terms of the calls you made to Mr. Dunphy – I'm going to bring that up, please, that's P-0130; this is excerpt from your phone records.

Okay, so Constable Smyth, we understand this is the excerpt from your phone records and we'll see here that there are – we talked earlier this morning about your call into, your calls into the RCMP, calls here – Tim Buckle. So this is the, almost a 23-minute call I referred you to right before we went on break.

And then we see there's one, two, three, four, five, six calls. The one here at 284, I understand that to be the cellphone number. So you called that number one, two, three, four times. And these two numbers – I won't cross-reference them now but, Commissioner, when you cross-reference those with, I believe it's P-0089, those are the numbers that Mr. Mahoney would have provided you.

Is that correct, Constable Smyth?

CST. SMYTH: I believe it is, yes.

MS. CHAYTOR: Okay. So four tries to the cellphone number and then two to the other two numbers – or one each to the other two numbers you had. Okay.

And did you actually speak to Mr. Dunphy prior to visiting his home?

CST. SMYTH: No.

MS. CHAYTOR: Okay. So none of your calls went through?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And we'll see over here then, Commissioner, that this column over here indicates all zeros.

THE COMMISSIONER: Zero, yeah.

MS. CHAYTOR: Whereas here, for example, the call to Tim Buckle was almost a 23-minute call is what I understand that to be. And that seems right to you, Constable Smyth?

CST. SMYTH: Yes, it does.

MS. CHAYTOR: Okay. Did you tell the RCMP in any of the statements that you gave them that you had attempted to call Mr. Dunphy prior to visiting him?

CST. SMYTH: I assumed I had until you brought it to my attention during deposition.

MS. CHAYTOR: You assumed you –

CST. SMYTH: But, no, I know now that I did not.

MS. CHAYTOR: Okay. All right.

And you also then recorded a case summary for the RNC on April 7. It's in your system, which I understand you started to write the day after, April 6, the day after the incident. You didn't mention it in your case summary either, Constable Smyth, that you had attempted to make these calls.

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. Also, when you were interviewed by Sergeant Grant Little who – from the Saskatoon Police Service, he conducted the review for the RNC, you also didn't mention it to him either.

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. And so as you say the first time, then, that you mentioned this was when we pointed it out to you through your interview with the Inquiry.

CST. SMYTH: No, I think I brought it up to you before you pointed it out to me, but –

MS. CHAYTOR: Yes, yes, and at that point in time myself and Ms. O'Brien had discovered this as being calls on your records.

CST. SMYTH: Pardon me? Sorry?

MS. CHAYTOR: Okay, so the first time you mentioned it was in your interview with the Inquiry.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. At that point in time Ms. O'Brien and I had already discovered these calls in your records.

CST. SMYTH: Okay.

MS. CHAYTOR: Okay. Why is it that you didn't mention –?

MR. KENNEDY: Commissioner, I really think the record needs to be clarified here. I don't know if I should do this in redirect or do it now. I seek guidance from your, from you, Mr. Commissioner.

THE COMMISSIONER: Well, if we can save some time going down a blind alley, is there something you can –

MR. KENNEDY: Yes, Commissioner, essentially I can refer you to exactly where this was, this issue arose. Day one, page 650 of the, of the Commission counsel's interview, Mr. – Constable Smyth said he determined there was nobody home and if anyone had had no interest – and if anyone was home he had no interest in speaking to me.

At page 651, this is before any questions from Commission counsel other than, what did you do next? I drove down the road a little bit further, I picked up a – pulled up in a gravel area. I attempted to make a few phone calls, didn't have any service.

Question: Who were you phoning? Answer: I made some attempts to call him actually. Question: Calls to Mr. Dunphy? Answer: Yes. So this is after you visit the first time? Answer: Right. Where did you go – question. Maybe 200 feet down the road.

So it's not brought to his attention by Commission counsel. They ask him where did he go. He volunteers the information, then the line of questioning that Ms. Chaytor has now put forward and is engaged in.

THE COMMISSIONER: Unless it was done before the interview started. Ms. Chaytor, do you have any point to make on that?

MS. CHAYTOR: Yes.

THE COMMISSIONER: I think –

MS. CHAYTOR: Yes, okay.

THE COMMISSIONER: – Mr. Kennedy is attempting to clarify something, but I'm not sure it is clarified.

MS. CHAYTOR: Okay. And I think what the point is then, and I'm sure he'll correct me if I'm wrong, but we were aware. Commission counsel and I discovered this in the records. And it's our understanding this is not recorded anywhere in the RCMP records and there's no reference in the RCMP records that they were aware that these calls had been attempted to Mr. Dunphy.

So Commission counsel and I, we had already interviewed a number of witnesses around this issue because, Constable Smyth, you were one of our last witnesses. So my point is that we were aware of that at the time that we're asking you those questions.

So my question to you, Constable Smyth, is –

THE COMMISSIONER: But Mr. Kennedy's point is that there was some – it is as though you were asking that an inference be drawn that Constable Smyth was not prepared to refer to these calls when, in fact, Mr. Kennedy –

MR. KENNEDY: (Inaudible.)

THE COMMISSIONER: – is saying they were referred to by him before you raised them.

MS. CHAYTOR: That's correct.

THE COMMISSIONER: Right.

MS. CHAYTOR: That's correct. And he had not mentioned it in any other statements up to that point in time.

THE COMMISSIONER: Yeah, I must say I'm missing too. What is the significance of his not mentioning them or of – even if he's attempting to make the calls. What inferences would I be asked to draw there?

MS. CHAYTOR: And if I could just continue with that line, Commissioner, but where this is going is the fact that it had not been mentioned even though the police had asked him in, in his interview, particularly his first interview whether or not there was any possibility of there having been a tipoff to Mr. Dunphy prior to him attending on, at his premises.

THE COMMISSIONER: Right.

MS. CHAYTOR: So if I could just continue with that line of questioning.

THE COMMISSIONER: Go ahead. Go ahead.

MS. CHAYTOR: And I would like –

THE COMMISSIONER: Mr. Kennedy, do you have any problem with that?

MR. KENNEDY: No.

THE COMMISSIONER: Okay, go ahead.

MS. CHAYTOR: Yes. And I would like to, I would like to ask you one other question about this, before I get to that question. But, Constable Smyth, in terms of the calls that – or in terms of Commission counsel knowing about this and having discovered this in your phone records, had anyone alerted you to that prior to you attending to give your interview with, with us, with myself and Ms. O'Brien?

CST. SMYTH: No. Frankly I was surprised when you pointed them out in the phone records because as I refresh my own memory of making those calls, I had no service and I would never have thought that they would even show up in your phone records. I thought this was a situation where you don't have any cellphone service; the calls were never initiated to show up in phone records. So I was surprised to see that all, absolutely.

I will note, I think you mentioned that it was never in any of the RCMP files, but I had noted in the RCMP timeline when that was released that they had made some reference to me phoning Colin Dinn. Now, I thought that was some sort of other error that maybe Mr. Dunphy had made a phone call to Colin Dinn and that was simply an administrative or clerical error. Because I didn't know Colin Dinn existed, let alone what his phone number would be or why I would call him. But I think after you and I having a discussion around these phone calls, it appears that the RCMP were indeed aware of those phone calls, but there may have been an error around who those calls were to.

MS. CHAYTOR: Right. Yes, that's right. And we explored that in the interview and I'll take you through that and where, where that error appears to be in the RCMP timeline that was prepared by Wanda Richards.

CST. SMYTH: Right. So I just wanted to clarify, I think the RCMP was actually aware of the phone calls, even though I hadn't made any correlation between what they were.

MS. CHAYTOR: And they had indicated four of those phone calls, the calls into the cellphone of Mr. Dunphy, those are indicated in the RCMP records as actually being calls to Colin Dinn.

Yes? Yes, that's what you –

CST. SMYTH: That's how I read it on the timeline, yes.

MS. CHAYTOR: Right.

CST. SMYTH: But I didn't think it was this error. I figured it was a different kind of error.

THE COMMISSIONER: So let me understand this. Mr. Smyth is saying he thinks that the – although he didn't mention it – that the RCMP were aware that these four phone calls of zero minutes had been made or attempted, whatever we consider it, and that they thought that all four were calls, attempted calls to Mr. Dinn?

MS. CHAYTOR: That's correct. Only the four, the four that are to the cellphone records –

THE COMMISSIONER: Okay, so the second one and the –

MS. CHAYTOR: – number.

THE COMMISSIONER: – and the others, all the same –

MS. CHAYTOR: Right.

THE COMMISSIONER: – numbers, 6476, last, last numbers, yeah.

MS. CHAYTOR: Right. And I'll take you to that document, Commissioner.

So neither of the two to the numbers that Mr. Mahoney provided are noted in the RCMP, but the four to the cellphone number for Mr. Dunphy, those are noted in an RCMP document, a timeline that Wanda Richards prepared. And she indicates those to be calls to Mr. Colin Dinn, not to Mr. Dunphy.

THE COMMISSIONER: But that appears to be a mistake, is it?

MS. CHAYTOR: That's an error. That's an error. Correct.

CST. SMYTH: But I didn't, I didn't think it was an error related to these phone calls.

MS. CHAYTOR: You didn't think it was.

CST. SMYTH: No. When I – I did see it and recognized it as an error, but I assumed it was an error by them even making reference to me being involved in those phone calls. I thought the error probably existed with them thinking that perhaps that phone call was Don Dunphy to Colin Dinn.

It wasn't until later, after we met, that I realized the error was in that I had tried – I tried to call Don Dunphy and not Colin Dinn.

THE COMMISSIONER: Right.

CST. SMYTH: Is that –?

THE COMMISSIONER: That's what I understood.

CST. SMYTH: Okay.

MS. CHAYTOR: Yes, that's right. That's right. And those are the same time, the reason we think that's the mistake – and we will hear from Wanda Richards on it. But the reason we think it is, it's because it's the same time frame. And I should caution here where you see the time periods, these are UTC time periods. So you have to back it up about 2½ hours in the difference.

THE COMMISSIONER: Okay. We've got that UTC. What is that – I know Newfoundland, Greenwich time –

MS. CHAYTOR: Universal.

THE COMMISSIONER: – or –

MS. CHAYTOR: Universal transfer.

THE COMMISSIONER: – Greenwich time, universal –

MS. CHAYTOR: Universal transfers, something.

THE COMMISSIONER: How long has this been on the go? I must profess it's only recently that I –

MS. CHAYTOR: I think since the beginning of time, I want to say.

THE COMMISSIONER: Greenwich is out the window? Don't use that anymore? Okay.

MS. CHAYTOR: Yeah, sorry. Anyhow, so these times here –

THE COMMISSIONER: Time to go back to school I guess.

MS. CHAYTOR: – aren't in Newfoundland time.

THE COMMISSIONER: So let me understand again, you're, you're going to be asking me to infer that Mr. Donald Dunphy may have seen these calls even though – coming in even though they read zero minutes?

MS. CHAYTOR: No, if I could continue with that line of questioning, Commissioner. But I think we need to be clear that there isn't any evidence to know – to suggest that Mr. Dunphy was alerted to those calls.

THE COMMISSIONER: Right.

MS. CHAYTOR: There is, there is indication on his cellphone records around that time period, but it appears to be GPS records, not calls coming in. So there's nothing to suggest that he was aware that these calls were being made.

THE COMMISSIONER: Right. So I guess I got to go back. So what is the relevance of this for, you know – why are we spending time on it? I'm not trying to put you off on it –

MS. CHAYTOR: No, that's fine.

THE COMMISSIONER: – I'm just trying to understand where you're going.

MS. CHAYTOR: That's fine. My main point in bringing this up was, well, two-fold. We – you are going to hear questions about any error in the RCMP record.

THE COMMISSIONER: Right.

MS. CHAYTOR: And so I think it's important to have on the record who in fact that Constable Smyth was calling at this particular point in time –

THE COMMISSIONER: Right.

MS. CHAYTOR: – and to confirm that he made these calls. Secondly, it's important in terms of the time frame of when those calls were placed.

THE COMMISSIONER: Uh-huh.

MS. CHAYTOR: And thirdly, I think that it's important in terms of, well his efforts, the fact that he would try and attempt to call Mr. Dunphy first before attending at the residence as part of what he's doing and whether or not that factors into his risk assessment.

