



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 10

Commissioner: Honourable Justice Leo Barry

Thursday

26 January 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

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

MS. O'BRIEN: Thank you, Commissioner.

Before we begin this morning, one housekeeping item; I'd like to ask to have entered into evidence Exhibit P-0379. It is a statement actually given by William Corcoran on November 8, 2016. It should have gone in with Mr. Corcoran's exhibits when he gave his testimony before this inquiry, and it was his statement regarding the anonymous letter that was found that came to light after the start of the inquiry.

I think it's unlikely that any counsel would want to cross-examine him on that statement but as it is a late-entered exhibit perhaps that should be confirmed.

THE COMMISSIONER: All right. If there's any objection by counsel I'll hear it, but let that go in.

MS. O'BRIEN: Thank you Commissioner.

Good morning, Corporal O'Keefe, we'll start with your – get into your testimony again today. I'll remind you that you've already affirmed your testimony, so you're still under your oath of affirmation. Have you had been watching the proceedings of the Commission of Inquiry to date, either on the Internet or have you been present in the hearing room?

CPL O'KEEFE: No. No, I haven't been actively watching it. Of course, it's hard to avoid all of it, but I certainly try.

MS. O'BRIEN: Okay, so you would have seen some things on the news, but have you been watching the web stream?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. All right.

Okay, so I think when we ended yesterday you were telling us about the call that Constable Cox had received from – thank you.

CPL O'KEEFE: How's that? Okay. Sorry about that.

MS. O'BRIEN: You were telling us about the call that Constable Cox had received from Constable Smyth.

CPL O'KEEFE: Yes.

MS. O'BRIEN: What did you understand to be the purpose of Constable Smyth's call?

CPL O'KEEFE: My understanding was that Constable Smyth was going to be going down to have a conversation with Mr. Dunphy, to discuss the contents of the Twitter comments.

MS. O'BRIEN: Okay.

So why would he have been calling the RCMP?

CPL O'KEEFE: Well, oftentimes where Holyrood detachment borders on the RNC jurisdiction, oftentimes they will call us out of a courtesy. I guess their members sometimes might be coming out to get statements or these types of things, so oftentimes they will call just to let us know that they're going to be conducting work in our area.

MS. O'BRIEN: Okay.

Do you know if Constable Smyth asked Constable Cox to perform any searches for him, or give him any information with respect to, with respect to Mr. Dunphy?

CPL O'KEEFE: I'm not sure if he was asked specifically.

MS. O'BRIEN: Okay.

So I believe your testimony was that Constable Cox came into your office, or came in with you and did a – you did do some searching, though, with Constable Cox?

CPL O'KEEFE: Yes. Yes, we did.

MS. O'BRIEN: Okay. So can you tell me about that?

CPL O'KEEFE: Well, as I mentioned yesterday we have our internal RCMP, I guess, filing system which is called PROS. It's a computer system where all our files are registered. So all you have to do is type in Mr. Dunphy's name and any files that were linked to Mr. Dunphy would come up on that system. And this was the system that we searched that morning.

MS. O'BRIEN: Okay. And so you recall doing that search?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And you were in the presence of Constable Cox when you did it?

CPL O'KEEFE: Yes. Yes, we were in my office.

MS. O'BRIEN: Okay. And what did you discover by doing that search?

CPL O'KEEFE: Well, I noticed there was entered in three entries; one there was a 2011, 2012, and a 2013 entry. Two of them he was – Mr. Dunphy was a complainant on two of the files. And that means that he basically called into the detachment to, say, lodge a complaint to us to investigate. One was a call of an impaired driver, another one was a call of mischief and the third, there was a file registered of, I guess, an illegal marijuana grow operation in his residence, but it was determined that Mr. Dunphy had a permit for that and there was no charge.

MS. O'BRIEN: Okay.

Did you do any searches other than on the PROS system?

CPL O'KEEFE: No, no. That was our internal system. The other searches, say, CPIC, the Canadian Police Information Center searches, they're national searches that could have been done by Constable Smyth or Constabulary, or anybody for that matter, any police agency. So we just searched our own internal one.

MS. O'BRIEN: Okay.

Did you see anything about uttering threats in the PROS system?

CPL O'KEEFE: No, I can't recall. Those are the three that I can recall off the top of my head.

MS. O'BRIEN: Okay.

Do you know approximately what time you would have been doing the searches?

CPL O'KEEFE: I guess it would have been shortly after the call came in from Constable Smyth, so 11, half-past 11, I guess.

MS. O'BRIEN: Madam Clerk, I'm going ask you to please bring up P-0141. Okay.

On your monitor there, Corporal O'Keefe, I'm showing what I believe to be a printout from the RCMP PROS system. Now, I understand we will have other testimony later, that the item entered at number one here was entered after Mr. Dunphy's death. So it wouldn't have been there on the morning that you did a PROS search –

CPL O'KEEFE: That's right.

MS. O'BRIEN: – but there are three other entries on the PROS system. Is that what you recall seeing that morning?

CPL O'KEEFE: Yes, similar to that, yes.

MS. O'BRIEN: And, Madam Clerk, can I please have P-0283, please.

Corporal O'Keefe, we asked that the RCMP provide us with an audit trail of the PROS searches done that morning for you and for Constable Cox, but it's yours I'm interested in here. Now we are waiting to get confirmation of the, how times are stored in PROS but the best information we have now is that this might be Eastern Standard Time, Ottawa time.

So it looks like – this is your name here and then there's a number following it. Do you recognize that number, 64687, at the end?

CPL O'KEEFE: Yes, I do.

MR. O'BRIEN: What is that number?

CPL O'KEEFE: That would be my, I guess my person – not my regimental number but personnel number.

MS. O'BRIEN: Okay. And then it shows here that on April 5, at 10:04, which again to be confirmed, but that might be 11:34 in the morning –

CPL O'KEEFE: That would make sense –

MS. O'BRIEN: – in Newfoundland time.

CPL O'KEEFE: – based on the time that everything came in.

MS. O'BRIEN: Okay. And then I understand next is a work station ID. Are you aware of what your work station ID number would be?

CPL O'KEEFE: No, I'm not.

MS. O'BRIEN: Okay. So that the user did a fast find person on Dunphy, Donald. So does that accord with your memory of a search you would have done?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And that you opened the person entity for Dunphy, Donald and a date of birth is given. I understand the deceased tag would have come later, though.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And that you clicked on the occurrence tab within the person entity, that you opened an occurrence – of the occurrence that took place in 2012?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And you opened an occurrence that took place in 2013?

CPL O'KEEFE: Correct.

MS. O'BRIEN: Does that accord with your memory?

CPL O'KEEFE: Yes, yeah.

MS. O'BRIEN: Okay.

Having done these searches, did you have any direct communication with Constable Smyth?

CPL O'KEEFE: No. No, I didn't.

MS. O'BRIEN: Okay. Do you know if Constable Cox did?

CPL O'KEEFE: I believe he spoke to him after, yes.

MS. O'BRIEN: Okay. Did you overhear that conversation?

CPL O'KEEFE: No.

MS. O'BRIEN: And why is it you believe Cox spoke to Smyth afterwards?

CPL O'KEEFE: Well, I know myself and Constable Cox had a conversation and we did, we did the search and, you know I'm pretty sure that he spoke to him.

MS. O'BRIEN: Okay.

CPL O'KEEFE: But, I mean, it would be better to ask Constable Cox that. I can't say for certain.

MS. O'BRIEN: Okay. Do you recall having any communications with Constable Cox about uttering threats –

CPL O'KEEFE: No.

MS. O'BRIEN: – from Mr. Dunphy? Okay.

CPL O'KEEFE: No, no I don't.

MS. O'BRIEN: Did the fact that Constable Smyth was visiting or planning a visit to Donald Dunphy on Easter Sunday, did that seem unusual to you?

CPL O'KEEFE: No; no, not at all.

MS. O'BRIEN: Okay. And why would that not seem unusual to you?

CPL O'KEEFE: Well, I guess for me, being in policing for almost 17 years, you know, it's a 24-7 operation. So it doesn't stop for holidays, nights, weekends. So if a police officer feels that they have to conduct their duties, even if it's Christmas Day, you know, it has to be done, I guess.

MS. O'BRIEN: Okay. Would a visit on Easter Sunday, would that suggest some urgency to the matter to you?

CPL O'KEEFE: No, there was no – there was no urgency relayed to me. Like I said, I just thought it was normal, normal policing duties, and, you know, it had to be done at a certain time.

MS. O'BRIEN: What do you mean by had to be done at a certain time?

CPL O'KEEFE: Well, that was the convenient time for it to be done, based on scheduling or what other – whatever other reasons there are.

MS. O'BRIEN: Okay.

CPL O'KEEFE: And then, like I said, that's just talking in general terms in policing, policing terms.

MS. O'BRIEN: Now, you said that Constable Cox – I believe you said yesterday that Constable Cox had offered to accompany Constable Smyth. Is that right?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And Constable Smyth had declined that offer?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Did you have any concerns about Constable Smyth attending at Mr. Dunphy's residence alone?

CPL O'KEEFE: No; no, not at all.

MS. O'BRIEN: Would that have been different if you knew that Mr. Dunphy had been flagged for violence in police records?

CPL O'KEEFE: It would have been – it certainly would have been mentioned.

MS. O'BRIEN: What do you mean it would have been mentioned?

CPL O'KEEFE: Well, you know, if we had any indication that there was any violence issues or anything like that, it certainly would have been told to Constable Smyth.

MS. O'BRIEN: Okay. Would you have – you're saying you would have said, told that to Constable Smyth, but would you have wanted to accompany him or have somebody accompany him to the visit?

CPL O'KEEFE: That all depends on the information that we had. I didn't personally know Mr. Dunphy, so I couldn't add anything.

MS. O'BRIEN: No, but my question was if you knew that he had been flagged for violence in police records.

CPL O'KEEFE: I probably would've recommended it or suggested that he have someone go with him. But as I said, you know, you would have to dig into it a little bit further to see what the background was.

MS. O'BRIEN: Okay. All right.

Do you recall being asked this question in your interview with Commission counsel, or questions around this topic in your interview with Commission counsel on November 30, 2016? So this was recently, just before the Christmas season and –

CPL O'KEEFE: Not off the top of my head, sorry.

MS. O'BRIEN: Okay.

All right; I'm just going to read from that transcript –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – and just see if it accords with your memory.

Ms. Chaytor asked you if you had – when you looked up on PROS, if you had something that would have caused you concern that –

MR. KENNEDY: Excuse me, Ms. O'Brien. What page is it on?

MS. O'BRIEN: Sorry, page 265, Mr. Kennedy. I apologize.

If you had – when you looked up on PROS, if you had seen something that would have caused you concern and maybe some propensity for violence – if in the past, on behalf of Mr. Dunphy, if you'd seen something like that, would that have influenced whether or not you would have insisted to go with Constable Smyth?

And your response was: Yes, yeah. If I had any safety concern or thought there should be a second member, you know, we would have either, you know, we would have went along, you

know, either myself or Constable Cox. But like I said, when we checked it and there was no – I had no concerns.

And then Ms. Chaytor said: And this idea, if there had been knowledge of uttering threats that there was some allegation that Dunphy in the past had uttered threats, if you had that, would that have influenced your decision and perhaps made you say, well, I think we'd better go along.

You answered: I would think so if I was aware of, like I said, any propensity for violence or – and Ms. Chaytor says: Uttering threats? And you answer: Like, it all depends. If there was something that was very, you know, you'd have to read into it.

So that's the – do you recall that now, me having read that out to you?

CPL O'KEEFE: Somewhat.

MS. O'BRIEN: Okay, is that accurate, your answers that you gave on that date?