And then the other point I think that makes this evidence relevant is the fact that Mr. – or Constable Smyth did not disclose it beforehand and his reasons for why he would not have thought to mention this beforehand. So those are the other questions that I would have on this particular issue. But I'm in your hands if you wish to (inaudible).

THE COMMISSIONER: No, I'm just trying to understand. Finish off your questioning but I'm, I'm not sure. The tipoff issue doesn't seem – there doesn't seem to be anything to that line of inquiry.

MS. CHAYTOR: Well, we know now that the calls didn't go through.

THE COMMISSIONER: Right.

MS. CHAYTOR: When, when Constable Smyth is being questioned by the RCMP as to whether or not the potential for a tipoff, he doesn't know whether or not those calls could have been displayed on Mr. Dunphy's cellphone or not. He doesn't know that.

We know now looking at – you know, after the fact everybody has examined the phone records that it doesn't appear that they did register. But at the time that Constable Smyth is being asked that question by the RCMP the next day, he would not have known whether or not those calls could have potentially been on his cellphone, whether or not the calls into his house – as we now know the house phone was disconnected, but he didn't know whether – he didn't know that at the time.

So in terms of answering the question of a potential tipoff, it doesn't appear that this would have alerted him but Constable Smyth would not have known that at the time.

THE COMMISSIONER: Well, again, I'll have some questions later because I – I'm still not sure –

MS. CHAYTOR: Absolutely.

THE COMMISSIONER: – what the inference or what the significance of the inferences are. But go ahead with your line of questioning.

MS. CHAYTOR: Okay. All right.

THE COMMISSIONER: So that – is that, so that's a cellphone, is it? The –

MS. CHAYTOR: This is an extraction from his cellphone.

THE COMMISSIONER: – ending is 6476? That's four, four –

MS. CHAYTOR: Yes.

THE COMMISSIONER: – records.

MS. CHAYTOR: This here is 6 – 765-6476, that's the cellphone number –

THE COMMISSIONER: Right, there's one there, there's three others – right, I see them. So that's a cellphone that has been confirmed to be Donald Dunphy's, is it?

MS. CHAYTOR: That is correct and that's in the records that you would have, Commissioner. And the other two numbers – the one at 285 and the one at 286 on this document, those two numbers are the numbers that you can cross-reference were given by Mr. Mahoney.

THE COMMISSIONER: Right, go ahead.

CST. SMYTH: Counsellor, I'll correct perhaps a reference you made to me having no way to believe that those calls were received by Mr. Dunphy, but as I stated there was no phone service, and when I attempted to make those phone calls, it was stated very clearly on my phone: call failed. So I think I had reason to believe that those calls were never made and never received by the intended recipient.

MS. CHAYTOR: Okay, so, Constable Smyth, did those phone calls and the fact that you attempted to make them – 'cause I think we've all had that experience when we experience coverage issues. But were those phones displayed on your – the fact that you attempted to make those calls, were they displayed on your cellphone?

CST. SMYTH: On my phone?

MS. CHAYTOR: Yes.

CST. SMYTH: I believe they would be, yes. I think any time you make an attempted call it would display it on the phone itself, on the hardware.

MS. CHAYTOR: Okay. And when you met the next day with the RCMP to give your statement, you were able to provide them with certain times. For example, you told them at 11:22 a.m. is when you called into RCMP Holyrood Detachment. I take it you checked your cellphone to be able to give that time?

CST. SMYTH: I think I did, yes.

MS. CHAYTOR: Okay. So in doing that and checking your cellphone, would you also have seen the calls into Mr. Dunphy?

CST. SMYTH: I don't recall making reference to those phone calls any time after that. Actually, it was very helpful after seeing these records, to apply a more finite timeline for myself, but I didn't reference them before that. I had simply forgot about them. They were calls that weren't made and I forgot about them.

MS. CHAYTOR: Okay.

And I think then, Commissioner, we should then look at P-0119, in fairness, and bring the witness to what he said in answer to the RCMP on this question in regard –

THE COMMISSIONER: What's that, P –?

MS. CHAYTOR: P-0119, this is Constable Smyth's transcript of his interview on April 6 with the RCMP, his first statement. And on page 53 of – and it may be 53 of the statement as opposed to the document, so it may be 54.

THE COMMISSIONER: 53?

MS. CHAYTOR: Yes, it's right here.

Okay. And this is towards the end of your statement that day, Constable Smyth.

And Corporal Henstridge says, "Ah, just a couple of questions. And like if you're okay with this, I was gonna get you to draw a diagram ... Obviously a diagram." Then he says "is there any way he could have any notion that you were coming? Like do you think that he might have been tipped off by anybody or anything like that? Were you aware of him having a phone in the house?"

And you replied, "He had a phone. I knew he had a phone. I had his phone numbers." "Okay."

So in answering that line of questioning you didn't think to say to the RCMP at that point in time: Oh, not only did I have his numbers, I did try to call. I wonder did my numbers register.

CST. SMYTH: No, it wasn't my line of thinking at the time. When they were asking those questions I felt like it was a – being inquisitive on whether or not somebody else could have tipped Mr. Dunphy off as in, did I speak to a neighbour, or did I see anybody on the road, or was I parked in such a fashion that might lead somebody else to believe the police are coming to your house and tip them off. I wasn't even thinking along the lines of, did you tip him off that you were coming.

And again, the phone calls; they hadn't crossed my mind, I think, after they were made to be quite frank, until our deposition hearings because they really were out of service calls that were never, in my mind, made, and certainly not received.

MS. CHAYTOR: Okay. And you do continue here. He says okay, and you say: I don't know, his brother could have called him but I don't think so, I didn't get that impression from him.

So in answering it, you do refer to the brother. So you were thinking more along the lines of someone else other than yourself.

CST. SMYTH: That was my line of thought, yeah.

MS. CHAYTOR: Okay, and then the other question or the other reason for this line of questioning, as I indicated to the Commissioner, would be this notion of a tipoff, a tipoff that you may have been coming. Did that occur to you in making the calls beforehand?

You obviously felt comfortable to make the calls, so you weren't concerned that if your calls had gone through and Mr. Dunphy was alerted to you coming, you weren't concerned about that. You didn't consider that as part of your risk assessment that you're alerting him to you coming.

CST. SMYTH: No, I wasn't.

MS. CHAYTOR: Okay. So is it normal that you would phone ahead and tell someone and set the time up for when you're going to be popping by?

CST. SMYTH: It can be. It's not my preference in the situation to initiate a meeting. I would prefer to do it face to face. By phone, you know, gives the opportunity for the receiver to say, to think about it, no, I don't want to talk to you, hang up the phone. It's just human nature in terms of it being easier to tell somebody on the phone, I don't want to talk to you.

Conversely, in person to person, they can say I don't want to talk to you, but you still have potentially an opportunity to say, look, I'm, I'm not here to arrest you, I just want to talk to you about some disconcerting comments you made. It'll only take a few minutes. So you have that opportunity in a face-to-face meeting that you don't necessarily get by phone. In the absence of being able to initiate that face-to-face meeting, doing it by phone would be better than nothing.

MS. CHAYTOR: Okay. And so, so an option could be to phone to Mr. Dunphy and have the discussion about his tweets or his Twitter account, you could call and have that chat with him. But do I understand you to be saying that you felt you could gather more information with a face-to-face with him and get a better feel for him and his issues that way.

CST. SMYTH: Yes. My point of making the phone call would have been to set up the face-to-face meeting, though. It wouldn't have been to have the discussion on the phone. It would have been to say, I'm in Mitchells Brook, I would like to meet up with you if I can, can we do that today.

MS. CHAYTOR: Okay. And are officers sometimes – are officers sometimes reluctant to make the call ahead of time because there could be a tipoff? Is that a concern?

CST. SMYTH: I don't think it would be a concern in this situation because we still haven't determined that there's some propensity for violence or history of extensive violence. I didn't feel an officer-safety concern at that stage. So that wouldn't have been a concern of mine.

MS. CHAYTOR: Okay.

CST. SMYTH: That would be a concern in the case of maybe an arrest of a violent person or a surreptitious drug search, any type of tipoff would be of a significant concern to those officers. This I wouldn't put in anywhere near the same category.

MS. CHAYTOR: Okay. And that day did you have any difficulty with any other calls being dropped? We were able to see that while you're in the vicinity of Mr. Dunphy's house.

CST. SMYTH: After the incident, I believe I had some challenges making phone calls once I was down on the road, but I can't remember specifically. Once inside the house I didn't have any challenge, no.

MS. CHAYTOR: Okay. And driving down that day you had no trouble reaching your wife or reaching Tim Buckle. Your cellphone was working fine then?

CST. SMYTH: Those were from the highway.

MS. CHAYTOR: Right. Okay.

And down, then, when you, from – where did you make the call to the RCMP after the shooting?

CST. SMYTH: Inside the house.

MS. CHAYTOR: Okay. And no troubles with your –

CST. SMYTH: No.

MS. CHAYTOR: – cellphone coverage inside the house?

CST. SMYTH: No.

MS. CHAYTOR: Okay.

Okay, so after you've – and I just want to be clear in terms of where you were at the time that you've made those calls. You've said I think, you pulled in on the side, a gravel side of the road, is that right?

CST. SMYTH: Correct. It would be the water side of the road.

MS. CHAYTOR: Okay.

CST. SMYTH: Yeah.

MS. CHAYTOR: And was it directly in front of Mr. Dunphy's house or further one way or the other?

CST. SMYTH: It would be further west I think we'd call it.

MS. CHAYTOR: Okay, so further west. And Dick and Debbie's house, if we're talking that language, it would be further east?

CST. SMYTH: Yeah, I would consider Dick and Debbie Dunphy's house to be immediately to the east of Don Dunphy's house. I had travelled further west, maybe 200, 300 feet, it may have been a bit more.

MS. CHAYTOR: Okay. So you pulled out of his driveway and turned right, is that –

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. And pulled in on the side of the road there?

CST. SMYTH: Right. I think I drove, you know, considerably further. And then when I turned around I came back further east again before I actually stopped. So the point where I stopped, it may have been 200, 300, maybe a little bit more feet from Don Dunphy's driveway.

MS. CHAYTOR: Okay. And so what was your intention, then, in going, turning right. So that's going back, not towards St. John's, the opposite direction.

CST. SMYTH: That's right.

MS. CHAYTOR: So where was it you were intending to go at that point?

CST. SMYTH: I didn't have any intentions at that point. It was find somewhere I could park for a minute so I could try to determine what my next course of action was.

MS. CHAYTOR: Okay. And we saw in the record – I won't bring it up here again now, but I think the last of your six phone calls, if we convert it to Newfoundland time it would have been 1:39 p.m. Does that sound right to you?

CST. SMYTH: That sounds right to me, yes.

MS. CHAYTOR: Okay. All right.

And how long – and I think maybe it's three minutes between them, 1:36 to 1:39 is my recollection on that, but the record will stand. So does that seem about right to you, that it was three minutes placing those – trying to place those calls?

CST. SMYTH: In totality, just the phone calls themselves?

MS. CHAYTOR: Yes.

CST. SMYTH: That sounds –

MR. KENNEDY: Just a minor point, Commissioner.

When Ms. Chaytor says the record will stand, we have that in UTC time. So I think it has to be put – if the record is going to stand, there has to be – the time is 1:39:39 is my understanding.

MS. CHAYTOR: Yeah, that's in another place. In this particular record that we have here –

MR. KENNEDY: Okay, sure.

MS. CHAYTOR: – that is in another place, Mr. Kennedy, where the conversion is made.

MR. KENNEDY: Okay. Thank you.

MS. CHAYTOR: You're welcome.

Okay so, Constable Smyth, sorry. So that's about right, about a three-minute stretch that you were placing those six calls.

CST. SMYTH: That's sounds correct.

MS. CHAYTOR: Sound about right? Okay. All right.

And in terms of, you're pulled over to the side of the road, did you do anything else on the side of the road or was that about the length of time you're on the side of the road?

CST. SMYTH: No, I spent some more time there. I didn't – I don't recall doing anything specific but I remember, I think, cycling through my phone, you know, messages, text messages and trying to think what is my next course of action.

I was (inaudible) there was a thought there for a minute, I'm just going to park here and wait for – give it maybe half an hour or even an hour to see if Mr. Dunphy returns. I had travelled that far. I didn't necessarily want to just immediately go back to St. John's without making some effort to speak to Mr. Dunphy.

So then while I'm sitting there waiting, I make the determination that, well, I'll use this time to speak to some neighbours to see if I can't garner some intelligence that way.

MS. CHAYTOR: Okay. And so about how long were you parked on the side of the road?

CST. SMYTH: I'm not really sure. It could have been as low as 10 minutes, maybe as high as 20 minutes.

MS. CHAYTOR: And what did you do after that?

CST. SMYTH: I pulled into Dick and Debbie Dunphy's driveway.

MS. CHAYTOR: Okay. All right.

Then perhaps you can take us there. What, so what time – can you tell us around what time, then, you arrived at Dick and Debbie's house.

CST. SMYTH: If I'm going to go by the 1:39 timeline, I'll take a guess and say anywhere between 1:45, 1:50 around there.

MS. CHAYTOR: Okay.

THE COMMISSIONER: 1:50 – from what to what?

CST. SMYTH: So my last phone call, attempted phone call, I know now by those phone records was 1:39:39.

THE COMMISSIONER: Right.

CST. SMYTH: Between a few minutes of waiting in the car, trying to decide the next course of action and the time it would take to just drive to Dick and Debbie Dunphy's house and exit the vehicle, I'm thinking a minimum of around 1:45. It could have been into the 1:50 range.

MS. CHAYTOR: Okay. So is your evidence that you were stopped on the side of the road for a period of time before you tried the calls into Mr. Dunphy's house? Or you were stopped there for a period of time, immediately made the calls and then stayed longer looking through your phone?

CST. SMYTH: Well, I think the phone calls would have been in the middle of that stop somewhere along the lines.

MS. CHAYTOR: Okay, so the 1:39 is not the beginning of your stop – or 1:36 is actually, I think, the first call.

CST. SMYTH: Right.

MS. CHAYTOR: So that is somewhere in the middle of –

CST. SMYTH: Right.

MS. CHAYTOR: – of the time you're stopping.

CST. SMYTH: Yeah, I didn't finish that phone call and then immediately drop the car in drive and go to Dick and Debbie Dunphy's, no. I still spent some more time there trying to – I'm still thinking, I get a hold of Mr. Dunphy, the next course of action is either I'm considering driving back to St. John's, waiting right where I was. I think I had a view of his driveway or at least where he had, where he'd pull in or as I, I guess I started to think about it, if I'm going to wait here for an hour, I should better utilize that time and maybe speak to some neighbours.

MS. CHAYTOR: Okay. All right.

And so tell us then about your visit to Debbie and Dick Dunphy who – did you pull up into their driveway? Who came to the door?

CST. SMYTH: I pulled up in their driveway. I exit my vehicle. I walk to a side door; it appeared to be a side door off a deck that looked like their primary door of usage, the front door, looked like one that wasn't probably used very much. I knocked on that screen door and within a couple of minutes Debbie Dunphy answered the door.

MS. CHAYTOR: Okay. And did you identify yourself to Mrs. Dunphy?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And what did you tell her – who did you tell her you were and what was your purpose of being there?

CST. SMYTH: I told her I was a member of the RNC and that I was looking into some comments that – I don't think I even told her initially exactly what I was investigating, but I asked her about her neighbour, if she knew her neighbour.

She immediately disclosed that it was her brother-in-law. And it was you know within a few seconds that I, I then said I'm actually looking into some comments he's made directed at the Premier.

MS. CHAYTOR: Okay. And what was – did Mr. Dunphy join the conversation at some point?

CST. SMYTH: He did eventually. It was some time after. I had a much lengthier conversation with Ms. Dunphy around the family history. She gave me a fairly exhaustive account of the family, some of their interactions, her own sentiments, that kind of thing.

MS. CHAYTOR: Okay. And where were you having this discussion? Did they invite you in? Did you sit down?

CST. SMYTH: She invited me in and – but we didn't go beyond the porch.

MS. CHAYTOR: Okay, so you stayed in the porch area of their house.

CST. SMYTH: Yes, that's correct.

MS. CHAYTOR: Okay. So the whole time you're there you're standing talking to her and then –

CST. SMYTH: Right, it's in the porch. The kitchen would have been to my right and there was a stairwell that looked like it went to the basement immediately in front of me.

MS. CHAYTOR: Okay. And so Mr. Richard Dunphy or Dick Dunphy who testified – I think you were here for his evidence as well, but he said that he thought the whole conversation only took a couple of minutes. Would that be because he, his perception of that, he joined the last couple of minutes of the conversation?

CST. SMYTH: I don't know why his perception is that. I don't know if he was privy to when I first arrived there and just waited on purpose or if that's his recollection of the entire conversation I had with Debbie as well, I don't know.

MS. CHAYTOR: How long did you – how long then were you at Dick and Debbie Dunphy's house?

CST. SMYTH: I would say anywhere between 15, upwards of 25 minutes.

MS. CHAYTOR: 15 to 25 minutes. Okay. So that's a fairly detailed conversation that you would have had in that time period, I would think.

CST. SMYTH: Yes, it was, yeah.

MS. CHAYTOR: Okay. And some of the information you said that Mrs. Dunphy in particular gave you was that they had had a very lengthy history with him, is that right?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. Did you understand from that discussion that it was not a good relationship with them?

CST. SMYTH: No.

MS. CHAYTOR: It wasn't a good relationship?

CST. SMYTH: No, it was pretty evident to me that there was a fair bit of acrimony between, particularly Mrs. Dunphy and Donald Dunphy. She got into a lot of insinuation and beliefs that weren't necessarily founded in anything she had witnessed. So it didn't lend too much into my overall threat assessment if you will. It was just, it seemed to be, I guess sadly, not uncommon of a relationship between family when land disputes come into play and other family disputes.

MS. CHAYTOR: Okay. And did you understand that they had not had any recent contact with Don Dunphy?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And how long did you understand it had been since they had any real contact with him?

CST. SMYTH: I think they would have led me to believe that any actual contact – like, they saw him regularly, but I think the actual contact, where they had any semblance of a conversation to me seemed to be probably in the area of 10 years.

MS. CHAYTOR: Okay. All right. And she – do you recall her telling you things like he’s an antagonistic person with a grudge against the world, that type of thing?

CST. SMYTH: Yes, she would have said.

MS. CHAYTOR: And that he was very reclusive?

CST. SMYTH: She said he was reclusive. She said he had no friends; said that he had a relationship with his daughter but she perceived it to be fairly limited.

MS. CHAYTOR: Okay. Based on, obviously, her limited knowledge.

CST. SMYTH: For sure.

MS. CHAYTOR: Okay.

CST. SMYTH: I didn’t – again, I didn’t put a whole lot of credence into that. She could only – she acknowledged herself that she had no contact with him. So I didn’t necessarily believe that she could give me an accurate depiction of his relationship with a daughter either.

MS. CHAYTOR: Okay. Was there anything that they told you that you did put any credence in?

CST. SMYTH: I asked specifically about violence. I asked about volatility. They did describe him as a volatile person. They didn’t say there was any firearms there.

MS. CHAYTOR: And did you ask them whether or not he had any firearm?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: And, and what did they tell you?

CST. SMYTH: They either said no or I don’t believe so. I would have taken the answer to either one in essence being the same.

MS. CHAYTOR: Okay, that they didn’t know or?

CST. SMYTH: They don’t know.

MS. CHAYTOR: That they didn’t know.

CST. SMYTH: Right.

MS. CHAYTOR: Okay. So –

CST. SMYTH: Unless they could definitively say: Oh yes, I saw Don walking up the driveway yesterday with a firearm, then, anything else I would take as I don’t know. So even saying no is I don’t know because they admitted to having no contact with him for 10 years.

MS. CHAYTOR: Right. So you didn't rely on them to give you any reassurances there being no firearm in the house.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. And I take it also, Constable Smyth, that you had already, of course you told us, visited Mr. Dunphy prior to any discussion with Dick or Debbie Dunphy. So was your intention to visit Mr. Dunphy regardless of anything before going to see the neighbours or anything that they may tell you?

CST. SMYTH: I'm sorry you're going to have to –

MS. CHAYTOR: I know, I'm sorry, that's not a good question. So, so you had already attempted to visit him once before you've spoken with Debbie and Dick Dunphy. So it's your, it was your intention to visit him, without having gone to speak to neighbours first.

CST. SMYTH: I would have, yes.

MS. CHAYTOR: Yes and you had done that.

CST. SMYTH: Yes. Of course, yes.

MS. CHAYTOR: Did anything that Dick or Debbie Dunphy told you, did that – anything they told you cause you to think that Donald Dunphy might have a mental health issue?

CST. SMYTH: They said he had a mental health issue. I think they used those exact words, or Debbie did anyway. Dick, I don't believe, had made any – Dick didn't say a whole lot, period.

But Debbie definitely said she felt he had mental health issues. She had described actually a conversation that she had previously had, I think, some years before with his daughter around making that suggestion to her, and that it also being the source of some estrangement between the family. That she had told the daughter he has mental health issues and he needs help.

MS. CHAYTOR: Okay. So did what they tell you give you insight into perhaps your going to visit a troubled man or a man with some level of mental illness?

CST. SMYTH: I felt that way, yes.

MS. CHAYTOR: Okay. So did that information from that perspective factor into your risk assessment for your own safety?

CST. SMYTH: I, still not to the point where I was considering not going.

MS. CHAYTOR: And still not to the point where you were considering bringing someone else with you.

CST. SMYTH: No

MS. CHAYTOR: Okay.

CST. SMYTH: I was still seeing those as potential factors to contribute to a broader threat assessment, but there were also comments made that – there would have been comments made I would have liked the opportunity to discuss with Mr. Dunphy.

I always find, you know, family relationships are, are very open to interpretation when somebody says somebody else has a mental health issue. I would like to get a lot more information before I accept that as definitive truth.

MS. CHAYTOR: Okay. So at this point in time in terms of the information you have, before you go back to attempt to see Mr. Dunphy again, you've been to his house, you've seen the sign which indicates a poverty house for quite some time, no government officials welcome.

CST. SMYTH: No political officials.

MS. CHAYTOR: No political officials welcome. Okay. Saw the derelict conditions of the house. Okay.

You had formed some concern that you don't know – from the quote that I showed you earlier that you don't know what you're dealing with to the point that you were saying what's this person into. You were told by his brother and sister-in-law that he could be an antagonist, grudge against the world, they thought he had mental health issues. Mrs. Dunphy also tell you that he made her feel uneasy?

CST. SMYTH: Yes, she did.

MS. CHAYTOR: Okay. Did she tell you that he'd had – she had had him charged with uttering threats and that it resulted in a peace bond?

CST. SMYTH: Yes, she did.

MS. CHAYTOR: And did she tell you he abided by that peace bond?

CST. SMYTH: No, she said he did not.

MS. CHAYTOR: He did not. Okay.

And you, yourself, are thinking there might be a mental health issue?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

And, again, in terms of risk level to yourself, when you then decide to go back to visit him, are you still at a low-risk level?

CST. SMYTH: Yes. I don't automatically correlate mental health to violence.

MS. CHAYTOR: What about all the rest of it, Constable Smyth? All the rest of what I've just described to you: the signage, the conversation with Mrs. Dunphy about her concerns, the fact that she had had him charged with uttering threats, about the overall conditions that you had observed?

What about the combination of all of that? Are you still looking at this as a low risk to yourself?

CST. SMYTH: Yes, I am.

MS. CHAYTOR: Okay. And including what you had read on Twitter which caused you to go there in the first place?

CST. SMYTH: Yes, I am. This is sadly not an overly uncommon situation that people find themselves in. Perhaps the living conditions were an extreme, but for people to have disputes with family, for family

to make allegations of mental health: all these things in consideration are not tremendously uncommon and all of those people are not acting out violently towards police or other people.

MS. CHAYTOR: Okay. So after leaving Debbie and Dick Dunphy's house did you go directly to Donald Dunphy's house?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. So you pulled out of their driveway and went into his. And about how far apart were the houses, do you recall?