CPL O'KEEFE: I would think so. As I said if there's any flags of violence or threats, there are certainly different scales. Some are more serious than others. In policing, we see it all. I know a threat is a threat, but some are on the very, very low scale. So it's something that you would look into and between police officers and the investigating officers, then you would discuss it and see if a second member would be necessary.

MS. O'BRIEN: Okay.

So if you just had uttering threats and you didn't know sort of the seriousness of that, would that merit further investigation before you took action to visit alone?

CPL O'KEEFE: Yes, I would think so.

MS. O'BRIEN: Now, I'm going to ask, we saw there a few minutes ago in P-0283 that you had accessed the Occurrence Report for the 2012 incident. Do you recall that?

Thank you, Madam Clerk, just bringing it back up. Just noting here, Corporal O'Keefe, that at 10:04:39 what we believe to be Eastern standard time, the user – that would be you – opened occurrence 2012352151, okay.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Madam Clerk, I'm now going to ask you to bring up Exhibit P-0302.

Now, Corporal O'Keefe, I did not have this document when we interviewed you back in November. It's come to our attention since and we are still finding more information out about it so I'm –

CPL O'KEEFE: Sure.

MS. O'BRIEN: We understand it to be what was entered in PROS under that occurrence number is the General Report. Now would you have seen – is that what you would have – we you accessed that file number in PROS, would you have seen the General Report that had been entered by the officer who had investigated that file?

CPL O'KEEFE: Yes, I would have had access to that entire file.

MS. O'BRIEN: Okay, so that's what you would have seen?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Oh sorry, it should be P-0302. I don't know, I might have misspoke. My note here is for P-0302.

There's no exhibit number on that document, Madam Clerk. And that is not the document I have. Okay, so while – we can just chat about it.

CPL O'KEEFE: Sure.

MR. O'BRIEN: So I understand in PROS if an officer doing an investigation on file will write up their report and enter it in PROS.

CPL O'KEEFE: Yes. Correct.

MS. O'BRIEN: So your understanding, when you would have clicked in for the, the report on that file number, that's what you would have seen?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So this is what has been provided to us, as the General Report from PROS, for that occurrence number, 2012352151, and this was the, the matter where there was a charge for I think production and possession of marijuana in 2012, that was ultimately – the officer did not proceed? Because of the medical marijuana licence.

Can you just take a moment to look at that, and do you recall seeing that? Oh sorry. Is that what you would have seen that day?

CPL O'KEEFE: Yes, I would have. If I opened up that report, that's what I would have seen, yes.

MS. O'BRIEN: Okay. Corporal O'Keefe, I just want to draw your attention here that there is a caution, V. What do you understand caution, V to mean?

CPL O'KEEFE: That would mean caution, violent.

MS. O'BRIEN: Okay. And further down open there is an entry here that says violence and drugs.

CPL O'KEEFE: Okay, yes.

MS. O'BRIEN: So would you have had that information that day?

CPL O'KEEFE: I would have had that available on the CPIC system, yes.

MS. O'BRIEN: Okay, but would you have accessed this particular record on that day?

CPL O'KEEFE: That, if I looked at that report I would have seen that, yes.

MS. O'BRIEN: Okay, so this is showing a caution flag for violence. Was that, did you communicate that information to Constable Smyth?

CPL O'KEEFE: No, I did not, no.

MS. O'BRIEN: Okay, do you know if Constable Cox did?

CPL O'KEEFE: I don't know.

MS. O'BRIEN: Okay.

You said earlier that you understand that Mr. Dunphy had just had, had been, you know, records for two complaints and the, and that he had had this charge that had been withdrawn because of the permit. Did you remember at the time that he had had a caution, V for violence flag?

CPL O'KEEFE: No, no, I got to say I don't recall that. I know we looked in the files, but honestly I don't recall it. It's clearly there.

MS. O'BRIEN: Okay, should you have passed on that information to Constable Smyth?

CPL O'KEEFE: Well, yes; however, that is also on that – that is the CPIC system so that could be run through CPIC, which is available to all the police services in the country.

MS. O'BRIEN: I think what you're saying here is this – the officer, the RCMP officer who created this document cut and pastes this information in from the CPIC system.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yes, actually I see it right there. It says they conducted a CPIC query. So that isn't actually a, say, a PROS document. As you said, it was cut and pasted in.

MS. O'BRIEN: It was cut and paste but this was then in your PROS system.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

And you had – when you accessed this record that information was available to you on that day.

CPL O'KEEFE: Yes. If it's there –

MS. O'BRIEN: Okay.

And that information should have been handed on to Constable Smyth by you or Constable Cox?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

Also here the other note here is that it does say here that a criminal record, a CR, which I understand to be a criminal record query is recommended.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

Did you tell that information to Constable Smyth?

CPL O'KEEFE: I didn't speak to him.

MS. O'BRIEN: Okay.

And as far as you know neither did Constable Cox?

CPL O'KEEFE: I'm not sure. I can't speak for Constable Cox.

MS. O'BRIEN: Okay.

Thank you, Madam Clerk. I'm done with that record.

THE COMMISSIONER: What is the number on that one?

MS. O'BRIEN: It was P-0302.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Did you have generally any concern about Smyth, who was an RNC member, going into RCMP jurisdiction to conduct an investigation?

CPL O'KEEFE: No, I would not.

MS. O'BRIEN: Would that have been a regular thing that happened from time to time, RNC going into RCMP –

CPL O'KEEFE: Yes. Yes, for Holyrood it was very common.

MS. O'BRIEN: Okay.

Corporal O'Keefe, what were you – sorry, after you finished that work with Constable Cox, did you have any other involvement with Constable Smyth or with any communications with him prior to the time you heard about the shooting?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

So what were you doing at the time you first got notice of the shooting?

CPL O'KEEFE: I was just out in a police vehicle on patrol.

MS. O'BRIEN: And how did you get the information?

CPL O'KEEFE: The call came in through our radio system, through our Communications Centre, which is relayed into our vehicles.

MS. O'BRIEN: Okay.

Would you have been in uniform at that time?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And would you have been in a marked police vehicle?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And was there anybody else in the vehicle with you?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

So what information do you recall getting over the radio?

CPL O'KEEFE: Well, it came in through one of our communications operators saying – and I don't know the exact wording, but I knew that there had been a shooting in Mitchells Brook.

MS. O'BRIEN: Okay. And is that all the information you got initially?

CPL O'KEEFE: Well, that was the basics. I then, I guess called in through the telephone.

MS. O'BRIEN: So you called into the telephone –

CPL O'KEEFE: Into the Communications Centre.

MS. O'BRIEN: Into your Communications Centre –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – by your phone?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And did you get additional information?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And what was that?

CPL O'KEEFE: Well, we – I guess it was determined that – well, of course, when I first heard there was a shooting in Mitchells Brook, I guess that's the first thing that came to mind was the conversation that happened earlier in the morning.

MS. O'BRIEN: With Constable –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – Smyth?

CPL O'KEEFE: Yes.

MS. O'BRIEN: So you knew he was headed to Mitchells Brook?

CPL O'KEEFE: Yes, yes. And the only reason I say that is in my five years in Holyrood, I had never been to a call in Mitchells Brook.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Never. So I kind of had an idea of what was transpiring. So I called the Communications Centre and then they had told me that there was a call from Constable Smyth, a police officer, and there had been a shooting in a home.

MS. O'BRIEN: Did you know who had been shot?

CPL O'KEEFE: It took a couple of minutes to figure it out. I don't know, I didn't know what happened at first but, you know, eventually we determined that it was Constable Smyth had shot Mr. Dunphy.

MS. O'BRIEN: Okay. So did you head – when you first got the call, did you head immediately, start heading towards the scene?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Approximately, how far away were you when you got that first call?

CPL O'KEEFE: Kilometer wise?

MS. O'BRIEN: Yes, or time wise.

CPL O'KEEFE: Time wise, probably half an hour.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Roughly.

MS. O'BRIEN: Okay. So the additional information you got that it had been a shooting in the home and – did that additional information come while you were en route?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Do you know what time you arrived on the scene?

CPL O'KEEFE: It was around 3 o'clock, shortly after 3.

MS. O'BRIEN: Okay. And what did you see when you first arrived on the scene?

CPL O'KEEFE: Well, Constable Cox had gotten there a little bit ahead of me. I was on the Witless Bay Line, Constable Cox was near Holyrood, so he was a little bit faster than I was. He was there. Like I said, we saw the home, the black SUV. Constable Smyth was there, and I believe the ambulance was there at the time as well.

MS. O'BRIEN: And you believe the ambulance was there?

CPL O'KEEFE: Yes, yes they were there. I think they were there a little bit ahead of us.

MS. O'BRIEN: Was Constable Downey there?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Any other police officers there?

CPL O'KEEFE: Not, not yet.

MS. O'BRIEN: Okay.

Did you have any concerns for your safety when you were arriving on scene? You know, you're coming out and there's been a shooting.

CPL O'KEEFE: No, no. I did not, no.

MS. O'BRIEN: And why would you not have had any concerns?

CPL O'KEEFE: Well, as you said, I knew there was a shooting but, you know, I – from the information I had, I knew that Constable Smyth had shot Mr. Dunphy. I didn't believe there was anybody else involved. So we didn't have any immediate concerns for our safety. You know, we – I guess you always do your continuous risk assessment as you go.

MS. O'BRIEN: Okay. And had you arrived at the scene with your lights and sirens going?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And so, when you pulled up on the scene you're saying you saw these other people on the scene. Where were they standing?

CPL O'KEEFE: At around the base of the driveway there.

MS. O'BRIEN: Okay. You got out of your vehicle?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Did you unholster or take out your weapon as you were getting out?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. What did you do?

CPL O'KEEFE: Well, I approached Constable Cox and Constable Smyth at the driveway there, at the end of the driveway.

MS. O'BRIEN: Okay. And what was said or done?

CPL O'KEEFE: Well, I just got the basics from Constable Smyth on what happened. He said that he was in the home, Mr. Dunphy became agitated and there were shots fired. And that was it for that conversation.

Myself and Constable Cox then –

MS. O'BRIEN: Sorry. That's all the information that you got from –

CPL O'KEEFE: That's all I had, yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: It was very, very basic information.

MS. O'BRIEN: What about – did Constable Smyth say anything about Mr. Dunphy's status, like whether he was alive or dead or –?

CPL O'KEEFE: He said he was deceased.

MS. O'BRIEN: Okay. Shots fired. Did he say who fired the shots?

CPL O'KEEFE: He said he did.

MS. O'BRIEN: Did he say whether or not Mr. Dunphy fired shots?

CPL O'KEEFE: He didn't say.

MS. O'BRIEN: Did he say how many shots?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. And the vehicles in the driveway, can you just describe what vehicles were in the driveway there, in Mr. Dunphy's driveway?

CPL O'KEEFE: Mr. Dunphy's – I guess it was Mr. Dunphy's vehicle, was there at the top of the driveway which was a black Jeep, black Cherokee. And then there was a black Yukon suburban vehicle, which was the vehicle Constable Smyth was operating.

MS. O'BRIEN: Okay. Was either vehicle running?

CPL O'KEEFE: Constable Smyth's vehicle was running, yes.

MS. O'BRIEN: And we understand that was an unmarked police vehicle.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Was there any – was his lights or sirens going?

CPL O'KEEFE: No, no, there's – I don't even know if it was equipped with lights or sirens, but there was nothing there.

MS. O'BRIEN: But you do recall it was running?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So you approached Cox and Smyth and you got that initial information from Constable Smyth. What did you do next?

CPL O'KEEFE: Well, myself and Constable Cox – and we knew Mr. Dunphy was inside, so we had to go in and check the house and check Mr. Dunphy as well. So myself and Constable Cox got together and went into the home.

MS. O'BRIEN: Okay. When you first approached Constable Smyth, how did you know it was Constable Smyth?

CPL O'KEEFE: Well, it was the only person there with Constable Cox, so.

MS. O'BRIEN: Okay. And where was Constable Downey at this time?

CPL O'KEEFE: I can't recall. She may have been down the road doing traffic patrol, but I'm not 100 per cent sure.

MS. O'BRIEN: Okay. Did Constable Smyth say anything to you about whether or not he'd cleared the house?

CPL O'KEEFE: No. I can't recall him saying that, no.

MS. O'BRIEN: And do you recall whether he has told you that Mr. Dunphy pointed a gun at him?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Okay. Did he tell you whether not he'd left anything in the house?

CPL O'KEEFE: I can't recall that either. I'm sorry.

MS. O'BRIEN: Okay. Other than your initial conversation with him, did you overhear him speaking to anybody else like Constable Cox –

CPL O'KEEFE: No.

MS. O'BRIEN: – or Constable Downey?

CPL O'KEEFE: No, I didn't.

MS. O'BRIEN: So you say the first thing that you and Constable Cox were going to go into the house and check Mr. Dunphy, I take it, that's what you just said?

CPL O'KEEFE: Yes. Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: We'd check, check Mr. Dunphy and then clear, clear the home.

MS. O'BRIEN: Okay, so you were going to go in to check Mr. Dunphy and clear the home.

CPL O'KEEFE: Yes.

MS. O'BRIEN: What do you recall Constable Smyth was wearing?

CPL O'KEEFE: I'm not sure.

MS. O'BRIEN: Okay, do you know if he was in uniform or plain clothes?

CPL O'KEEFE: Plain clothes.

MS. O'BRIEN: Okay. Do you know if he had on a hat?

CPL O'KEEFE: I'm not sure.

MS. O'BRIEN: What about gloves?

CPL O'KEEFE: And I don't know that either.

MS. O'BRIEN: Okay. What about glasses?

CPL O'KEEFE: I know he wears glasses, and I'm guessing he had them on that day.

MS. O'BRIEN: Pardon?

CPL O'KEEFE: I know he wears glasses and I'm guessing he had them on that day, yes.

MS. O'BRIEN: But you don't have any independent memory?

CPL O'KEEFE: No, no.

MS. O'BRIEN: On that first approach to him, what was, what was his demeanor like?

CPL O'KEEFE: I guess it's hard to describe. I guess he was probably in a little bit of disbelief of what happened, might be the best way to describe it.

MS. O'BRIEN: Okay. So what were you observing to make you say it looked like disbelief?

CPL O'KEEFE: I guess just, just his, his voice, just the way he was speaking. I mean, this all happened fairly quickly. It only happened probably a half an hour before, so I guess things may not have really set in yet.

MS. O'BRIEN: Okay. How were you feeling at the time? Like, was your adrenaline up, was your heart racing, when you were responding to a shooting?

CPL O'KEEFE: Oh yes, yeah. All my senses were heightened there that day.

MS. O'BRIEN: Okay.

So did you note, when you say his voice, did his voice – was it shaky –

CPL O'KEEFE: No, I don't –

MS. O'BRIEN: Was it slurred, was it slow, was it fast – what –

CPL O'KEEFE: No, I don't, I don't recall it being any of those. Like I said, I'd never spoken to Constable Smyth, I'd never met him, so I don't know what his normal voice would have been, but you know there was nothing there that really jumped out at me.

MS. O'BRIEN: Okay, did you see him physically shaking?

CPL O'KEEFE: No, no.

MS. O'BRIEN: Did you get any smell of alcohol from him?

CPL O'KEEFE: No.

MS. O'BRIEN: And how close to him would you have gotten, Corporal O'Keefe, when you're talking to him?

CPL O'KEEFE: Well, regular conversation distance.

MS. O'BRIEN: So like a couple of feet?

CPL O'KEEFE: Yeah, sure.

MS. O'BRIEN: Okay, so you're coming, you're one of the first responders to come to the scene. From the beginning did you understand that this was a homicide investigation, that was about to be – you were about to undertake?

CPL O'KEEFE: No, I guess in the back of my mind I was looking at it as a police-related shooting.

MS. O'BRIEN: And what would you mean by that, a police-related shooting?

CPL O'KEEFE: Well, just as the call came in really, that there was a police officer went to a residence and, you know, unfortunately a gentleman was shot.

My main goal that day – now, I mean no matter what it would have been, would be secure the scene until the major investigators arrived.

MS. O'BRIEN: So you're saying you didn't understand it to be a homicide investigation, but you understood it to be a police-related shooting.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

And at that time did you understand that Mr. Dunphy had pointed the firearm at Constable Smyth at that time?

CPL O'KEEFE: I believe I was made aware of that, yes.

MS. O'BRIEN: Okay.

So from Constable Smyth would you have gotten that information?

CPL O'KEEFE: Between Constable Smyth and Constable Cox.

MS. O'BRIEN: Okay.

So right in those first few minutes you would have gotten that information.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

So that was what in your head – so would you have understand, looking, you know, into a police-related shooting, would that have been a criminal investigation in your mind?

CPL O'KEEFE: Well, it could have been. And I mean that all depends on the, you know, how the investigation unfolded and when major crimes arrived. I mean that would be all – I knew it would all be turned over to them right off the bat.

MS. O'BRIEN: Okay.

So how important – so you said your main goal was to secure the scene. How important was securing the scene to you? How important did you think that was at that time?

CPL O'KEEFE: Well, I felt it was very important. It was one of our top priorities there, to get everything cleared in the house, check on Mr. Dunphy, and then pretty much lock it down and let nobody else in there unless absolutely necessary.

MS. O'BRIEN: Okay.

Now, I understand from your testimony yesterday that you had understood that Constable Smyth was investigating threats made on social media against the premier.

CPL O'KEEFE: Correct.

MS. O'BRIEN: Is that right? Okay.

If you did not have that information – so if you had information that Constable Smyth was just doing a routine house visit, or looking into something that was not threats against the premier, he was just looking into, you know, tweets that had been made or statements that had been made that were not necessarily threats, would that have changed the way you saw or approached things that day when you arrived on the scene?

CPL O'KEEFE: No.

MS. O'BRIEN: Would it have changed anything in your mind up to what you've described as happened now?

CPL O'KEEFE: No, I don't think so.

MS. O'BRIEN: Okay.

(Fire alarm activates.)

MS. O'BRIEN: So we'll close. We've got a fire alarm.

THE COMMISSIONER: I guess we've got to assume it's a fire alarm and take measures. We're recessed for a few minutes, hopefully.

Recess

MS. SHEEHAN: All rise.

The Commission of Inquiry is in session.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Okay. We're back after a fire-alarm break. Apparently, a water leak they think on the alarm sensors and it should be all right. It's been looked after.

So continue when you're ready, Ms. O'Brien.

MS. O'BRIEN: Thank you, Commissioner.

So Corporal O'Keefe, at this time were you the senior officer on the scene?

CPL O'KEEFE: Yes, I was.

MS. O'BRIEN: Okay. So would you have been in charge of directing the other officers on the scene?

CPL O'KEEFE: Yes, until the more senior members showed up.

MS. O'BRIEN: Okay. And so you said it was very important to get the house cleared, to check on Donald Dunphy and to lock the house down or to secure the scene is what I understood you meant by that.

CPL O'KEEFE: Yes, that's right.

MS. O'BRIEN: All right. So first of all – now, when you arrived you're saying the ambulance attendants were there.

CPL O'KEEFE: I believe so.

MS. O'BRIEN: Okay. Are you certain about that?

CPL O'KEEFE: Not 100 per cent, no.

MS. O'BRIEN: Okay. I just wondered why you would be going to check on Donald Dunphy if, you know, there were emergency response paramedics there.

CPL O'KEEFE: Well, I mean, we had to go into the house first before we let anybody else in. So, I mean, that was just part of, you know, what we would do as – because we're first responders. I guess we're first aid trained, so I have to check into everything in the house.

MS. O'BRIEN: Okay. And so why would you have to go into the house first? Is that, would be to make sure it was safe?

CPL O'KEEFE: Yes, sorry.

MS. O'BRIEN: Okay. So you go in to clear it and make sure it was safe before you brought in paramedics or anyone else?

CPL O'KEEFE: Correct.

MS. O'BRIEN: All right. Okay.

So in terms of containing the scene, what were your first actions that you took to do that?

CPL O'KEEFE: Well, we went – we cleared the house first.

MS. O'BRIEN: Okay. Prior to clearing the house, did you put up police tape or caution tape or anything like that?

CPL O'KEEFE: I can't recall if we put the tape up before or after we went in the house. I'm really not sure, but tape was put around the front of the home. So whether it was before or after, I can't recall.

MS. O'BRIEN: Okay. Do you recall doing that yourself or do you recall directing one of the other officers on the scene to do that?

CPL O'KEEFE: That was Constable Cox and Constable Downey put up the tape.

MS. O'BRIEN: Okay. And would they have done that on your direction?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Do you know where they ran the police tape?

CPL O'KEEFE: They ran it from the full front of the home.

MS. O'BRIEN: Yes.

CPL O'KEEFE: So, say, I guess the front corner of the yard to the other corner of the yard. All of the whole front was blocked off; so the front of the home right across the driveway.

MS. O'BRIEN: Okay. So it didn't go all around the house did it?

CPL O'KEEFE: No, no. The property was just too big to tape all that in, yeah.

MS. O'BRIEN: Okay.

Okay. Now we know that there was a – we have evidence that there was a front window on Mr. Dunphy's home like a picture-type window looking into his living room. Did you look through that window prior to actually entering the house?

CPL O'KEEFE: Yes, we looked in through the window.

MS. O'BRIEN: Okay. And when you say we, who's we?

CPL O'KEEFE: Myself and Constable Cox.

MS. O'BRIEN: Okay. What do you recall seeing through the window?

CPL O'KEEFE: We could see Mr. Dunphy inside and sitting in a chair. I guess when you're looking in, you can see in through the, I guess, the left-hand side of the window.

MS. O'BRIEN: Okay. So you saw Mr. Dunphy sitting in a chair?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And how did he appear from you from the window view?

CPL O'KEEFE: Well, he was sitting upright in the chair and I guess he appeared deceased at the time.

MS. O'BRIEN: Pardon?

CPL O'KEEFE: He appeared deceased just from –

MS. O'BRIEN: Appeared deceased. Okay.

Could you see any injuries on Mr. Dunphy's body?

CPL O'KEEFE: I can't recall if I could actually see injuries through the window, but I did once we entered.

MS. O'BRIEN: Okay. And from the window view, could you see any weapons?

CPL O'KEEFE: I can't recall if I saw anything through the window there; like I was focused on Mr. Dunphy at the time.

MS. O'BRIEN: Prior to entering the house, did you have any other interaction with Constable Smyth?

CPL O'KEEFE: No, I don't recall.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I don't believe so.

MS. O'BRIEN: I just know from your notes that you'd made a note of seizing some articles –

CPL O'KEEFE: Oh.

MS. O'BRIEN: – from Constable Smyth?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: Does that refresh your memory?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yes, I did seize his firearm, yes.

MS. O'BRIEN: Okay. So what does then entail, seizing his firearm?

CPL O'KEEFE: Well, as I said before, based on the call and there was a shooting involved, you know, we knew that the firearm would have to be seized; and, as well, it was discussed with staff Tiller.

Just to backtrack, while I was en route to the scene I made all the appropriate calls to my supervisors to let them know what was happening.

MS. O'BRIEN: Uh-huh.

CPL O'KEEFE: And that was one of the things myself and Staff Sergeant Tiller discussed was to make sure the scene was secured and that the firearm would have to be seized fairly quickly.

MS. O'BRIEN: Okay. So Staff Sergeant Tiller was your supervisor and you were talking with him over your telephone were you, while you were at the scene?