CST. SMYTH: Their driveways are, are very close together. They're separated by a bank of trees. I pulled down the end of the driveway. I think I, I think I was actually – they had given me a description of where his daughter lived.

My plan was to drive by the daughter's and see if his vehicle was there. I believe I pulled out and made the left-hand turn to go back towards Salmonier Line. Before I did, I reversed and looked up the driveway and saw there was a black Jeep there.

MS. CHAYTOR: Okay. And so talking to his daughter you would have, you would have looked at that as part of doing your assessment as well and getting more recent information, I take it, on Mr. Dunphy. Would that be the intention?

CST. SMYTH: Well, yes, I would have spoken to the daughter if – because I didn't know the daughter existed until I spoke to Dick and Debbie Dunphy. But the thought of going to the daughter's was that maybe Don Dunphy was there. Ms. Dunphy had led me to believe that given it's Easter Sunday, that's where he may be.

MS. CHAYTOR: Oh, okay. So you didn't think about visiting her for the purpose of gathering information about Mr. Dunphy.

CST. SMYTH: Not at that point. While, if I got there and Mr. Dunphy wasn't there, I would have absolutely made an effort to speak to the daughter and ask her some of the similar questions I did to Debbie.

MS. CHAYTOR: Okay.

So, and at the point that you're leaving you now know there is a daughter and they've given you some idea as to where she lives.

CST. SMYTH: Right.

MS. CHAYTOR: Further along out Salmonier Line, I guess. So that would have been an option that you could have just continued on and tried to get some more recent information.

CST. SMYTH: It would have been an option, yes.

MS. CHAYTOR: Okay.

And do you think that would have been a prudent step for you to do rather than, at that point in time, go back to Mr. Dunphy's house?

CST. SMYTH: I don't think it would have been an improper step or impudent step, but based on where I was and the information I had gleaned thus far, I was, I felt more than appropriate to go visit Mr. Dunphy.

MS. CHAYTOR: Okay.

Are you able, then, to tell us what time it is that you arrived at Mr. Dunphy's house for the second time?

CST. SMYTH: Again, based on now having some reference to those last phone calls and the conversation with Dick and Debbie, it was probably in the area of five, six, seven minutes after – maybe as late as 10 after 2.

MS. CHAYTOR: So why five or six minutes to get to his house from their house?

CST. SMYTH: Well, I had a conversation with him. The conversation I've articulated took 10, 15, 25 minutes.

MS. CHAYTOR: Okay.

Okay, so –

CST. SMYTH: So that brought me up to perhaps in the area of 1:50 before I even start the conversation. So if I have a 15-minute conversation from 1:50 that will bring me to 10 minutes after 2.

If I arrived at Dick and Debbie Dunphy's at 1:45 and I had a 20-minute conversation, I arrive there at 2:05. If I left Dick and Debbie Dunphy's at 1:55 and – or, sorry, if I had arrived at Dick and Debbie Dunphy's at 1:55 and had a 15-minute conversation with them, I would have arrived at 2:10. So it's, it's – all I can provide you is kind of a window.

MS. CHAYTOR: Okay. And in terms of calculating those times again, and you said that your telephone calls that you're measuring from and those times, those would have been in the middle of your time period, you think, when you're stopped on the side of the road or around the middle of your – not – when you first pulled over on the side of the road, not at the end, more in the middle.

CST. SMYTH: Right.

MS. CHAYTOR: Okay. And you can only give an estimate as to how long you're on the side of the road.

CST. SMYTH: Sure.

MS. CHAYTOR: Okay. And Constable Smyth, did you record your times anywhere?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. And would that be normal that you would be carrying a police notebook and you would be writing down and recording your information as you're going?

CST. SMYTH: Yes, it would be a fairly standard practice to do that. I don't think in those circumstances or during that type of investigation you may necessarily record so many specific times. I think I'll do it from now on but at that time, no.

MS. CHAYTOR: Okay. And you didn't do that, that day. You had no, no – did you even have your police-issued notebook with you?

CST. SMYTH: No, I did not.

MS. CHAYTOR: Okay.

Okay, so – and I know you just gave me a whole bunch of different times. So based on what you're saying, you would have arrived at Mr. Dunphy's house somewhere between what time and what time?

CST. SMYTH: I think between five after and 10 after.

MS. CHAYTOR: Okay. And depending on how long you are on the side of the road, depending on how long you are with Dick and Debbie, it could be 10, 15 minutes one way or the other.

CST. SMYTH: Correct. And knowing – I try to work ahead and back because the only other time reference I have is the phone call after the shooting to the RCMP. So I kind of work from both of those times now to try to give you as an accurate picture as I can. Because I work only from one with some of my time estimates would bring me beyond the time that that phone call was made. Those same time estimates on the other end would bring me too far away from that phone call so.

MS. CHAYTOR: Okay.

All right, and I'm going to ask you some questions about that. And perhaps this might be a good place, actually, to bring up the timeline that Wanda Richards did prepare, and that's P-0104. And we're going to have to make that big, thank you. Okay. Can it go even bigger, please? Yes, okay. Thank you.

I'm not going to take you through all of this, but, Constable Smyth, I am going to ask you if there's anything else other than what I direct you to, if you would like to speak to anything else on this document

–

CST. SMYTH: Okay.

MS. CHAYTOR: – I really want you to be able to point out anything else that you think needs to be pointed out, okay?

CST. SMYTH: Sure.

MS. CHAYTOR: All right. Okay. So and what we have here is that – and, Commissioner, just to be clear, you will hear from Wanda Richards. She's one of our intended witnesses, and she was a criminal analyst for the RCMP and she put together this, based on information that she had in the RCMP file. And so we will hear her on this as well.

But we have here in her timeline: Smyth attends neighbour/brother's residence. And she puts that at approximately 1:30 p.m. And then, Constable Smyth, she has you calling Colin Dinn/friend of Donald Dunphy, and she has that 1:39:39 seconds p.m. And she says, Smyth makes several outbound calls to Colin Dinn who is a friend of Dunphy, and the last call in that series is 1:39.

THE COMMISSIONER: Well that's, we think that's an error there, reference to Colin Dinn, do we?

MS. CHAYTOR: Correct.

THE COMMISSIONER: Okay.

MS. CHAYTOR: And just to be clear on that, Constable Smyth, did you at any point in time attempt to reach Colin Dinn?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And the reason we think this is in error, because this is the same time frame that she would have had the records, and we think she will speak to that and say that it must have been the calls to Mr. Dunphy that she was referencing at that time.

CST. SMYTH: And, Mr. Commissioner, this is the block that I had originally thought was an error of even my name being in there at all. I thought that maybe Wanda Richards had determined from the RCMP investigation that perhaps maybe Dunphy had called Colin Dinn, because my calls that I made down on the beach were made before I attended the residence of Dick and Debbie, whereas this timeline indicates it's the other way around.

MS. CHAYTOR: That's right. So right here she's saying that first you go to Dick and Debbie's, then you make the phone calls, and then she puts you back – I'm sorry, no, that's the text to Colin from Mr. Dunphy. And then she puts you back, returning to Mr. Dunphy residence around 2 p.m. And so the point that you're pointing out to the Commissioner, this is an error as well, that your calls came before your visit to Dick and Debbie's residence. Is that right?

CST. SMYTH: Correct. And I hadn't realized that this was, this was an error until I met with you in December.

MS. CHAYTOR: Yes. Okay. All right.

And then she puts you then – so with – so no calls to Colin Dinn but there were calls around that, around the time indicated here to Mr. Dunphy. Then you go visit the neighbours, Debbie and Dick Dunphy, is what you're saying.

CST. SMYTH: Correct.

MS. CHAYTOR: And then you're back at Mr. Dunphy's residence. And she puts that at about 2 and you're saying that was more in the range of 2:05 p.m. or 2:10 p.m. Is that, is that correct?

CST. SMYTH: Correct. Well, it would be impossible for me to get there that quick, based on that final call to Mr. Dunphy at 1:39:39. I then had to travel from that position to Dick and Debbie's, have that lengthy conversation with Dick and Debbie and then travel from – albeit not very far, I still needed a few minutes to get from Dick and Debbie Dunphy's house over to Don Dunphy's house.

MS. CHAYTOR: Okay. So the 1:39 would – if, you know – and your evidence I understand you to be saying today is that you weren't, you didn't – it wasn't 1:39 and then you went to Dick and Debbie's. In any event, you stayed on the side of the road for a bit longer than that.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. And then the travel to Dick and Debbie's would have taken you a couple of minutes.

CST. SMYTH: Yeah.

MS. CHAYTOR: It's not that far.

CST. SMYTH: No, it's not far at all.

MS. CHAYTOR: Not that far. Okay.

CST. SMYTH: I'm just taking into account getting out of the vehicle and walking to the door, probably in totality two or three minutes.

MS. CHAYTOR: Okay. And even shorter distance, I guess, then to go back from Dick and Debbie's, back to Mr. Dunphy's.

CST. SMYTH: Of course, yes.

MS. CHAYTOR: Okay.

Okay, now, I want to give you, just in terms of, was there anything else – Constable Smyth, I take it you've reviewed this in some detail, have you in terms of – is there anything else in terms of this document that you wanted to speak to or that you find not to be accurate?

And I think I would point out to you, maybe I can take you there now, but – while we have the document up rather than come back, we're going to scroll down here.

CST. SMYTH: I think a lot of the times reference to the 15-minute conversation with Mr. Dunphy are inaccurate based on her not understanding that I had met with Dick and Debbie after those phone calls.

MS. CHAYTOR: Okay. All right. So that might explain it.

All right. In terms of then, after the shooting, she has some times here as well, and this is the – I think this is the time that you're indicating would be another accurate marker, would be the 2:27 because we have that in the records, the time you actually called the RCMP after the shooting.

CST. SMYTH: Correct.

MS. CHAYTOR: And that's in keeping with what you understand, 2: 27.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So this time period would be right, that's right?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: Okay. And if we back up in terms of, Smyth draws his weapon – and we're going to get into a line of questioning around this. But Smyth draws his weapon, shots fired. She places that at 2:13 p.m. Does that seem right to you?

CST. SMYTH: No, it doesn't.

MS. CHAYTOR: Okay. And what do you think would be a more accurate time for that?

CST. SMYTH: I would put that more closer to 2:25; 2:13 is plausibly, I'm only arriving at Don Dunphy's house.

MS. CHAYTOR: Okay. So how long are you speaking with Mr. Dunphy before the shots were fired?

CST. SMYTH: I think it was in the area of 15 minutes.

MS. CHAYTOR: Okay. All right.

And then she has this block that I'm showing you here. You exit the living room and step just beyond the opening towards the front door and says you're continually assessing the threat. And she has that still at 2:13. At 2:15 she has you re-entering the living room, and then 2:27 the calls are made.

So from the time that the shots were fired until the RCMP is alerted, according to this timeline prepared by Wanda Richards, would be approximately – well, it's over 10 minutes; 10, 12, yes, 14 minutes, yes. Doing my rudimentary math here; so 14 minutes from the time you fired your shots until you called for the RCMP. Is that accurate, Constable Smyth?

CST. SMYTH: Absolutely not.

MS. CHAYTOR: So perhaps you could tell the Commissioner –

THE COMMISSIONER: My question is, you suggested 14 minutes from the time he fired the shot until, when?

MS. CHAYTOR: Until the RCMP – the 2:27 we know to be accurate; 2:27 we know to be accurate. So from the time she's indicating the shots fired approximately 2:13; re-enters the living room 2:15. And I'll take you through details afterwards Constable Smyth. It's just while the document is up –

CST. SMYTH: Sure.

MS. CHAYTOR: – I wanted you to speak to the timeline as to what's happening. But then the call doesn't go out until 2:27, which is 12 minutes; 12 minutes between when you went back into the living room and made the call, and some 14 minutes after the shots were fired, according to this timeline.

THE COMMISSIONER: Are you saying, Constable Smyth, that that's not an accurate estimate?

CST. SMYTH: No, it's not.

MS. CHAYTOR: Sorry. So that's not accurate?

CST. SMYTH: No, they –

MS. CHAYTOR: So what are you –

CST. SMYTH: It goes back to the, to my meeting with Dick and Debbie Dunphy. The RCMP has that occurring before my phone calls, my attempted phone calls to Don Dunphy.

THE COMMISSIONER: They have what before –?