CPL O'KEEFE: Well, no, while I was en route.

MS. O'BRIEN: Okay.

CPL O'KEEFE: He was the detachment commander at the time, so he was informed of what was happening.

MS. O'BRIEN: Okay. So you seized Constable Smyth's firearm. Did you seize any of his ammunition or magazines?

CPL O'KEEFE: Yes. I seized whatever – whatever was there, whatever he had.

MS. O'BRIEN: Okay. And where did you – where did you put the firearm magazines once you'd seized them?

CPL O'KEEFE: It was all secured in the grey lockbox, his grey lockbox. It was then transferred to my police vehicle and secured in the trunk of my police vehicle.

MS. O'BRIEN: So in, it was secured his grey lockbox.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Who, whose is his?

CPL O'KEEFE: Oh, I'm sorry; Constable Smyth's.

MS. O'BRIEN: Okay. And where would –

CPL O'KEEFE: I took – I took the box from his vehicle, box, lock and the keys. And they were all – everything was seized.

MS. O'BRIEN: Okay. So would all – he would have had in his vehicle a secure –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – locked box that you could, you could lock up a firearm, ammunition in.

CPL O'KEEFE: Correct.

MS. O'BRIEN: Is that what it's designed for?

CPL O'KEEFE: Yes, yes. Most police vehicles have these lockboxes so when you go into buildings, say like the Waterford, and you can't take in your sidearm, you can securely lock them.

MS. O'BRIEN: Okay. And would you have had a lockbox in your own vehicle?

CPL O'KEEFE: Yes, there's one there too.

MS. O'BRIEN: Okay. So why did you choose to use Constable Smyth's lockbox from his vehicle?

CPL O'KEEFE: Well, the – I guess the, you know, the box was there and it was all part of the firearm, so I just took whatever was there belonging to that firearm. And it was there, it was easily transportable. The box in my vehicle was bolted down. So at least then, by taking that box, it could all be kept together.

MS. O'BRIEN: Okay.

CPL O'KEEFE: So when it was secured back at the detachment it was all in the box.

MS. O'BRIEN: Okay. And where was Constable Smyth's firearm when – just before you seized it. Was he carrying it? Was he carrying it?

CPL O'KEEFE: I can't recall. I really don't know if – you know, I'm guessing yes 'cause there was nowhere else to put it, but I'm not 100 per cent sure.

MS. O'BRIEN: Okay. Did you go into his vehicle to retrieve the lockbox?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Was his firearm already – was his firearm in his vehicle?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Honestly, I can't. I know I retrieved it but, 100 per cent, I can't say for certainty if he had it on his side, or – but I know I took it.

MS. O'BRIEN: Okay. But you do have a memory of you going into his vehicle to get the lockbox?

CPL O'KEEFE: Yes, yes. I took that –

MS. O'BRIEN: Did you see anything else in the vehicle?

CPL O'KEEFE: No, nothing of note, no.

MS. O'BRIEN: Okay. Did you do a search, or cursory search of the vehicle?

CPL O'KEEFE: No, no I didn't.

MS. O'BRIEN: Okay. And you said the vehicle was running. Did you just leave the vehicle running at this point?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And why would you have just left the vehicle running?

CPL O'KEEFE: I just, I basically didn't want – I wanted to touch as little as possible. So until our major crimes people showed up and our very senior members showed up, I wanted to touch very, very little of anything.

MS. O'BRIEN: Okay. And when you were seizing Constable Smyth's weapon, would you have been wearing gloves?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I had gloves on the whole time.

MS. O'BRIEN: You had gloves on the whole time.

CPL O'KEEFE: Yes –

MS. O'BRIEN: What was the weather like? What was the temperature like?

CPL O'KEEFE: It was a cool day. It was probably below freezing, but it was a cold day and it was windy.

MS. O'BRIEN: Okay. When you seized the firearm would you have cleared it, in other words emptied it of ammunition?

CPL O'KEEFE: Ah, I'm not sure of that either. If I opened the action up and popped a round, I really can't say for sure. I think I mentioned in my pre-interview that I didn't, but from further consideration I'm really not sure.

MS. O'BRIEN: Okay. Would you have –

CPL O'KEEFE: I think I said I knew that I had the sidearm and any ammunition that was with it was taken.

MS. O'BRIEN: Okay.

CPL O'KEEFE: So whether I opened it up, maybe the exhibit custodian could clarify that on how he received it but –

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yeah, I'm sorry.

MS. O'BRIEN: So you don't know whether or not that gun was loaded when you put it in the lockbox, is that what you're saying?

CPL O'KEEFE: Well, I'm pretty sure I deemed it safe for the other members that came in.

MS. O'BRIEN: Okay, all right.

So did you do any counting of the bullets, for example, in Constable Smyth's magazine?

CPL O'KEEFE: No, no I did not.

MS. O'BRIEN: Okay. And did he have more than one magazine, do you recall?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Okay. The details of what you seized will be entered into the record.

CPL O'KEEFE: Yes, yes. Whatever I seized, I took everything that I was supposed to take.

MS. O'BRIEN: Okay. And do you recall whether you checked to see if there was a round in the chamber of his gun?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Okay. Did you photograph the gun?

CPL O'KEEFE: No.

MS. O'BRIEN: All right. Was that a conscious decision not to photograph the gun or did you just not think to do it at the time?

CPL O'KEEFE: No, I – I probably didn't think to do it. I think my role was to seize everything, make sure everything was secure. And I knew that our identification people were en route because I had made that call when I was on the way to Mitchells Brook, so I would let them handle all that. And we had other pressing matters to deal with at the time so.

MS. O'BRIEN: Okay. And had you – did you do any photography of Constable Smyth? Did you think to photograph Constable Smyth?

CPL O'KEEFE: No. No, I did not.

MS. O'BRIEN: Did you have an ability to photograph with you? For example, did you have a camera or a camera on your cellphone with you?

CPL O'KEEFE: Yes, yes. I had a camera on cellphones, yes.

MS. O'BRIEN: And do you remember what time you seized Constable Smyth's firearm and magazines?

CPL O'KEEFE: Off the top of my head, no, but I know it's mentioned in my notes there. I did make note of that.

MS. O'BRIEN: Okay. I'm just – I don't think we need to bring it up but in looking at your notes, the time 1505, five past three in the afternoon. Does that sound right to you?

CPL O'KEEFE: Yes. Yes, it was fairly quickly after I got there.

MS. O'BRIEN: Okay.

And I'm just looking, maybe I will bring it up just to help you with this portion of your evidence, it might refresh your memory. Can we see P-0228, please, Madam Clerk.

I'm looking at your typed notes, your Supplementary Occurrence Report typed notes, Corporal O'Keefe. And just looking at these notes here, looking at the report time here is April 5, 2015 at 1428. And I understand that would have been the time the incident was called in or thereabouts.

CPL O'KEEFE: Yes, that's right.

MS. O'BRIEN: Okay. And the entered time, which is April 10, 2015 at 1826, would that have been the time you typed up your report?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: Okay. So it's only five days later that you typed up your report.

CPL O'KEEFE: Yes.

MS. O'BRIEN: And I know you did take some handwritten notes and would have been guided by those.

CPL O'KEEFE: Correct.

MS. O'BRIEN: But here, I just want to take you to – here's the note I was just referring to at 1505. It says Corporal O'Keefe seized Sergeant Smyth's sidearm and magazine. The sidearm was unloaded and cleared with Corporal O'Keefe present.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Does that refresh your memory as to whether or not it was stored loaded or not?

CPL O'KEEFE: Somewhat. Like I said, I can't remember it but if it's in my report, I certainly stand by what's written in my report.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yeah. As I said earlier, that day was very fast moving, very fluid, so sometimes my memory doesn't come back to me.

MS. O'BRIEN: Okay. Thank you.

I'm done with that exhibit for now, Madam Clerk.

Now, so let's talk about clearing the house. What does that mean? For those of us who don't know, what does it mean to clear the house?

CPL O'KEEFE: Well, it means going – I guess given the type of incident, we wanted to make sure, to go in and that there was nobody else in the home. That's what we were looking for, to see if there was anybody else there. So we would go in, we would go from room to room, check and make sure that there was nobody – we were fairly confident there wasn't but, you know, we have to be sure ourselves.

MS. O'BRIEN: And why were you fairly confident there wasn't?

CPL O'KEEFE: Well, I guess, just given the type of incident that it was. We showed up, I guess a little while after it happened, probably half an hour – 40 minutes I guess from the time it happened till the time we got there. And I guess we felt that there was nobody else in there.

MS. O'BRIEN: Okay. But you have to make sure –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – and I guess that one of the main reasons would be – am I right – for safety, for anyone going in after you.

CPL O'KEEFE: Sure.

MS. O'BRIEN: Would that be one of the reasons?

CPL O'KEEFE: Yes, correct.

MS. O'BRIEN: And another reason, would it be to make sure that there's nobody there who might tamper with or interfere with the scene, as part of keeping the scene secure?

CPL O'KEEFE: Yes. Well, it was more of a safety, safety issue of course starting out.

MS. O'BRIEN: Okay. So is scene security not as much of an issue?

CPL O'KEEFE: No, no. Of course I wouldn't say that, but I guess in an incident like this that's the first thing on your mind is –

MS. O'BRIEN: Safety first.

CPL O'KEEFE: – you know, is there somebody else there that could jump out at us, or – I mean that's what we were looking at.

MS. O'BRIEN: Okay. Now, who – did you clear the house alone or were you with someone?

CPL O'KEEFE: No, Constable Cox.

MS. O'BRIEN: Okay, and what were you wearing when you and Cox entered the house to clear the home?

CPL O'KEEFE: Just our regular duty uniforms.

MS. O'BRIEN: Okay. Would either of you have been wearing any protective gear before entering the house, like – you know, like protective gloves or little booties over your shoes, or protective suits?

CPL O'KEEFE: No. No, I don't believe so.

MS. O'BRIEN: Were you wearing any gloves at all when you entered the house?

CPL O'KEEFE: Yes, wearing gloves, yes.

MS. O'BRIEN: So just your – your regular uniform gloves?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So what's the first thing that you noticed when you entered the front door of the house? Take us through that. You and Constable Cox are going in to clear the house, tell us what you do, what you see.

CPL O'KEEFE: Well, I guess – you know, we were going up, we were going into the property and we notice that there was a lot of, I guess, debris on the property. That's the best way to describe it. We got up onto the step and then we went into the home and there was – there was certainly a lot of, a lot of clutter in the home.

MS. O'BRIEN: Okay. Was the – did you enter through the front door of the house?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Was it locked or unlocked? Opened, closed?

CPL O'KEEFE: It was unlocked and closed.

MS. O'BRIEN: Would you and Constable Cox have had your weapons holstered, out? What were your weapons doing at this time?

CPL O'KEEFE: Constable Cox had his out and mine was holstered.

MS. O'BRIEN: Okay. So can you just take us through what you did?

CPL O'KEEFE: Sure. We entered the home. There was a hallway, and we proceeded to go checking the rooms one by one. The first room was that living room off to the right, and this is where Mr. Dunphy was.

MS. O'BRIEN: Okay. What did you see in the living room?

CPL O'KEEFE: Well, the first thing we saw was Mr. Dunphy in the chair, which was along the wall. So when you – the living room, I guess, was to the right, going down the hallway. And when you come in you pretty much loop around to the right and he was there on that wall, that corner in there.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Sitting in the chair.

MS. O'BRIEN: Okay. What position was his body in?

CPL O'KEEFE: He was sitting, sitting in the chair.

MS. O'BRIEN: Okay. Do you recall how his arms were placed or anything like –

CPL O'KEEFE: His arms were just, you know just kind of there in front of him.

MS. O'BRIEN: Okay.

And did you see any injury on this body?

CPL O'KEEFE: Yes.

MS. O'BRIEN: What did you see?

CPL O'KEEFE: I could see two – there was some blood in his ear. I guess it was an injury – that would have been his left ear. It seemed like there was an injury to his right temple and also there was another injury, I guess, to his right forehead.

THE COMMISSIONER: You said an injury to his right temple, but I think you were pointing to your left.

CPL O'KEEFE: Oh, thanks Mr. Commissioner, sorry. Yes, to his left temple, right forehead. Sorry about that.

MS. O'BRIEN: Okay.

Did you see any weapons in the living room?

CPL O'KEEFE: There was a long gun there kind of at his feet.

MS. O'BRIEN: Do you remember how it was positioned?

CPL O'KEEFE: It was – like, I know it was, it was at his feet. I never – I saw it, I never really – I guess I was more focused on Mr. Dunphy at the time, but I know it was in front of him, yes.

MS. O'BRIEN: Okay. So when you say in front of him, was it on the ground, was it on anything? Do you have any memory?

CPL O'KEEFE: And I can't recall. I thought it was on the floor, but now I've since reviewed the file but I can't – my memory, I can't recall exactly where it was. I know it was in front.

MS. O'BRIEN: Okay.

CPL O'KEEFE: But from that day I can't recall.

MS. O'BRIEN: Okay.

So you said you went into the house and you said there was a lot of clutter.

CPL O'KEEFE: Yes.

MS. O'BRIEN: And did you notice anything about the smell of the house? Were you getting any smells?

CPL O'KEEFE: Yes. It was, I guess there was a smell of cat urine, cat feces. Yes.

MS. O'BRIEN: Could you smell any marijuana?

CPL O'KEEFE: Eventually we did, but that was the first smell that really jumped out at me.

MS. O'BRIEN: Okay.

CPL O'KEEFE: That's what I can really recall when we walked in.

MS. O'BRIEN: Okay, do you recall seeing any cats?

CPL O'KEEFE: Yes. Yes, there was cats.

MS. O'BRIEN: So let's start with outside. Did you see any cats outside the house before you entered?

CPL O'KEEFE: Yes. Yes, I did.

MS. O'BRIEN: And can you give us an estimate of how many? I mean did you see one cat, was it numerous cats?

CPL O'KEEFE: It was numerous cats, yes.

MS. O'BRIEN: What about inside the house?

CPL O'KEEFE: And there was a number of cats inside as well.

MS. O'BRIEN: Do you have any idea of how many cats you saw inside?

CPL O'KEEFE: No, I can't recall an exact number, but it was, you know, there might have been, might have been a half dozen; there could have been 10. I, I don't – it was a number of cats. But there was much more outside.

MS. O'BRIEN: Did you see any cats in the living room?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Do you recall how many you saw in the living room?

CPL O'KEEFE: I'm, I'm not sure. It might have been a couple, two, three maybe.

MS. O'BRIEN: Okay. And did you see the cats, you know, were the cats touching the body?

CPL O'KEEFE: No.

MS. O'BRIEN: Did you see the cats touching the gun?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay, so you did your first look in the living room. Is there anything else that you remember about the living room?

CPL O'KEEFE: No, no, the same thing. Just a lot of, a lot of clutter, a lot of debris around everywhere.

MS. O'BRIEN: Okay.

And then you and Constable Cox went around and checked each room?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And the whole time were you and Constable Cox together?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay, I'm going to ask Madam Clerk to bring up the scene map so we can take you through the sort of path that you and Constable Cox went through. Could we please have the scene map brought up, which is exhibit – there's a hole punch through my exhibit number – it's P-0035, perhaps?

THE COMMISSIONER: Is it this one here that we have up on the –

MS. O'BRIEN: It's the same one we have up on the table, but I'm going to ask to bring it up on the monitor so that people can see it a little better. Okay. Thank you.

Corporal O'Keefe, so you came in through the door here, right?

CPL O'KEEFE: Yes, that's correct.

MS. O'BRIEN: And you said to your right, the living room.

Do you recall seeing a stick or bat in the living room? The only weapon you recall is the rifle that you just told us about?

CPL O'KEEFE: Yes, yeah, I didn't recall seeing the bat at all (inaudible).

MS. O'BRIEN: Okay, so where would you and Constable Cox have proceeded from there?

CPL O'KEEFE: Well, I guess we went down the front hallway. There was closets there. The closets were checked, you can see on the left-hand side.

MS. O'BRIEN: Okay, so you would have checked this closet here that I'm pointing to?

CPL O'KEEFE: Correct.

MS. O'BRIEN: Thank you.

CPL O'KEEFE: Now, from there I'm not sure where we went first. I can't recall if we went into the kitchen and the back porch area or went down the hallway first –

MS. O'BRIEN: Okay.

CPL O'KEEFE: – but I think we did the hallway first.

MS. O'BRIEN: Okay.

CPL O'KEEFE: We went down the hallway, so we checked the bathroom.

MS. O'BRIEN: Okay, so do you recall whether that door was open or closed?

CPL O'KEEFE: Can't recall.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I can't recall if that was open or closed.

MS. O'BRIEN: All right, so you would – if it was closed, I take it you would have opened it?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And would you have gone inside the bathroom?

CPL O'KEEFE: Just, well, we just would have a look in 'cause I mean it's, you know, it's not a –

MS. O'BRIEN: Okay.

CPL O'KEEFE: – it's not a big room; you can see everything from the hallway I guess.

MS. O'BRIEN: Would you have checked the closet off the bathroom?

CPL O'KEEFE: I can't recall if we checked that closet.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Okay.

MS. O'BRIEN: All right. So then where would you have proceeded?

CPL O'KEEFE: We would come down the hallway then into bedroom number one.

MS. O'BRIEN: Okay. Do you recall if the door to bedroom number one was open or closed?

CPL O'KEEFE: And I can't recall about doors being opened or closed except for one, which we will get to.

MS. O'BRIEN: We'll get to.

Okay.

CPL O'KEEFE: Yes, yeah.

So we checked that room.

MS. O'BRIEN: Okay. And what did you see in that bedroom?

CPL O'KEEFE: I believe this is where there was some marijuana in there, in that room; that would be number one.

MS. O'BRIEN: Okay. So when you say marijuana, are you talking about live marijuana plants?

CPL O'KEEFE: Plants, yes, plants.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Okay, yes –

MS. O'BRIEN: Would you have come in and checked the closet of this bedroom?

CPL O'KEEFE: And I can't recall if – and I would say yes, we would be checking the closets, but, you know, I can't really remember about doing actual closets.

MS. O'BRIEN: Okay.

CPL O'KEEFE: But if we're, you know, checking the rooms, we're checking the rooms.

MS. O'BRIEN: Okay.

So then where?

CPL O'KEEFE: Then there was bedroom two, as well.

MS. O'BRIEN: Okay.

So, again, you don't remember whether the door was open or closed?

CPL O'KEEFE: No. No, I'm not sure. And Constable Cox may be able to give more detail on that because there's one thing about Constable Cox, he's very, very thorough with these things, so he might have a very good memory of that.

MS. O'BRIEN: Okay.

CPL O'KEEFE: So we checked bedroom two.

MS. O'BRIEN: Okay.

So again, am I right, you don't recall whether or not you checked the closet?

CPL O'KEEFE: No.

MS. O'BRIEN: And you don't recall whether the door was open or closed?

When you left the doors, do you recall whether you left them open or closed?

CPL O'KEEFE: And that would depend on how they were. I would think we would have the doors closed, just we knew that it was animals around, so we wanted to kind of keep it as is.

MS. O'BRIEN: Okay. So you might have closed the doors for that reason. Okay.

CPL O'KEEFE: It's possible, yes.

MS. O'BRIEN: Where did you go next?

CPL O'KEEFE: Then it goes over the hallway into this – it's called the cat room.

MS. O'BRIEN: Okay.

CPL O'KEEFE: That door was definitely closed because I know when we opened, there was a number of cats came to the opening, and I remember we just had to, we just closed that right away, so we never did get into that room.

MS. O'BRIEN: Okay.

So here you're saying that you indicated with your hands, but so the transcript shows –

CPL O'KEEFE: Oh, sorry.

MS. O'BRIEN: So you're saying you just opened that door a small amount. You were looking like – in terms of centimetres or inches, how wide do you think the opening was?

CPL O'KEEFE: Well, as I said, as soon as I started to open it – which, I mean, it would be enough for a bunch of cats to get their heads through, so whatever that would be, you know, three, four inches. Like I said, as soon as the door started to open, a bunch of cats tried to get out and we shut it immediately because that's the last thing we needed was more cats getting out around so –

MS. O'BRIEN: Okay.

CPL O'KEEFE: We did pretty much a risk assessment and said that door is going to be closed; we're not going to open that.

MS. O'BRIEN: Okay.

So you didn't go in and search that room?

CPL O'KEEFE: No. No, we just didn't want anything else getting out.

MS. O'BRIEN: Okay.

Prior to entering the house, had you walked around the outside perimeter of the home, like had you gone around the back of the home?

CPL O'KEEFE: I can't recall how far, you know, up around the back. I'm really not sure. I think our main focus was to get in the house first. From the driveway, you can see quite a bit of the backyard there. So, you know, we certainly did a visual but, like I said, I can't recall walking up into the backyard until after.

MS. O'BRIEN: Okay.

Until after, so when you – you said you didn't go in that room. Were you aware at that time that there was a full addition with connections, with a connection to the room?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay, so you didn't know about that. Did you know that there was an exterior door into that addition?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. So when you chose not to go in that room, you didn't know how large that room was and you didn't know whether or not that room had any entry to the outside?

CPL O'KEEFE: No, that's right.

MS. O'BRIEN: Okay.

So you close that door, where did you proceed next?

CPL O'KEEFE: Then we went into the kitchen, the back porch area in there.

MS. O'BRIEN: Do you remember what was the state of the opening into the kitchen?

CPL O'KEEFE: I think that was just a straight opening. There was no door there; it was just – 'cause you could see it from straight down the hallway.

MS. O'BRIEN: Okay. We've had some testimony that there was a piece of like a plywood or sheeting for walling there to the side. Do you recall seeing that?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Okay, so your memory is, it was open.

Okay, so you went in the kitchen

CPL O'KEEFE: Went into the kitchen, just looked around. There was some plants in the back porch as well, marijuana plants.

MS. O'BRIEN: Okay, so looked down here where I'm indicating in the back porch.

CPL O'KEEFE: Yes. And we had a look in the laundry room.

MS. O'BRIEN: Okay, and do you remember the state of the laundry room door, open or closed?

CPL O'KEEFE: I can't recall.

MS. O'BRIEN: Can't recall, okay. And these would have been marijuana plants what we're seeing here.

CPL O'KEEFE: Oh yes, the green, yes.

MS. O'BRIEN: Okay.

Just a couple – let me look over my questions here. In the living room do you recall if there was a TV in the living room?

CPL O'KEEFE: I can't recall. Sorry.

MS. O'BRIEN: Okay.

Do you recall if there was a heater in the living room?

CPL O'KEEFE: No, I don't.

MS. O'BRIEN: Did you take any photographs while you were in the house?

CPL O'KEEFE: No.

MS. O'BRIEN: How long did it take for you and Constable Cox to clear the house?

CPL O'KEEFE: It wasn't very long. I'd say maybe five minute, maybe a little bit more. Like I said, this was just a, just an initial quick search and we had the paramedics outside, so we wanted to get the paramedics in as well so it was – we had to get in and do this as quickly because we wanted them in.

MS. O'BRIEN: So you and Constable Cox remained together the full time you were in there?

CPL O'KEEFE: Yes, the full time. Neither one of us were alone.

MS. O'BRIEN: Okay. And I understand what you just said, you believe that you left doors closed when – you believe you left doors closed when you left, but you're not sure.