CST. SMYTH: My meeting with Dick and Debbie Dunphy in their residence, the RCMP have –

THE COMMISSIONER: – have it before the phone calls that you made by the side of the road.

CST. SMYTH: – but I made, I had that meeting after that. So it's a 20 to 20 –

MS. CHAYTOR: Yes. So you think that's the origin of the error.

CST. SMYTH: Right, 'cause it's a 20 – up to 25 minutes which is probably the high, high end of that, but certainly at the bare minimum 15 minutes that's not accounted for after those phone calls were made – which they have at 1:39:39 correctly.

MS. CHAYTOR: Okay. So how long was it after the shots were fired before you called the RCMP?

CST. SMYTH: Two to three minutes.

MS. CHAYTOR: Two to three minutes. Okay. And I'm going to have some more questions for you along this line, but while the document was up I wanted you to have an opportunity to speak to that.

THE COMMISSIONER: It might be an appropriate place to break. We're going to be stopping early at 4 o'clock, so it's almost quarter to three. We'll have another hour when we get back, roughly.

MS. CHAYTOR: Okay.

Thank you.

THE COMMISSIONER: Okay, we'll have a recess.

Recess

MS. SHEEHAN: All rise.

The Inquiry is now in session.

Please be seated.

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

MS. CHAYTOR: Thank you.

Constable Smyth, when you then arrived back at Mr. Dunphy, Donald Dunphy's residence, was there a vehicle in his driveway at that time?

CST. SMYTH: Yes, there was.

MS. CHAYTOR: Okay. And what type of vehicle was there?

CST. SMYTH: It was a black Jeep Cherokee.

MS. CHAYTOR: Okay. And based on the information that Mark Oram would have provided you earlier in the day you would have been aware that Mr. Dunphy owned a Honda. Is that correct?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. So you would have surmised that this wasn't his registered vehicle, at least.

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. Did you run any check on the licence plate of the Jeep to determine who owned it?

CST. SMYTH: No, I don't believe I did.

MS. CHAYTOR: Sorry?

CST. SMYTH: No, I do not believe I did.

MS. CHAYTOR: All right. And would the existence of a vehicle in the driveway that wasn't registered to Mr. Dunphy cause you to think that perhaps there was someone else in the residence?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And so did that fact –

CST. SMYTH: Possibly.

MS. CHAYTOR: Possibly. Okay, fair enough. And would that factor into then your risk assessment?

CST. SMYTH: Not necessarily, no.

MS. CHAYTOR: Okay. So did you make any inquiry to determine who might own that vehicle?

CST. SMYTH: No, I did not, until I knocked on the window.

MS. CHAYTOR: Until you knocked on the window.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay, all right. And so in terms of trying to figure that out before you actually go ahead and knock on the window, you didn't take any steps?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. Did you make any inquiry of Mr. Dunphy as to who owned the vehicle?

CST. SMYTH: No.

MS. CHAYTOR: Did you ask Mr. Dunphy whether or not there was anyone else present in the house at any point in time?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: And at what stage were you into your discussion with Mr. Dunphy when you made that inquiry?

CST. SMYTH: I think it was probably midway through, around the time that he started to get a bit agitated.

MS. CHAYTOR: Okay. So were you starting to feel a little suspicious that there might be someone else there?

CST. SMYTH: Well, I wanted to know if there was somebody else there. I started to be concerned about that possibility, yes.

MS. CHAYTOR: Okay. All right. So when you first arrived you didn't ask him, whether or not you are alone?

THE COMMISSIONER: So you say you – it started to come to your mind when he became a bit agitated?

CST. SMYTH: That's correct. That's when it became a heightened level of concern that there might be someone else in the home, but I do believe I would have asked him that initially as well: Are you here alone?

MS. CHAYTOR: And do you recall if you did that?

CST. SMYTH: I think I did, but I know I asked it again.

MS. CHAYTOR: Okay. So then when you return to his presence – to his residence, you see the Jeep in the driveway. Prior to knocking on the window, did you do anything else? Did you do any other look around the exterior of the house or anything similar to what you had done the first time that you arrived?

CST. SMYTH: I had done basically the same assessment of the exterior without going behind the house but just basic observations that I could take in from that position.

MS. CHAYTOR: Okay. And why are you doing that? What's your purpose in doing that?

CST. SMYTH: I think it's just a standard approach to go to any house to take in as many angles as you possible can.

MS. CHAYTOR: Okay. So you knocked on the living room window again, I take it?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. Did Mr. Dunphy come to the window?

CST. SMYTH: No, he came to the door a couple of minutes later.

MS. CHAYTOR: Okay. Did you look in the window before you knocked?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And what did you see? Anything different from what you'd seen in the first visit?

CST. SMYTH: No.

MS. CHAYTOR: Was Mr. Dunphy seated in his chair?

CST. SMYTH: No, he wasn't.

MS. CHAYTOR: Okay. Was he in the living room at all?

CST. SMYTH: I didn't see him there, no.

MS. CHAYTOR: Okay. So basically you saw the same view as when you looked in earlier that day?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. Nothing seemed, nothing different than what you had observed before that you noted?

CST. SMYTH: No.

MS. CHAYTOR: Okay. How long did it take Mr. Dunphy to come to the door after you knocked on the window?

CST. SMYTH: I would say as low as thirty seconds, as high as two minutes.

MS. CHAYTOR: As high as two minutes?

CST. SMYTH: Yeah.

MS. CHAYTOR: Did it – well, did it seem to be an inordinately long period of time for him after you've knocked to come to the door?

CST. SMYTH: No, it didn't seem inordinately long, no.

MS. CHAYTOR: Okay, all right. So where did you – you knocked on the window and then he comes to the door, where are you standing when he comes to the door?

CST. SMYTH: I had backed away from the corner of the house again where I had knocked and backed up further towards my vehicle, and Mr. Dunphy came to his front door. I could hear the screen door open.

MS. CHAYTOR: Okay. Just tell me that again. You backed up where?

CST. SMYTH: I backed towards my vehicle where I had parked.

MS. CHAYTOR: You went back towards your vehicle?

CST. SMYTH: Yes.

MS. CHAYTOR: So are you down in the driveway by then?

CST. SMYTH: Yes. Well, the driveway comes up almost right to the corner of the house.

MS. CHAYTOR: Okay.

CST. SMYTH: So I backed up maybe, between 10 and 20 feet.

MS. CHAYTOR: Okay, all right. So and then he came to the door?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And then, did you then approach him?

CST. SMYTH: Yes, I did. Well, I approached the front of the house where he could see me.

MS. CHAYTOR: Okay. And did you identify yourself to him?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: And what did you say?

CST. SMYTH: I hauled out my police badge and ID. I showed it to him. I said I was Joe – I asked him if he was Don Dunphy. He said yes. I told him I was Joe Smyth with the RNC; I was hoping to talk to him about something. I asked him if I could come in.

MS. CHAYTOR: I'm sorry, can you speak up again, please.

CST. SMYTH: I asked him if I could talk to him and if I could come in his house.

MS. CHAYTOR: Okay. And Constable Smyth, when you showed him your badge, which badge was it that you showed him?

CST. SMYTH: It was my wallet badge.

MS. CHAYTOR: Your wallet badge. And were you also carrying another badge?

CST. SMYTH: Yes, I was.

MS. CHAYTOR: Okay. And I'm just going to approach the physical exhibit, if that's okay. All right.

Okay, Constable Smyth, is this your other – sorry, I'm going to share your mic if you don't mind.

CST. SMYTH: Yeah, go ahead.

MS. CHAYTOR: Is this your other badge?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

CST. SMYTH: That's the badge that would be attached to my belt, located in front of my gun on my right side.

MS. CHAYTOR: Okay. So on the same side as your gun?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay, on the right side. So you didn't show him this?

CST. SMYTH: No.

MS. CHAYTOR: Okay.

CST. SMYTH: But it's identical to my wallet badge.

MS. CHAYTOR: Okay. And is your wallet badge the same size?

CST. SMYTH: Exactly the same size.

MS. CHAYTOR: The same size, okay.

CST. SMYTH: Exactly.

MS. CHAYTOR: Okay, all right.

And if we could please bring up P-0010 and I'd like to look at Photo 030, just to get a sense of where you were standing when you spoke to him and identified yourself, okay, Constable Smyth?

CST. SMYTH: Sure.

MS. CHAYTOR: Okay. And if we can see it in this photo, if not perhaps we can find a different one, but you said you knocked on the window. So this is the window you would have knocked on here?

CST. SMYTH: That's correct.

MS. CHAYTOR: Okay. And then you said you moved back out – I understood you to say you backed out and went more down towards where your vehicle was parked. Is that right?

CST. SMYTH: That's right.

MS. CHAYTOR: Okay. And then Mr. Dunphy came to the door.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. And did he stand in the door, did he come out on his –

CST. SMYTH: No, he stood in the doorway.

MS. CHAYTOR: He stood in the doorway, okay. And how did you know he was there?

CST. SMYTH: I heard the screen door open.

MS. CHAYTOR: Okay.

CST. SMYTH: And then I walked over so that I was directly facing that door, and I would have been back from that stone walkway –

MS. CHAYTOR: Okay.

CST. SMYTH: – probably two or three feet.

MS. CHAYTOR: So you're back – this is the stone walkway you're referring to?

CST. SMYTH: Right.

MS. CHAYTOR: And you stood back two or three feet from there, is that right?

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. But directly in front of where the door would be so he could see you?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So you're back, and my little – the icon that I'm moving here, so you're back – it's probably not quite even in the picture, but it's back around there. Is that –

CST. SMYTH: That's correct, yes.

MS. CHAYTOR: Okay. And he is stood in the doorway.

CST. SMYTH: Yes.

MS. CHAYTOR: And you showed him your badge.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And you identified yourself as Joe Smyth of the RNC.

CST. SMYTH: Right.

MS. CHAYTOR: And you said that you wanted to talk to him about something.

CST. SMYTH: Yes.

MS. CHAYTOR: And he invited you in.

CST. SMYTH: I asked him if I could come in and he said yes, no problem.

MS. CHAYTOR: Okay.

And you readily then identified yourself as a police officer, so is your concern in having a uniformed officer – is that different than a police officer coming? Was it the uniform versus a police officer that caused you concern in not wanting someone in a uniform with you?

CST. SMYTH: Yes, I think it can sometimes be perceived differently, as an impending arrest, that type of intimidation factor, if you will. Even though that wouldn't be the point of it, I think sometimes it could be perceived that way. It's just in recognition of the effect it might have.

MS. CHAYTOR: Okay.

And when you introduced yourself to him, did you tell him that you were a member of the Protective Services Unit?

CST. SMYTH: No. I don't recall telling him exactly what unit I was attached to, no.

MS. CHAYTOR: At any point in time did you tell him that you were a member of the Protective Services Unit?

CST. SMYTH: No, I don't think so.

MS. CHAYTOR: Okay. And why not?

CST. SMYTH: I didn't necessarily see the relevance and I also didn't want him to necessarily tie me to politics.

MS. CHAYTOR: Okay.

And he, and I know that you have told me and we'll talk about this, but at one point in time Mr. Dunphy gets agitated with you and starts calling you a name. Can you tell the Commissioner what it is that Mr. Dunphy called you?

CST. SMYTH: Ah, he referred to me as a fucking puppet, an arm of the government, those kinds of things.

MS. CHAYTOR: Okay. And, but in saying that to you, he wasn't aware you were a member of the protective service unit.

CST. SMYTH: No. But I had articulated at that point exactly what I was doing, what I was investigating.

MS. CHAYTOR: I'm sorry; can you leave that exhibit up, please?

And in bringing, I understand your concern that you've articulated about bringing a uniformed officer. Can you think of an advantage in bringing a uniformed officer or yourself appearing in a uniform? Is there an advantage to a uniform presence?

CST. SMYTH: In, in terms of putting somebody at ease and trying to develop a rapport?

MS. CHAYTOR: No, in any sense. Is there an advantage, like, does it eliminate, for example, any ambiguity that the person standing before you is in fact a police officer?

CST. SMYTH: Oh sure, it does, yeah, yeah. There's actually, I referenced earlier, I – you know, I would specifically take a uniformed officer if there was any intension to potentially arrest. There's actual case law around that issue of ensuring that you're properly identified and that there not be any ambiguity around your identity. So in that case yes, there's absolutely an advantage.