CPL O'KEEFE: Yeah, I'm not sure, but I believe so, yes.

MS. O'BRIEN: Okay.

Did you ever advise any other officers who came to the scene that you and Constable Cox had not cleared the cat room and the addition?

CPL O'KEEFE: I'm not sure what I told them when the, when the senior members were briefed. I would think I would have told them about our full search and what we did.

MS. O'BRIEN: So you think you would have told them that you hadn't cleared –

CPL O'KEEFE: I would think so, yes.

MS. O'BRIEN: – those rooms in the house. Okay.

Is it fair to say that you and Constable Cox had not done a full clearing of this house?

CPL O'KEEFE: Oh, yes.

MS. O'BRIEN: Okay. So was this, would that have been an error on your part? Should you and Constable Cox have cleared the full house?

CPL O'KEEFE: Well, I think we, given what we had, you know, you know we did the best we could; but, yes, we probably could have gone into that, that cat room and had a look around, but I guess that was a, that was a judgement call on our part, knowing what was in there.

MS. O'BRIEN: But if the concern was for safety of people coming behind you, including the paramedics that you were about to bring in – and you said that was the primary concern –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – and your concern would be that there would, there was nobody else in the house, right?

CPL O'KEEFE: Yes.

MS. O'BRIEN: So to be sure that there was nobody else in the house you would have had to at least look in every room in a house –

CPL O'KEEFE: Correct.

MS. O'BRIEN: – would you not have?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So when you brought the paramedics into the home you could not be satisfied that the house was fully cleared and that there wasn't anyone else waiting in there; is that right?

CPL O'KEEFE: Well, like I said, we didn't go into the cat room, but you know, I certainly felt safe bringing them in. Even though we didn't go into the room –

MS. O'BRIEN: And even though you didn't know it had an exterior door and you didn't know how large that room was –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – you felt safe?

CPL O'KEEFE: I, I felt it was safe. But, like I said, we didn't go in; maybe we should have.

MS. O'BRIEN: Okay, in hindsight now, you know, today – and I appreciate, you know, months have passed, and it's different looking back at anything in hindsight, but when you look back in hindsight now, do you see that as an error?

CPL O'KEEFE: Certainly, yes.

MS. O'BRIEN: Okay.

And you said that you're not sure what you told other officers. I can tell you, Corporal O'Keefe, I haven't seen in any other officer's notes that I reviewed as part of this file, any indication that you told to any other officers who came on scene that the house had not been fully cleared by you and Constable Cox, all right. So, you know, you're saying you, you, you, you're not sure what you told other officers. Would you agree with me that you didn't record in your notes that you made any communications to other officers that the house hadn't been fully cleared?

CPL O'KEEFE: Yes, I would agree with that, yeah.

MS. O'BRIEN: Okay. And do you think if you had told that to other officers, would you think that those officers would have recorded that information in their notes?

CPL O'KEEFE: Possibly. It all depends on the member and their, and their note taking.

MS. O'BRIEN: Okay. Do you think some other officer, then, would have taken it – you know, directed that the house be fully cleared?

CPL O'KEEFE: Possibly.

MS. O'BRIEN: Okay. Do you know whether or not that was ever done?

CPL O'KEEFE: I'm not sure.

MS. O'BRIEN: Okay.

How does this house compare, I mean I assume – you've said you've been 17 years in policing. And I would assume in that period of time that you've been in a lot of people's homes. Would that be a fair assumption?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

How did this house compare in terms of its condition to other houses you've been in as part of your policing duties?

CPL O'KEEFE: Well, there was, there was certainly quite a bit of clutter in the home. It was, it was messy for sure. There's no doubt about that.

MS. O'BRIEN: Do you recall having a discussion with Commission counsel about the condition of the house when you did your pre-hearing interview on November 30, 2016?

CPL O'KEEFE: Yes. Yes, I do.

MS. O'BRIEN: Okay. Do you recall what you told us about how this house compared to other houses you'd been in at that time?

CPL O'KEEFE: I believe so. Yes.

MS. O'BRIEN: Okay, so can you tell, tell us, tell the Commissioner what you told us on that date.

CPL O'KEEFE: Well, I was – I think it's fair to say it's probably the messiest house that I've been in my, in my service that I've seen.

MS. O'BRIEN: So the messiest house you've been in –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – in your service.

Okay. And was it just the mess of the house that was the worst or were you making also comment on the condition of the home? Or could you please make some comment on the condition of the home?

CPL O'KEEFE: Well, I guess it was a bit of everything. There was – it was a mess. There was an awful lot of clutter. There was garbage strewn everywhere. There was dirt. There was a smell of cat urine.

The condition of the home was very, very poor just, I guess, structurally. It was – like I said it was a state. The house was an absolute state.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I think it's fair to say that.

MS. O'BRIEN: Okay.

All right, after you and Constable Cox cleared the home, what did you do next?

CPL O'KEEFE: Well, then we came out and we got the paramedics to go in.

MS. O'BRIEN: Okay. How many paramedics?

CPL O'KEEFE: There was two.

MS. O'BRIEN: Did you know them previously? Had you ever met them previously?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. Do you know their names?

CPL O'KEEFE: I can't recall, but I know it was mentioned in my notes.

MS. O'BRIEN: Okay. So Nancy Linehan and Kevin Bishop, does that sound right, a man and a woman?

CPL O'KEEFE: Yes, a man and woman, yes.

MS. O'BRIEN: Okay, all right. So you and Constable Cox got the paramedics and what did you do?

CPL O'KEEFE: We just – we came into the home again and they came and checked on Mr. Dunphy.

MS. O'BRIEN: Okay. So we're going to – Ms. Linehan and Mr. Bishop are going to give testimony to the Commission about what they did in terms of how they checked the body. So I don't need to get you to go over that, but I do want to ask you some questions. Were you with them the entire time that they were inside the house?

CPL O'KEEFE: Yes, both of us were, yes.

MS. O'BRIEN: Okay. And when you say both of us, that's you and Constable Cox?

CPL O'KEEFE: Myself and Constable Cox.

MS. O'BRIEN: Okay, and what area of the house did they go to?

CPL O'KEEFE: Just to the living room area, no further.

MS. O'BRIEN: Okay. So, now how far into the living room would they have entered?

CPL O'KEEFE: They would have just gone and seen to Mr. Dunphy and that was it.

MS. O'BRIEN: Okay. So did they go the full of the way into the living room, like over by the mantelpiece area or would they have stayed in the area close to the body?

CPL O'KEEFE: I can't recall exactly where they went, but whatever way was easiest to get to Mr. Dunphy without disturbing anything, that's where they went. They checked on Mr. Dunphy and determined he was deceased and then we left right away.

MS. O'BRIEN: Okay. Did you see them touch anything while they were inside?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay. Did they have to do any touching to the body, or did either of them have to do any touching to the body that you recall?

CPL O'KEEFE: Yes, they would have had to have seen to Mr. Dunphy, yes.

MS. O'BRIEN: Okay. But other than the touching of the body that they did, or one or the other of them did, did you see them touch anything else in the room?

CPL O'KEEFE: There was nothing moved, and that's why myself and Constable Cox were there watching all the time.

MS. O'BRIEN: So nothing was moved.

CPL O'KEEFE: No.

MS. O'BRIEN: And was anything else touched, even if it wasn't moved?

CPL O'KEEFE: No, not that I can see, no.

MS. O'BRIEN: Okay.

Approximately how long did that exercise take?

CPL O'KEEFE: I can't say for sure, but it wasn't very long. It was a very short period of time.

MS. O'BRIEN: Okay, so we're talking minutes, on the scale of minutes.

CPL O'KEEFE: Sure, sure minutes, yes.

MS. O'BRIEN: Okay.

Okay, and when they left, did all four of you leave together?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Were you ever in the house again after that?

CPL O'KEEFE: No. No, that was it for me.

MS. O'BRIEN: Okay. Did you have any other conversation with Constable Smyth when you came out?

CPL O'KEEFE: Not that I can recall, no.

MS. O'BRIEN: Okay. Have we now heard your evidence about all the conversation that you had with Constable Smyth?

CPL O'KEEFE: Well, there will be more coming up I'm sure, yes.

MS. O'BRIEN: Okay, but on that day?

CPL O'KEEFE: On that day, yes. Yes, correct.

MS. O'BRIEN: Okay.

So at this point when you come out you're still the senior officer in charge of the scene, are you?

CPL O'KEEFE: Yes, I believe so.

MS. O'BRIEN: Okay. And, well I understand we've had testimony that other officers arrived on the scene. We had a Constable X testify yesterday and some other officers' names are mentioned in the paper. So would it have been you who was directing what officers –

CPL O'KEEFE: Yes.

MS. O'BRIEN: What those officers should do?

CPL O'KEEFE: Correct.

MS. O'BRIEN: Okay. And do you recall what direction you were giving the people?

CPL O'KEEFE: Well, we had – well, I had Constable X and Corporal Williams. They were doing the, I guess the scene control.

Constable Cox, he was, I guess we're into that time you just – I guess, working hand in hand with me; the same thing as (inaudible) site security, making some notes. We had Constable Downey there who was handling traffic down the road, 'cause of course once word is getting out, the traffic is picking up, picking up. There was some media arriving on the scene. So we were trying to keep control of all that as well.

MS. O'BRIEN: Do you recall Meghan Dunphy arriving to the scene?

CPL O'KEEFE: Yes, I do.

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

CPL O'KEEFE: It was very shortly after I arrived. I'd say it wasn't half an hour after I was there –

MS. O'BRIEN: Okay.

CPL O'KEEFE: – and Meghan and Billy showed up.

MS. O'BRIEN: Meghan and Billy you're saying? Is that what you just said, Meghan and Billy?

CPL O'KEEFE: Yes, yes; Meghan Dunphy and Billy Corcoran, yes.

MS. O'BRIEN: Okay. So I just see a note that might help. Could you please bring P-0226, Madam Clerk? These are your handwritten notes, Corporal O'Keefe.

CPL O'KEEFE: Sure.

MS. O'BRIEN: These handwritten notes, would you have taken those that day?

CPL O'KEEFE: Yes, they were taken off a notepad I had in the police vehicle. They're –

MS. O'BRIEN: Okay.

CPL O'KEEFE: They're hard to read, but they were being written fairly quickly.

MS. O'BRIEN: Okay, so we see a note here related to Meghan Dunphy. Does that help refresh your memory as to what time –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – they would have arrived?

CPL O'KEEFE: Yes. Yes, like I said, it was approximately half an hour later.

MS. O'BRIEN: Okay. So this is showing at 1537, 3:37.

CPL O'KEEFE: And I was there around 3 o'clock so –

MS. O'BRIEN: Okay.

CPL O'KEEFE: – that's correct, yes.

MS. O'BRIEN: Now, how did you know who Meghan Dunphy was, or did you know who Meghan Dunphy was?

CPL O'KEEFE: She had, I guess, approached Constable Downey and said who she was, and then I was kind of flagged down to come over. And I guess Ms. Dunphy said who she was.

MS. O'BRIEN: Okay. So she would've said she was the daughter of Mr. Dunphy.

CPL O'KEEFE: Yes, yes. Correct.

MS. O'BRIEN: Okay. All right. So did you have any interactions, discussions with Meghan Dunphy?

CPL O'KEEFE: Yes, I did.

MS. O'BRIEN: Okay. Can you tell us about that?

CPL O'KEEFE: Well, I guess, Meghan was there on the scene. She had, I guess, seen some police cars going down the Salmonier Line past her home. And then she had a phone call saying that the police were at her home. So, you know, she needed to know what had happened. So I sat in the car with her and Billy and we had a discussion and a chat. I had to tell her that her father had passed away.

MS. O'BRIEN: So you told her that her father had passed away. Do you recall what other information you would have given her?