MS. CHAYTOR: During your discussion with Mr. Dunphy, at any point in time did you get the sense he was doubting that you were in fact a police officer?

CST. SMYTH: No, quite the contrary.

MS. CHAYTOR: Quite the contrary? And why do you say that?

CST. SMYTH: Because he seemed to group me into every other government worker. I never felt that he questioned who I was, no.

MS. CHAYTOR: Okay.

And in terms of the distance you would have been standing from him at the time you showed your police badge, are you able to tell us approximately what that distance would be?

CST. SMYTH: Twenty feet, 30 feet.

MS. CHAYTOR: Twenty feet? Okay.

And when you were invited into the house, at that point in time you told him that you just wanted to talk to him and he said no problem, come on in.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. Did you tell him before you were invited in what exactly it was that you wanted to talk to him about?

CST. SMYTH: Not before I got into the house, no.

MS. CHAYTOR: Okay. Did you tell him you wanted to do anything other than just talk to him?

CST. SMYTH: No.

MS. CHAYTOR: I'm sorry.

CST. SMYTH: No, I did not tell him anything other than that.

MS. CHAYTOR: You just wanted to talk to him.

CST. SMYTH: Yes.

MS. CHAYTOR: Yeah, so you didn't tell him you wanted to look around his house or anything like that?

CST. SMYTH: No.

MS. CHAYTOR: Okay. All right.

And, and you were wearing casual clothes or not in your uniform. Perhaps you can describe for us what exactly you were wearing that day.

CST. SMYTH: I think I'd probably describe it as business casual.

MS. CHAYTOR: Business casual, okay. And what is that? What exactly did you have on?

CST. SMYTH: I had business-style pants on, dress shoes. I think I had a polo shirt on, a buttoned polo shirt. I don't know if it was a three button or all the way, and I had a black or dark brown leather jacket on.

MS. CHAYTOR: Okay. Were you wearing any hat?

CST. SMYTH: No.

MS. CHAYTOR: Okay. Were you wearing any gloves?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And in terms of your use-of-force equipment, what were you carrying?

CST. SMYTH: Pepper spray, a magazine, extra magazine and handcuff holder. They were in the same case. The pepper spray and the magazine and the hand cuff holder were all (inaudible) on my left side.

MS. CHAYTOR: Sorry, can you speak up 'cause I'm even having trouble hearing you, sorry.

CST. SMYTH: Sorry.

MS. CHAYTOR: It's the mics.

CST. SMYTH: I had my pepper spray.

MS. CHAYTOR: Yes.

CST. SMYTH: And then there was a case that contains an extra magazine and hand cuffs, all of which were on my left-hand side, tucked kind of a little bit further behind my hip, and my firearm was on my right-hand side and my badge.

MS. CHAYTOR: Okay. And are – and is all of that concealed?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: And it's concealed, I take it, by your jacket then, is it?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And did your use-of-force equipment remain concealed throughout your conversation and discussion with Mr. Dunphy?

CST. SMYTH: Yes, it did.

MS. CHAYTOR: Okay.

Were you wearing any body armour?

CST. SMYTH: No, I wasn't.

MS. CHAYTOR: Okay. And is that an option for you? Are there circumstances in which – are you provided with body armour?

CST. SMYTH: Yes, we are.

MS. CHAYTOR: And is that your discretion as to whether or not you wear it?

CST. SMYTH: Yes, it is. For investigative work, Criminal Investigation Division, it is our discretion.

MS. CHAYTOR: Okay. And you didn't wear it that day?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. And why not?

CST. SMYTH: Because it's uncomfortable.

MS. CHAYTOR: Okay. All right.

THE COMMISSIONER: Sorry?

CST. SMYTH: It's uncomfortable.

MS. CHAYTOR: Okay.

Were you wearing a body camera?

CST. SMYTH: No.

MS. CHAYTOR: Is that an option for you, is there – to wear a body camera –

CST. SMYTH: I wish it was but, no.

MS. CHAYTOR: – when you're going somewhere along.

I'm sorry?

CST. SMYTH: I wish it was but, no.

MS. CHAYTOR: Okay. So that's not something that the RNC uses.

CST. SMYTH: No.

MS. CHAYTOR: Okay.

Is there any policy about wearing your body armour? Are you supposed to wear your body armour?

CST. SMYTH: There is policy regarding body armour. My understanding is that it's the discretion of the officer for Criminal Investigation Division, unless you're engaging in a high-risk situation, arrest, execution of a search warrant, those kinds of scenarios.

MS. CHAYTOR: Okay, and does it make a difference whether you're a uniformed officer or not, does that (inaudible) –

CST. SMYTH: Uniformed officers, front line are required to wear body armour.

MS. CHAYTOR: At all times?

CST. SMYTH: Yes, that's my understanding.

MS. CHAYTOR: Okay.

Okay, so you're invited into Mr. Dunphy's – we're done now, then – thank you, Madam Clerk – with this exhibit.

So tell me what you observe first when you enter in through the doors.

CST. SMYTH: I think the first thing that hit me was the smell; it was a pretty bad smell in the house.

MS. CHAYTOR: I'm going to ask you to speak up again, please, or move into the microphone.

CST. SMYTH: The first thing that hit me was the smell of the house. It was a pretty tough smell to take.

MS. CHAYTOR: And what kind of smell was this?

CST. SMYTH: It was a lot of cat smell, cat feces, cat urine. It was fairly overpowering.

MS. CHAYTOR: Anything else? Did you smell any marijuana?

CST. SMYTH: I don't recall smelling a strong smell of like freshly smoked marijuana. It was definitely – and I don't want to be disrespectful or impolite, but there was a, like a smell of uncleanliness, filth, which I think would be inclusive of a lot of smoking.

MS. CHAYTOR: Okay, all right. So the smell was the first thing that caught your attention as you walked in?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And what about what did you observe?

CST. SMYTH: I observed pretty poor living conditions.

MS. CHAYTOR: Very poor living conditions. So when you first walk in that door and you're looking straight ahead, we've seen photographs about a sheet of plywood up against the door which would have been immediately straight in front of you as you came in. Did you notice that when you walked in?

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And did you make any inquiries of Mr. Dunphy as to the purpose of that, why there's a sheet of plywood up blocking a doorway?

CST. SMYTH: We had some conversation about, you know, his conditions in general. We did chat about that, I think. He had it for heat, to keep heat blocked in.

MS. CHAYTOR: Okay. And was that his kitchen area, did you understand that –

CST. SMYTH: I don't think I got into that detail –

MS. CHAYTOR: That detail –

CST. SMYTH: – as to what was behind that door.

MS. CHAYTOR: All right –

THE COMMISSIONER: I'm sorry, what did you – I missed it.

CST. SMYTH: I think he had the piece of plywood over the door to keep heat into a certain area.

THE COMMISSIONER: Keep heat in, okay.

CST. SMYTH: Yeah.

MS. CHAYTOR: Did it cause you any concern, in terms of your risk assessment that this piece of plywood there and what might or might not be behind the door?

CST. SMYTH: No, not at that point. I wouldn't have taken it any differently than just a closed door. I still wasn't feeling in fear of Mr. Dunphy.

MS. CHAYTOR: Okay. And at some point in time did your concern heighten and that that was one of the things you thought about, in terms of whether or not, for example, there's someone else in the house?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And that's after your into your conversation with him for a while I take it, Constable.

CST. SMYTH: Correct.

MS. CHAYTOR: Okay. All right.

So did you go – where did you go then after you entered the living, sorry, after you entered the house; did you go directly into the living room or what did you do?

CST. SMYTH: We were there in the hallways for a couple of minutes. It wasn't very long, a minute to two minutes, max three minutes. And he invited me into the living room, said let's go in the living room. He sat down in his chair that was directly to the right when you walked in the living room and he told me to have a seat on the couch.

MS. CHAYTOR: Okay. And so what are you doing for the couple of minutes in the hallway area?

CST. SMYTH: Small talk, really. Where are you from, he asked me where I was from. Have you grown up here? It was general conversation and it was cordial.

MS. CHAYTOR: Did he have any question as to why an RNC would be in RCMP territory?

CST. SMYTH: He did ask that.

MS. CHAYTOR: Okay.

CST. SMYTH: He said, what's – I think he said Constab. What's Constab doing out here?

MS. CHAYTOR: Okay, and what did you tell him about that?

CST. SMYTH: Well, I told him exactly why I was here.

MS. CHAYTOR: Okay. And what exactly did you tell him? Why were you there?

CST. SMYTH: I was following up on some comments that he had made on Twitter.

MS. CHAYTOR: Okay. And how did he respond to that?

CST. SMYTH: First, he kind of just laughed it off. To me, it was almost a sense of relief first, is the way I took it, like oh –

MS. CHAYTOR: I'm sorry?

CST. SMYTH: It was almost a sense of relief first maybe. Like oh, that's all, that's the only reason you're here. When I said laugh, it was kind of just of an exhale, like a pfft, that type of reaction. Then we got into some – we had a lot more conversation about his injury previous to this because this is around the time that he starts to get a bit agitated too, but up to that point we had a fairly lengthy conversation about his injury. He told me he had been run over or squished by a dump truck back in the '80s.

THE COMMISSIONER: All right. I don't know why I'm not getting it, hearing you better but you're going to just about have eat the microphone I think in order to –

CST. SMYTH: Sorry, I'm backing away from it because I can hear myself breathing.

THE COMMISSIONER: We can't hear you. I can't hear you if you back away from it so – we'll have to try and get a happy medium.

Go ahead.

CST. SMYTH: We had had some lengthy conversation around his injury. It happened back in the '80s, that he had been squished or run over by a dump truck and what proceeded that. It was fairly evident that he had lived a pretty tough life. And it was, you know, within six, seven minutes of that that we started talking specifically about why I was there and what I was investigating and the comments he had made on Twitter.

MS. CHAYTOR: Okay. I'm going to ask you some more detail around that, but I just want to back you up to you went into the living room. He asked you to come in, into the living room.

CST. SMYTH: Yes.

MS. CHAYTOR: And as he's going into the living room, do you observe, can you observe Mr. Dunphy, his movements, did you make any assessment of his physical capabilities?

CST. SMYTH: I didn't observe anything out of the ordinary. He didn't move overly quickly. He didn't move overly slowly.

MS. CHAYTOR: So did he –

CST. SMYTH: He didn't have an obvious limp or he didn't struggle to get there, but nor did he leap there like an athlete.

MS. CHAYTOR: Okay.

And where would the living room have been located in relation to – you come into the little porch area or hallway; is it directly then to your right as you got in?

CST. SMYTH: It was probably five feet ahead and then immediately to your right.

MS. CHAYTOR: Okay. So he would have had to walk five feet or so, is that it?

CST. SMYTH: That's correct.

MS. CHAYTOR: So you didn't notice him to appear to be frail or slower than you?

CST. SMYTH: Oh, he was definitely more frail and slower than me, for sure.

MS. CHAYTOR: Oh, okay. All right.

And you say he sat in his chair?

CST. SMYTH: Yes.

MS. CHAYTOR: And he invited you to sit down?

CST. SMYTH: Yes, he did.

MS. CHAYTOR: And did you sit down?

CST. SMYTH: No.

MS. CHAYTOR: Why not?

CST. SMYTH: I was reluctant to sit on the couch. There was a lot of cat hair and garbage around there. I just – I didn't feel comfortable sitting in that.

MS. CHAYTOR: Okay. And did you suggest to him that perhaps you could go somewhere else then, sit in the kitchen where you could make a few notes or anything like that?

CST. SMYTH: No, I tried to forget about it and move on from that issue. I just went over towards the mantel and leaned up against the mantel.

MS. CHAYTOR: Okay. So you went to the mantel which is on the far end of the room, the opposite end from where he sat.

CST. SMYTH: Right.

MS. CHAYTOR: Okay.

And what did you learn through your training as to where to position yourself in the room?

CST. SMYTH: While you're conducting a standard, basic interview or –

MS. CHAYTOR: Yeah.

CST. SMYTH: You should position yourself where you have ease of exit.

MS. CHAYTOR: Okay. And in this situation there was only the one entrance, I understand, to the living room.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And so where you're positioned, Mr. Dunphy is between you and the only exit to the room; is that correct?

CST. SMYTH: He's not between us, but I would have to go by him to get out, yes.

MS. CHAYTOR: Okay.

Okay, once you get in the living room do you see anything there that caused you any concern, or anything that may have been relevant to your risk assessment?

CST. SMYTH: He did have a bat down by the left side of his chair that I eventually brought to his attention. I asked why it was there. He said well, you never know who is going to come in here.

THE COMMISSIONER: Said what?

CST. SMYTH: He said you never know who is going to come in here. I have to protect myself. And I said, fine with me as long as it stays there. This was while he's getting agitated. I did see it beforehand, but didn't necessarily feel the need to even bring it up.

MS. CHAYTOR: Okay.

CST. SMYTH: But at that point I wanted him – when he got agitated, I wanted him to know that I knew it was there and not to motion for it.

MS. CHAYTOR: Okay. And did you say that to him, not to motion for it?

CST. SMYTH: I said as long as it stays there, we're fine.

MS. CHAYTOR: Okay, fair enough. And so you did notice it, though, before that. Did you notice it when you entered the living room?

CST. SMYTH: I don't remember at what point I noticed it, whether it was immediately as I was walking in or within a couple of minutes of being in there.

MS. CHAYTOR: Okay. Did you have to step over it to get into the living room?

CST. SMYTH: No. No.

MS. CHAYTOR: Okay. And you say that it was by the side of his – the left side of his chair?

CST. SMYTH: That's right.

MS. CHAYTOR: So if you're facing Mr. Dunphy, you're standing at the mantel facing him. Do you mean the left side of his chair in that situation or the right side?

CST. SMYTH: It's on the – if he's sitting in the chair, it's to his left.

MS. CHAYTOR: Okay.

CST. SMYTH: If I'm facing the chair, it would be to my right.

MS. CHAYTOR: Okay. So from where he's sitting it's his left?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. I just want to be clear on that. Okay.

When you say it was on the left side of the chair, was it stuck up against the chair, was it lying on the floor, where was it?

CST. SMYTH: It was flat on the floor.

MS. CHAYTOR: Lying on the floor. Okay. And at any point in time in your encounter with Mr. Dunphy was that stick propped up against the chair?

CST. SMYTH: No.

MS. CHAYTOR: Or propped up against the wall or anything?

CST. SMYTH: No.

MS. CHAYTOR: Okay. So did it move from the position that it was in during your time – when you first observed it until the end of your encounter with Mr. Dunphy, did that bat change position?

CST. SMYTH: No, it didn't.

MS. CHAYTOR: Okay. In terms of, in terms then of what your training teaches you, Constable Smyth, if there is presence of one weapon, what does your training teach you?

CST. SMYTH: Don't be complacent and give consideration for other weapons.

MS. CHAYTOR: And are you familiar with the one-plus-one rule?

CST. SMYTH: Yes, that's what I'm referring to.

MS. CHAYTOR: Okay. And perhaps you can explain that to the Commissioner what the one-plus-one rule is.

CST. SMYTH: The one-plus-one rule is if there's one weapon visible, there's very likely there could be another.

MS. CHAYTOR: Okay. So did the presence of the bat change your risk assessment?

CST. SMYTH: Well, I'm at this point at a heightened alert level, yes.

MS. CHAYTOR: Okay. So you're beyond low now in any event?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And how high up are you at this point in time?

CST. SMYTH: I'm becoming increasingly aware of my surroundings. I'm starting to think of who else might be in the house. I've made reference to the bat to Mr. Dunphy to ensure that it stays where it is.

MS. CHAYTOR: Did you do anything to change your position of where you're located in the room?

CST. SMYTH: No.

MS. CHAYTOR: And why not?

CST. SMYTH: I still wanted to have the conversation with him. I still wasn't feeling that this was going to turn into a violent situation. I thought, at worst, he was going to escalate to the point where he was going to tell me to leave. I'm still not thinking this is dangerous, you need to get out of here, or you need to think more tactically, other than to have a little bit of increased awareness about who else might be in the house. Or there's somebody else that hears his voice becoming raised, that do they come out now and inflame the situation.

But in terms of Mr. Dunphy, my concerns still weren't very high. So moving over towards the door would have put me almost on top of him. I didn't feel that would do anything to deescalate him. If anything, maybe it would be perceived as threatening to him, a position of intimidation. I wanted to try to get him to relax, staying back where I was and trying to be very fluid.

MS. CHAYTOR: Was the position of the bat within Mr. Dunphy's reach?

CST. SMYTH: He probably, he would have had to – he could reach it from the chair, yes.

MS. CHAYTOR: He could have, from where he was sitting he could have reached for it?

CST. SMYTH: Yes, I think he would have had to lean, lean over a fair bit, but he could have got to it.

MS. CHAYTOR: Okay. And if we could look, please, at P-0010, Photo 047. And that's what I understood you to say, and in your statement as well to the RCMP, that he could have reached it from where it was.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And it was certainly – are we having trouble, do I not have that photo in my group? All right, okay. So that's fine. Pardon me?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Okay, that's fine. We can come back to that.

And in fact, actually, I'm not going to break this line of questioning, but I do also need to remember to come back to you about the PROS search that we discussed earlier and we had a problem with our documents. So I need to come back to that with you as well. So I'm sure somebody will remind me to do that.

So in terms of the position of the bat, and him being able to reach down and do it, what was your plan in terms of how you're going to be able to safely exit the room if Mr. Dunphy had decided to arm himself with the bat?

CST. SMYTH: I didn't feel intimidated by Mr. Dunphy, his size or his ability to overpower me. I felt I could either overpower him or pepper spray him.

MS. CHAYTOR: I'm sorry?

CST. SMYTH: I felt he could easily be overpowered or pepper sprayed.

MS. CHAYTOR: Okay, all right. And so that would have been your plan, if need be?

CST. SMYTH: If he'd picked up the stick, yeah.

MS. CHAYTOR: Did you see anything else in the living room, other than the bat, that caused you any concern or may have been relevant to your risk assessment?

CST. SMYTH: There was a lot of – there was a lot of garbage.

MS. CHAYTOR: Okay. And how is that relevant, the garbage that's there and the –

CST. SMYTH: I'm sorry?

MS. CHAYTOR: How is that relevant?

CST. SMYTH: Relevant to my risk assessment, probably not.

MS. CHAYTOR: Yes, your risk assessment and –

CST. SMYTH: Now, drug paraphernalia, I saw some drug paraphernalia which – but, again, I knew he was – had medicinal marijuana so that didn't necessarily give me any rise for concern either.

MS. CHAYTOR: I'm sorry; can you just repeat that again? I was a little distracted.

CST. SMYTH: I had observed drug paraphernalia –

MS. CHAYTOR: Yes.

CST. SMYTH: – but I don't think that added to my concern for my own safety. So, no, I didn't see anything else in the room that would give me reason to be concerned for my own safety, no.

MS. CHAYTOR: Okay. So the drug paraphernalia, is that on a table directly in front of Mr. Dunphy?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: Okay. And what do you mean by drug paraphernalia? What exactly is it that you saw?

CST. SMYTH: I saw some knives that would have been used for what they call hot knifing, hot knifing marijuana. I saw the stained bottle that would be used to inhale. I think there may have been, maybe a bong there.

MS. CHAYTOR: Okay. And you're saying that that wouldn't necessarily have caused you any concern.

CST. SMYTH: No.

MS. CHAYTOR: What about these – so in terms of his use of marijuana, you knew he had a medicinal marijuana licence.

CST. SMYTH: Yes, I did.

MS. CHAYTOR: Okay. And so – and no level of marijuana was going to be of any concern to you in terms of his usage of marijuana?

CST. SMYTH: I haven't, I haven't had any issues previously with people smoking marijuana in terms of it creating a propensity for violence, no.

MS. CHAYTOR: Okay. All right.

CST. SMYTH: Perhaps the opposite effect.

MS. CHAYTOR: Okay. All right.

And you did see knives that appeared to have been used for that purpose.

CST. SMYTH: Yes.

MS. CHAYTOR: For the purpose of drugs usage. Were those knives within his reach?

CST. SMYTH: If he had have leaned forward, yes.

MS. CHAYTOR: Okay. Did you also see a utility knife?

CST. SMYTH: I didn't notice a utility knife, no.

MS. CHAYTOR: You didn't notice the utility knife?

CST. SMYTH: No.

MS. CHAYTOR: Okay. And what about a blowtorch, did you see the blowtorch?

CST. SMYTH: Yes, now that you mention it, yes.

MS. CHAYTOR: And that's on the table in front of him as well.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. All right. So you – that didn't cause you any concern, though, in terms of risk assessment?

CST. SMYTH: No, I didn't feel Mr. Dunphy was going to pick up the blowtorch and try to catch me on fire, no.

MS. CHAYTOR: Okay. Or throw it at you?

CST. SMYTH: Well, there's probably other items in the room that would be more effective to throw at me; but, no, it didn't.

MS. CHAYTOR: Okay. And what were those items?

CST. SMYTH: There was an ashtray there. There was – the stick would be of more concern.

MS. CHAYTOR: Okay. So if we could bring up then, please – and these are going to be C exhibits that I'm going to look at now. So if we could – and I would ask if counsel, please, could tip their monitors so that they're flat. Either turn them off if you don't want to watch, or tip them up.

Okay, now I should ask before we do this – I am going to need mine, aren't I? I will tip mine up too.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: Yeah, but before we do that, I just make sure now, Constable Smyth, I'm going to show you some pictures and in those pictures there are pictures of Mr. Dunphy. Are you okay with me showing you those?

CST. SMYTH: I'd prefer not, but I understand, go ahead.

MS. CHAYTOR: Okay. All right. If you wish, we don't have to proceed with showing the photo.

CST. SMYTH: No, go ahead. Go ahead.

MS. CHAYTOR: You're okay?

CST. SMYTH: Yes.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. CHAYTOR: No, this is another one; I want C 103. It's C 103, please, Madam Clerk.

Yeah, this is the one (inaudible), thank you. Yeah, I will come back to that one. My monitor is not off –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. SIMMONDS: You got to tilt it, as you say –

MS. CHAYTOR: No, they go flat.

MS. O'BRIEN: (Inaudible) and counsel, there is the books as well that you may look at. I recommend using the book.

MS. CHAYTOR: The first one is not too bad, Constable Smyth, the first one C 103 that I want to show you. This is more for the items on the table. Are we good now? Okay, so C 103, please.

This one's fine, you're not seeing the injury to Mr. Dunphy in this photo but part of his body is visible.

THE COMMISSIONER: It's in the book as well, is it? Okay, I have it here.

MS. CHAYTOR: You have it on your screen, Commissioner.

MS. O'BRIEN: Commissioner, you are on tab – yeah, you can see it (inaudible) –

THE COMMISSIONER: I have it now, yeah.

MR. KENNEDY: It is a better picture on the screen, Commissioner.

THE COMMISSIONER: I got it now.

MS. CHAYTOR: Yeah, he's looking at the screen.

Okay, so this is my line of questioning, Constable Smyth, around some of the articles on the table, and I mentioned to you about the utility knife. Do you see the yellow and blue there?

CST. SMYTH: Yes, I do.

MS. CHAYTOR: Okay.

Constable Smyth, are you okay? Do you want to take –?

CST. SMYTH: Yes, I'm okay.

MS. CHAYTOR: Okay. All right. So you didn't see the utility knife?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay, and how about – the blow torch you did see, there in front of him.

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And I thought this might have shown better, but I think that might also be one of the other knives that you were referencing to the right, far right of the picture. Is that around where you remember seeing the knives?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

And what about this pile of garbage here, do you recall seeing that? Is that part of the clutter that you saw in the room?

CST. SMYTH: Yes, I do.

MS. CHAYTOR: Okay. All right.

Do you want to take a break?

CST. SMYTH: Nope.

MS. CHAYTOR: Okay. All right.

Scene 45, please. Okay. All right. And this again is just another photo of the table but it has some of the other items that you mentioned. Do you have that there now, Constable Smyth?

CST. SMYTH: Yes, I do.

MS. CHAYTOR: Okay. All right.