CPL O'KEEFE: Well, I had told her that –

MS. O'BRIEN: Yeah, we're gonna get you some more water.

CPL O'KEEFE: Oh, thank you.

I had told her that there was a police officer from the Royal Newfoundland Constabulary had gone down to Mitchells Brook to see her dad, wanted to speak to him about some tweets that were put on Twitter that were I guess perceived to be threatening. And something happened in the home and her father was shot and he had passed away.

MS. O'BRIEN: Okay. Did you tell her that the threatening tweets had been directed towards the premier?

CPL O'KEEFE: I believe I did, yes.

MS. O'BRIEN: That was probably a very difficult conversation to have with –

CPL O'KEEFE: Yes, absolutely. It was a difficult conversation. It happened very, very quickly. There was very little time to prepare. It's certainly not the way I would want to do it in a normal way of doing things.

MS. O'BRIEN: Yes.

CPL O'KEEFE: Absolutely not.

MS. O'BRIEN: Okay.

CPL O'KEEFE: But, you know, she was – her and Billy were there and, you know, unfortunately, I had been a senior member there, I had to unfortunately tell her.

MS. O'BRIEN: Okay. And how was her reaction?

CPL O'KEEFE: She was quite upset. Both of them were very, very upset, understandably.

MS. O'BRIEN: Okay. Do you recall whether Meghan Dunphy asked you any questions?

CPL O'KEEFE: Oh, I'm sure she asked quite a few.

MS. O'BRIEN: Okay. Do you recall any of the questions that she asked?

CPL O'KEEFE: Not off the top of my head. I mean, it was a conversation that was I guess moving very, very fast.

MS. O'BRIEN: Okay.

CPL O'KEEFE: And, you know, I guess I kind of had to balance my – you know, the information that I could give her, what she needed to know, what she had to know, and of course I had to be sympathetic to everything that was happening, that had just happened, you know, probably a half an hour before.

MS. O'BRIEN: Did you tell her that her father had drawn a rifle or a gun on the officer, or pointed a rifle or gun on the officer?

CPL O'KEEFE: I'm not sure.

MS. O'BRIEN: Okay.

I'm going to ask to go to Exhibit P-0228 please, Madam Clerk.

This is your Supplementary Occurrence Report, Corporal O'Keefe, so I'm just to take you through –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – the note you made about the conversation there.

CPL O'KEEFE: Yes, absolutely.

MS. O'BRIEN: Do you recall whether you told her whether or not, you know, where or how her father had been injured, other than the fact that he was deceased? Did you tell her, for example, where he had been shot?

CPL O'KEEFE: No. No, I did not.

MS. O'BRIEN: And your note about this interaction is here under 1507 and – so I won't read the full note; it's there on the screen. And you told her that your father was deceased and explained to him – this is information you already gave us – that you explained to him by an RNC member who was gone to speak to him about threats towards the premier.

Meghan was told that her father had been shot and was deceased. She asked if her father had a gun and then she continued by stating it most likely her grandfather's old gun and it probably wasn't even loaded.

Looking at those notes, does that refresh your memory about that part of the conversation?

CPL O'KEEFE: Not, not really. It, it doesn't refresh my memory, as if, as if I told her there was a gun. I really can't say for sure; I'm sorry.

MS. O'BRIEN: Okay. Now you would have made these notes on April 10, so some five days later.

CPL O'KEEFE: Yes.

MS. O'BRIEN: You know, would these be accurate or is it possible that these notes are not accurate?

CPL O'KEEFE: No, these are accurate notes.

MS. O'BRIEN: Okay. So you just don't – you remembered at the time, you don't remember now.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

You said you were speaking with Meghan and, Meghan Dunphy and Billy Corcoran in their vehicle, is what I understood you to say.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Were you speaking with them more than once?

CPL O'KEEFE: I, I can't, I really can't recall. I've, I probably spoke to them a number of times back and forth that day. It was, you know, but the one I really remember was the initial conversation. It's not something you're going to forget fairly quickly, having, having to pass along that tragic news.

MS. O'BRIEN: Now when –

CPL O'KEEFE: But –

MS. O'BRIEN: Oh sorry, I didn't mean to interrupt you.

CPL O'KEEFE: No, no, no, okay.

MS. O'BRIEN: Go ahead.

CPL O'KEEFE: But like I said, I can't remember any other interactions back and forth; there was so much on the go. I don't know if they, you know, approached me or maybe I, you know, checked on them a couple of times to make sure they're okay. That's quite a possibility.

MS. O'BRIEN: Okay.

And where would they have been located in terms of the scene? I know you say the front of the house has been taped off and there's officers, I understand, posted keeping traffic from passing along the front of the house. So where would they have been relative to that description?

CPL O'KEEFE: They would have been, I guess, down the road a little further, say, coming into Mitchells Brook say, towards Holyrood and Salmonier Line way, as you're coming in. So they would have been down there where – I mean the road was kind of, kind of blocked. Because I walked down to them and down to their vehicle –

MS. O'BRIEN: Okay.

CPL O'KEEFE: – and sat in with them.

MS. O'BRIEN: Okay, so they would have been outside the area that you had blocked off.

CPL O'KEEFE: Yes. Oh yes. Yes.

MS. O'BRIEN: Okay.

THE COMMISSIONER: So you, you went down and sat in their vehicle, did you?

CPL O'KEEFE: Yes, I did, Mr. Commissioner. Yes.

MS. O'BRIEN: Now, when we looked at your handwritten notes a few minutes ago, I – there's – you don't, you didn't record any of the details of your conversation with Meghan Dunphy in your handwritten notes that you took that evening. Is that right?

CPL O'KEEFE: That's right. Yes.

MS. O'BRIEN: Okay. So you – the only time you put it was the five days later when you typed up your notes?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And you don't remember what other, what other conversation you had other than what you've told us here today and –

CPL O'KEEFE: No. No, I don't.

MS. O'BRIEN: – what you recorded in those notes?

CPL O'KEEFE: No. Like I said, that day was just moving so, so fast and there was, I mean, so many moving parts. And it was very, very fluid so – yeah.

MS. O'BRIEN: So is it possible that you had conversations with Meghan Dunphy that day that you just forgot about and didn't get recorded.

CPL O'KEEFE: Yes, that's quite possible but it would be just, you know, just general conversations; you know, how are you doing, are you okay because – you know, I knew they were there. You know, it was very tragic for them so I kind of want to make sure, you know, you guys are okay.

MS. O'BRIEN: Okay.

Meghan Dunphy has said, and I believe Billy Corcoran has also said, that he overheard this conversation, that you told Meghan that her father was on the floor and the gun was beside him. Do you recall saying that to Meghan Dunphy?

CPL O'KEEFE: No, I wouldn't have made those comments at all.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I can assure you.

MS. O'BRIEN: Okay, so you're saying you don't recall it?

CPL O'KEEFE: No, I'm saying I didn't make those comments.

MS. O'BRIEN: And you did not make those comments.

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I did not. No.

MS. O'BRIEN: So how can you – you know you're saying that with, you know, great certainty there.

CPL O'KEEFE: Absolutely.

MS. O'BRIEN: Can you just explain to the Commissioner, you know, why you're so certain about that.

CPL O'KEEFE: Well, because it wasn't fact. I had been in the house. I had seen where Mr. Dunphy was, so there's no reason for me to say that. So I absolutely did not make those comments.

MS. O'BRIEN: Do you recall what the length of period of time was that you were speaking with Meghan Dunphy?

CPL O'KEEFE: I'm not sure. I really don't know. It could have been 10 minutes, I'm not sure.

MS. O'BRIEN: Okay. And do you recall any other questions she might have posed?

CPL O'KEEFE: No, no. I mean if there were questions, a lot of it I could not answer or I didn't know the answer.

MS. O'BRIEN: Where was Constable Smyth at this time?

CPL O'KEEFE: I guess he was up still near the home, near the scene.

MS. O'BRIEN: Okay, so would he have been on the road. I mean, could Meghan Dunphy have seen him?

CPL O'KEEFE: I believe she did see him, yes.

MS. O'BRIEN: Okay. Do you believe she knew who he was or that he was the officer who shot her father?

CPL O'KEEFE: I believe she made that assumption, yes.

MS. O'BRIEN: So had you not asked Constable Smyth to sort of sit in a police vehicle or stay put or –

CPL O'KEEFE: He was in Constable Cox's vehicle. He was in my vehicle as well. I guess there was a period where I guess he was outside.

MS. O'BRIEN: And did you think to ask him to, you know, stay in a vehicle as opposed to sort of wandering freely around the scene?

CPL O'KEEFE: You know I guess we could see where he was, but no, I didn't ask him to get in a car and stay there. Hindsight, I should have but, as I said, there was so many things on the go that day.

MS. O'BRIEN: Okay. But you recognize in hindsight the right thing for you would have done, would have been to ask him to sit in a vehicle.

CPL O'KEEFE: Absolutely, yes. Correct.

MS. O'BRIEN: Do you recall whether Ms. Dunphy was asking, you know, asking you to identify Constable Smyth or do you recall her saying anything about Constable Smyth or asking you any questions?

CPL O'KEEFE: Now that you mention it, I believe she did ask and, you know, I didn't provide an answer to her.

MS. O'BRIEN: Okay, so she asked but you did not answer.

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

Did you have any other interaction – I know we're going to get to a point now where I understand that Constable Smyth left the scene.

CPL O'KEEFE: Yes.

MS. O'BRIEN: And we have testimony that that happened at around 4:10 that afternoon, but prior to that, did you have any further interaction with him?

CPL O'KEEFE: No, no, other than I put him in my police vehicle and then that's where he stayed until he left. So he – I didn't have any more conversations with him. He got in my police vehicle and I guess then he probably made some phone calls to his supervisors or wherever he was calling.

MS. O'BRIEN: When you say you put him in your police vehicle, was that you putting him in there or was him choosing to get in a vehicle. How did that –

CPL O'KEEFE: Well, no, I guess we just said, you know, come on in. I didn't, you know, I didn't force him in the vehicle, but, you know, I suggested he get in the vehicle, so.

MS. O'BRIEN: Okay. And why did you do that at that time?

CPL O'KEEFE: Well, I'm, I'm not sure. I don't know why. Maybe it was, it was because of the questions and it triggered that maybe he should be in a vehicle; that's possible.

MS. O'BRIEN: The questions that Meghan Dunphy was –

CPL O'KEEFE: Yes –

MS. O'BRIEN: – posing to you about who is the officer?

CPL O'KEEFE: – it's quite possible, yes, yeah.

MS. O'BRIEN: And that might have triggered you to ask him –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – or suggest –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – that he get in your vehicle.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay –

CPL O'KEEFE: So he just got in my car and then I, I got out and carried on.

MS. O'BRIEN: Okay, and where in, where in your car did he sit?

CPL O'KEEFE: In the front seat.

MS. O'BRIEN: Okay. And so just left him in there in your car –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – while you went out and did your other work.

Okay, do you recall how long before he ultimately left the scene that that happened?

CPL O'KEEFE: I'm, I'm not sure.

MS. O'BRIEN: Do you recall seizing his OC spray or doing any other seizures from him?

CPL O'KEEFE: Yes, yes, I had his OC spray as well, yes.

MS. O'BRIEN: Okay, was that done sometime after you had initially seized his –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – weapons and ammunition.

CPL O'KEEFE: Yes, the firearm was first, and then we realized that the spray was there, so we took the spray as well, correct.

MS. O'BRIEN: Okay, were you, did you have a conversation with someone to, who suggested to you to get his OC spray as well?

CPL O'KEEFE: I believe it was, it was probably Staff Tiller mentioned that as well, we should probably get the spray.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Now I, I'm not sure it was Staff Tiller, but he was the supervisor that I was speaking most with, so.