And so we see a bottle there with this staining. Is that what you're referring to as part of the drug paraphernalia?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: All right.

And the ashtray, do you see that there?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. All right. And so is this basically what you recall seeing on the table?

CST. SMYTH: Yes.

MS. CHAYTOR: All right.

And Constable Smyth, while we're at it, we might as well look at then C 047, which is the one with the bat in the photograph.

Is that up on your screen now, Constable Smyth?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: All right. Okay.

So the position that we see the bat in P-0010, C 047, is this the position you recall it being in while you were in Mr. Dunphy's house that day?

CST. SMYTH: Thereabouts, yes.

MR. KENNEDY: Commissioner, could I just interject for a second? I could be wrong on this but if I look at C 045 and I look at C 047, that bat appears to be in a different position in both those photographs.

THE COMMISSIONER: Yes, it seems to be further away –

MR. KENNEDY: If you look at the newspaper and you –

THE COMMISSIONER: – in 047 than it was in 045. Now, I don't know the terms of perspective, you know – we'll have to –

MS. CHAYTOR: Yeah, it might be the angle of the photographs.

THE COMMISSIONER: – listen to the police officers who did the forensics, I suspect, but I don't know. Constable Smyth may be able to help us on that, but I noticed that as well, Mr. Kennedy.

MS. CHAYTOR: Yes, and I was actually going to bring that photo, but we can look at 040 – so we can do 045 or 047 but that's fine. So thereabouts you said, this looked like it was thereabouts where you remember it being?

CST. SMYTH: It is in that area.

MS. CHAYTOR: Okay. And did it appear to be to you any closer to the chair than what we see here in C 047?

CST. SMYTH: It could have been a bit closer. I don't think it was further.

THE COMMISSIONER: It could have been what?

CST. SMYTH: It could have been a bit closer, but it wouldn't have been further.

THE COMMISSIONER: Thank you.

MS. CHAYTOR: Okay. All right. And it wasn't moved at any point in time while you were in the room?

CST. SMYTH: I don't believe so, no. It's possible I hit it with my foot when I was evaluating Mr. Dunphy, but I don't recall.

MS. CHAYTOR: Okay, so it's possible when you went back in the room after the shooting, you could have moved it –

CST. SMYTH: Sure, that's possible, yes.

MS. CHAYTOR: It's possible, but you don't recall that happening?

CST. SMYTH: No.

MS. CHAYTOR: Okay. All right. And we'll hear from others who have taken the photographs too and others who were first on the scene as to where they observed it.

Did the presence of the garbage affect your ability to scan your environment while you were in the room?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

And I'm sorry, I need to ask to bring back up the – no, it's a different exhibit, sorry. Mr., or Constable Smyth, did you observe whether or not there was any ammunition on the table in front of Mr. Dunphy?

CST. SMYTH: I didn't see any ammunition, no.

MS. CHAYTOR: Okay. All right.

And if we could bring up please 102? P-0010, 102 and I don't think this is a C exhibit. Can you confirm with me that that is a public exhibit, 102?

Is yours on, Constable Smyth?

CST. SMYTH: Yes, it is.

MS. CHAYTOR: Okay. All right.

And I understand that this is a – mine's not working, but I can see it over there, so that's fine. I understand that this was a – well, do you recognize what this is, in this picture?

CST. SMYTH: No, I don't.

MS. CHAYTOR: You don't know what that is?

CST. SMYTH: I know it's a bullet. I know it's a .22 round. I don't know where it was taken or what's around it.

MS. CHAYTOR: Okay, all right.

Okay. So that's a – you recognize it, though, as being a .22 bullet?

CST. SMYTH: Yes.

MS. CHAYTOR: Yes, okay. And I believe to the left here we have other photos of this, but this might be the ashtray that we saw in the other picture.

CST. SMYTH: Okay.

MS. CHAYTOR: Okay, all right. But you didn't see any ammunition on the table in front of Mr. Dunphy either before or after the shooting?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: Okay. And if you had seen ammunition on the table in front of him, would that cause you concern or to re-evaluate your risk assessment?

CST. SMYTH: Yes, it would.

MS. CHAYTOR: Constable Smyth, at any point in time did you ask Mr. Dunphy whether or not he had any firearms in the house?

CST. SMYTH: No, I didn't.

MS. CHAYTOR: You asked the neighbours?

CST. SMYTH: Yes.

MS. CHAYTOR: And you asked Mark Oram to check, to do a CFRO check for you?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay.

CST. SMYTH: I probably would have asked him that at some point in time but I didn't feel it a positive opening question to develop rapport with somebody.

MS. CHAYTOR: Okay. So at some point in time, though, that you may have – you may have asked him but you hadn't gotten to that point in the conversation.

CST. SMYTH: Correct.

MS. CHAYTOR: Is that what you're saying?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. So it's not an opening comment to ask someone when you walk in their house.

CST. SMYTH: Not in those circumstances, no.

MS. CHAYTOR: Okay, all right. And so you never got to the point where you asked him whether there was a firearm present?

CST. SMYTH: No, I never asked him that.

MS. CHAYTOR: Did he otherwise volunteer any information about the presence of any firearms in his house?

CST. SMYTH: Not until he presented it, no.

MS. CHAYTOR: Okay.

THE COMMISSIONER: The mic seems to be better when you're over that way in the last little while.

MS. CHAYTOR: Do you have any impression, as a police officer, as to the likelihood of firearms in homes in rural Newfoundland?

CST. SMYTH: I think it's an increased likelihood, yes.

MS. CHAYTOR: Okay.

CST. SMYTH: If somebody's a hunter or engages in that type of activity.

MS. CHAYTOR: Okay, all right. And did you ask him that? Did you ask him if he's hunter?

CST. SMYTH: No.

MS. CHAYTOR: So you were telling us about your discussion with Mr. Dunphy and how he started to get agitated. How long were you into your discussion with him before his demeanour changed?

CST. SMYTH: I think it was between five, six or seven minutes, around there.

MS. CHAYTOR: And your total conversation with him until the shooting happened – from the time you entered his house until the shooting happened, how much time passed?

CST. SMYTH: I think it was around 15 minutes.

MS. CHAYTOR: Okay. And so just tell me then in terms of the conversation that you had managed to have with him in that time period. What was he saying and what was being discussed?

CST. SMYTH: Originally, there was a fair bit of discussion around his injury. Then we got into talking about social media, his activity on Twitter. He was, at this point, starting to waiver a bit between getting agitated. He would say, I say a lot of stuff on Twitter. I'll say what I want and I'll say it again, type thing.

I did ask him specifically about the tweets that had been originally brought to my attention. I asked him, you know, what he was referring to there, or who he was referring to. He gave me the names of the two MHAs. One was – did you want me to name them?

MS. CHAYTOR: Sure, whatever he told you.

CST. SMYTH: The last names were Maynard and Gullage. I had wrote down those names. He told me some history of them and it wasn't too long after that that he would go back and forth to talk about Maynard and Gullage and sometimes mutter their names. But at this stage he was starting to decompensate a bit and he would, you know, ask who sent me, who sent you here anyway. I tried to steer that conversation away and explain to him that nobody sent me, that I was there to talk to him and get his interpretation of what it is he's trying to say on social media, what is your intention of mentioning the Premier, these kinds of things. But he kept going back to who sent you here anyway, you're, he'd say, you're nothing but a fuckin' puppet. Say, you're just another arm of the government, those kinds of comments.

I, a couple of times, made reference to his living conditions, not to be derogatory in any way, but –

MS. CHAYTOR: You made mention?

CST. SMYTH: Yes I did, yeah, yeah.

MS. CHAYTOR: Okay.

CST. SMYTH: And I told him it was no way for anyone, anyone to be living. And he seemed to take insult to that, even though it was not what I was trying to do. I was trying to express some empathy to his situation. But it seemed to anger him more. Because he'd made reference to his living this way because of me, you know, this is your fault, government's fault, ya fuckin' puppet – this kind of commentary, and it went back and forth like this for some time.

MS. CHAYTOR: Okay. And at the point in time when the demeanor changed, what was being discussed at that point in time? Was this a sudden change in his demeanor, or did it just gradually get to that point?

CST. SMYTH: It was fairly sudden, and it was around when we started to discuss, in particular, social media, what he was saying, and I guess government's response to that. It was, you know, and I'm perhaps just giving you my beliefs now but it seemed to be that it struck him at some point in time that government had sent me out there because of, you know, his issues on social media versus what I was actually attempting to do there. You know, I tried to calm him, tell him I'm not there to, I'm not here to arrest you. I'm not here to give you a hard time.

I said that in response to his decompensation around the references to his living conditions. I tried to tell him I'm not here to give you a hard time. I had moved some garbage with my foot, and some bugs had crawled out from underneath the garbage and I kind of shook my head and I said I got real concerns for you Mr. Dunphy, and that, that really seemed to agitate him more, too. And I don't know if he took that as I felt he was a concern to me, to, a security concern, or if I was concerned because of the way he was living. I don't know how he took it but it seemed to agitate him.

MS. CHAYTOR: Okay. And the garbage that you moved, I showed you a few minutes ago a picture with a lot of garbage, is that the area of the garbage that you moved?

CST. SMYTH: No, it was over by the fireplace.

MS. CHAYTOR: Okay.

CST. SMYTH: It wasn't a big pile of it, like what you see in that picture. It was more papers scattered around, smaller items of garbage. I moved it with my foot – I think just as a, to emphasize what I was talking about.

MS. CHAYTOR: Okay. And when –

THE COMMISSIONER: Uh, I'm sorry –

MS. CHAYTOR: Yes, sir.

THE COMMISSIONER: If you pick within the next couple of minutes, we still got three or four minutes but I don't want to get you into a line of questioning that will require 15 or 20 minutes today.

MS. CHAYTOR: Okay, thank you.

THE COMMISSIONER: Unfortunately, I have another commitment that I have to get to within the next half hour. It's going to take all that time.

MS. CHAYTOR: Okay. Well, just a couple of questions –

THE COMMISSIONER: Go ahead.

MS. CHAYTOR: – arising from what you told us there, Constable Smyth. You used the word that he seemed to decompensate in terms of his discussion or his conversation with you. Did he remain coherent throughout your conversation with him?

CST. SMYTH: Mostly coherent. There was times where I didn't understand what he was saying, he seemed to be mumbling under his breath. So yes and no, I guess.

MS. CHAYTOR: Okay. And you had already gotten from him the names of the people that he was referring to –

CST. SMYTH: Yes.

MS. CHAYTOR: – in the tweet. Did you also understand from him that those individuals were deceased?

CST. SMYTH: Yes.

MS. CHAYTOR: Okay. And, but you stayed to talk to him further, and tell the Commissioner why that is. You've gotten this information, these individuals are deceased. Are you concerned about anyone else?

CST. SMYTH: In relation specifically to those tweets? I still hadn't, I mean garnered even close to the information that I would've liked to around the threat assessment piece, but by this stage I wasn't really getting any information out of him.

MS. CHAYTOR: Okay.

CST. SMYTH: I was just focused then on trying to deescalate him and calm him down.

MS. CHAYTOR: Okay. So you're not – it's not the individuals who he was talking about, the two dead MHAs and having referred to them in the tweet. That wasn't your concern, you're still trying to figure out if there's a threat to whom?

CST. SMYTH: Well, I'm still trying to identify if Mr. Dunphy fulfills any of the factors that we would take into consideration for a threat assessment.

MS. CHAYTOR: And when he started to decompensate, become agitated, did you consider perhaps you should leave?

CST. SMYTH: Not at that stage. I was still thinking this can be mitigated by calming him down, and I can get back to doing what I was doing. I just need to tell him, articulate to him, you're not under arrest. I'm not here to give you a hard time about your living conditions, let's get back to what we were talking about.

MS. CHAYTOR: At any point in time during your discussion with him, did Mr. Dunphy ask you to leave?

CST. SMYTH: No.

MS. CHAYTOR: Did he otherwise indicate through gesturing or any other way, suggest to you that you need to leave his residence?

CST. SMYTH: No, he didn't.

MS. CHAYTOR: Okay. Thank you.

That's a good time to end.

THE COMMISSIONER: Okay. I'm sorry that we have to stop a little early, but I have no choice.

Thank you, Constable.

And we'll adjourn now until 9:30 tomorrow morning.