MS. O'BRIEN: And that would have been by telephone you were speaking with him?

CPL O'KEEFE: Yes, before he was on the scene, yes.

MS. O'BRIEN: Before he was on the scene.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay, suggested – because this would have been another weapon, I guess –

CPL O'KEEFE: Yes, correct.

MS. O'BRIEN: – that, that, that Constable Smyth had. And we're talking about OC spray. And just to be clear for people who don't know, that's the same thing as pepper spray, right?

CPL O'KEEFE: Pepper spray, yes, correct.

MS. O'BRIEN: Okay.

Now, so how did it come to pass that Constable Smyth left the scene?

CPL O'KEEFE: I'm, I'm not 100 per cent sure. I know we had other members arrive on scene, and it's quite possible that they were speaking to some of the senior members and then Constable X was assigned to drive him.

MS. O'BRIEN: Okay, who assigned Constable X to drive?

CPL O'KEEFE: I'm not sure. I don't know if that was me in consultation with Staff Sergeant Tiller; I really can't recall.

MS. O'BRIEN: Okay, all right. Do you recall giving any instructions to Constable X?

CPL O'KEEFE: No. Other than the initial site security, I can't recall.

MS. O'BRIEN: Okay. Do you recall how Constable Smyth – I take it Constable X took Constable Smyth from the scene in Constable X's vehicle. Is that how it happened?

CPL O'KEEFE: Yes. Yes, I believe so.

MS. O'BRIEN: Okay, do you recall how Constable Smyth got from your vehicle to Constable X's vehicle?

CPL O'KEEFE: That – no, I don't.

MS. O'BRIEN: Okay.

I think Constable X testified that you brought or you walked over with Constable Smyth to his vehicle. Do you have any memory of that?

CPL O'KEEFE: It's quite possible. I don't recall.

MS. O'BRIEN: Okay. And at this point were you still the senior officer on the scene? And this –

CPL O'KEEFE: I believe.

MS. O'BRIEN: – is at 6:10.

CPL O'KEEFE: I believe so.

MS. O'BRIEN: Or, sorry at 4:10.

CPL O'KEEFE: It was close to what all the other members were on. It was close.

MS. O'BRIEN: Okay. So who is the first person who came on scene who was senior to you?

CPL O'KEEFE: I would probably think it would have been Staff Tiller would have been the first one.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Like I said I'm not sure because there's Major Crime arriving. They were kind of all arriving fairly quickly, but I think it would have been staff.

MS. O'BRIEN: Okay.

(Water tipped over.)

CPL O'KEEFE: Oops.

MS. O'BRIEN: Oops. That's okay; we'll just take a moment –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – and clean that up.

CPL O'KEEFE: Sorry, folks.

MS. O'BRIEN: No, that's fine. Madam Clerk will get you something to help you with that. There she comes.

THE COMMISSIONER: We have all done it.

CPL O'KEEFE: Sorry about that. I am not paying for a microphone.

MS. O'BRIEN: That's okay.

All right. So when you – Constable X gave us some testimony yesterday about his transport of Constable Smyth from the scene. And we understood from him that he didn't have very much information as to what had gone on in the scene when he was asked to transport Constable Smyth, and that he wasn't given any other instruction more or less other than to take him back to Holyrood detachment.

As the senior officer, if you're the senior officer on the scene and you're communicating – I know you're communicating with other, your superiors who are not on the scene. Would it not have been your responsibility to make sure that Constable X had proper instruction for the task that he was about to undertake or he was being asked to undertake?

CPL O'KEEFE: Well, I'm sure Constable X had an idea of what had happened, just the basics. But, then again, I wasn't given any instruction either. I mean, we were told to bring Constable Smyth to Holyrood detachment. So –

MS. O'BRIEN: Okay, so who would have told you that?

CPL O'KEEFE: I'm not sure. I really can't tell you.

MS. O'BRIEN: Okay. Did you have any understanding of why Constable Smyth was being brought to Holyrood detachment?

CPL O'KEEFE: Well, I guess it was his superiors from the Constabulary were going to be going there and they were going to be meeting him at our office.

MS. O'BRIEN: Okay. Did someone tell you that?

CPL O'KEEFE: Yes, I would have been told that.

MS. O'BRIEN: You would have been told this by your superiors –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – or whoever you were speaking with back –

CPL O'KEEFE: Correct.

MS. O'BRIEN: – at the Holyrood detachment?

CPL O'KEEFE: Correct.

MS. O'BRIEN: You would have gotten that information?

CPL O'KEEFE: Yeah. Now who told me, I don't know, but I do know that information, he was to be brought there.

MS. O'BRIEN: Okay.

CPL O'KEEFE: So – right? Because I didn't, I didn't make that call to go there.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Right.

MS. O'BRIEN: I mean at the time that Constable Smyth is removed from the scene, he had actually been on the scene for approximately 75 minutes or so since the first RCMP officer arrived, since Constable Cox was first on the scene. About 75 minutes –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – before he left the scene. You know, why did you wait that long a time before having Constable Smyth removed?

CPL O'KEEFE: I really can't answer that. I don't know. I guess I go back to there was so much happening on that scene in such a short period of time.

I guess moving, getting Mr. – or Constable Smyth away from the scene and to another area, I guess I was in, kind of in a pecking order. We had, we had a scene there; we had Mr. Dunphy

inside. We had Meghan and Billy there as well. So there was a lot of, as I said earlier, a lot of moving parts.

So it was, you know, we were kind of – I guess I was kind of waiting for some backup and for some other senior members to be in contact. Then we could get things moving along.

MS. O'BRIEN: So when you, when, when Constable X was asked to transport Constable Smyth, you know, he testified yesterday that he didn't know whether or not Constable Smyth had been – he hadn't been told whether or not Constable Smyth had been detained, whether or not he had been given his rights to counsel, police caution. You know, that he had no – really was given no information.

Do you see that as a mistake that was made?

CPL O'KEEFE: Well, now that you mention it, I probably should have informed him a little bit better and give them some better information, yes.

MS. O'BRIEN: Okay. And if you didn't have that information yourself, you could have called to your superiors –

CPL O'KEEFE: Sure.

MS. O'BRIEN: – and gotten direction, what should I be telling Constable X here so that he knows what it is he's doing.

CPL O'KEEFE: Yes, that's right.

MS. O'BRIEN: Okay.

Now, going back to one item here; you had said – when you were giving your direct testimony earlier you said that you weren't sure whether or not you told anybody else about whether or not the scene had been fully secured or cleared, or you weren't sure. My co-counsel here helpfully pointed out to me in the exhibit here, which is P-0228, which is your SOR, that there is a note here at 1513 where it says: Staff Sergeant Tiller was advised of that the scene was fully secured and he was updated on the investigation so far.

So would that have been you who advised Staff Sergeant Tiller at that time that the scene was fully secured?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay, and –

CPL O'KEEFE: As far as I know.

MS. O'BRIEN: All right.

CPL O'KEEFE: Now, I guess that – I mean when I say the scene, I guess I was referring to, you know, the outside. We had it shut down, we had left. I guess that's what that's referring to. We were out of the house. There was nobody else in there, no.

MS. O'BRIEN: Okay. So where had you posted officers around the house?

CPL O'KEEFE: The members were posted out to the front – the front, out by the driveway, out in the front area. That's where they were kind of – I guess on foot patrol, for lack of a better word.

MS. O'BRIEN: Okay.

CPL O'KEEFE: There was nobody out back.

MS. O'BRIEN: Okay, so there's nobody out back.

CPL O'KEEFE: No.

MS. O'BRIEN: No police tape around the back of the house.

CPL O'KEEFE: No.

MS. O'BRIEN: Two entrances on the back of that house, right, into the house?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. I know you know that now.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Did you know it at the time?

CPL O'KEEFE: No, I don't believe so.

MS. O'BRIEN: Okay. So, and you didn't have anyone posted or stationed out at the back of the house?

CPL O'KEEFE: No.

MS. O'BRIEN: Would it be fair to say, Corporal O'Keefe, that the house, that the scene was not fully secured, that it was vulnerable?

CPL O'KEEFE: Well, I guess – you know, I guess if you look at it you can say that. However, I guess through our risk assessment and the location and the type of file, I was pretty confident there was going to be nobody coming down through the back and trying to get in the house, seeing a bunch of police officers there. And that's how I felt.

As I said earlier, it's Mitchells Brook and I had never been to a call there before. So I guess I felt that, you know, the way we had it secured was safe and nobody was going to try and get into the home.

MS. O'BRIEN: Okay, but –

CPL O'KEEFE: If that helps.

MS. O'BRIEN: Okay, but you had not gone up around back to see what was back there or how people might –

CPL O'KEEFE: Not at that time.

MS. O'BRIEN: Okay. And I know you're saying, you know, you hadn't been called to Mitchells Brook before. So you're saying you felt Mitchells Brook was safe and there's good people in Mitchells Brook and nobody is going to try to get into this house?

CPL O'KEEFE: Well, I felt if we – there were police officers, you know there was a number of police cars out front and I guess I felt fairly confident that nobody was going to be up in the woods, come down and try and sneak in and run the risk of being seen.

MS. O'BRIEN: Right. Okay.

CPL O'KEEFE: Yes.

MS. O'BRIEN: So you felt the police presence out front was a significant, enough of a deterrent?

CPL O'KEEFE: Yes, yes I did.

MS. O'BRIEN: Okay.

You know looking back on that now, you know – again, I know we're doing a hindsight exercise here but looking back at that now, do you recognize that the house was vulnerable and that someone should have been posted to the back of that house?

CPL O'KEEFE: It could have been but you work with what you have. I mean, we had a number of moving parts. I only had a small number of members at the time until other members arrived. So I was certainly working with what I had.

MS. O'BRIEN: Okay. But you didn't, in your notes there we just – you communicated to Staff Sergeant Tiller that the scene was fully secured.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So you didn't communicate to him, I don't have enough officers to post anyone at the back of the house?

CPL O'KEEFE: Well, I knew more people were on the way.

MS. O'BRIEN: Okay.

CPL O'KEEFE: And then we could work with it from there, but I believe even with all the other members were coming, there was nobody posted out back or it wasn't taped off or back.

MS. O'BRIEN: Nobody was ever posted to the back of the house?

CPL O'KEEFE: No, we – I guess we felt the number of cars and – would be enough of a deterrent.

MS. O'BRIEN: Okay. And there's a number – was a couple of outbuildings on this property, like –

CPL O'KEEFE: Sheds, yes.

MS. O'BRIEN: – sheds, yeah. Did you see those there?

CPL O'KEEFE: Yes. Yes, there was a shed there.

MS. O'BRIEN: And did you look inside them?

CPL O'KEEFE: No, I did not, no.

MS. O'BRIEN: Okay, so those hadn't been secured or cleared?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

Just coming back there to, you know, coming back to the issue with Constable X. One of the statements that Constable X had made yesterday was that if he had known he was involved in an investigation, if he'd understood his role he would have essentially recorded any spontaneous – you know, been more careful about recording any spontaneous statements made by Constable Smyth.

CPL O'KEEFE: Sure.

MS. O'BRIEN: Would that be part of an officer's training? I mean if you were transporting someone who is part, who is the subject of an investigation, would you have your ears open for any spontaneous statements or utterances that the person would have made?

CPL O'KEEFE: Yes. Yes, I would think so.

MS. O'BRIEN: Okay. So police are trained –

MR. FREEMAN: Kate, excuse me, I have to interrupt for one second. I'm not sure that's really an accurate description of what X said. He did say he recorded any excited utterances and that he would have recorded anything that he did hear. So not so much that he wouldn't have been more acute or anything like that. I think if that's a specific reference you're making to something he said, then I think we might need to go there.

MS. O'BRIEN: Okay, and I will be able to check that in my, actually memory of – my notes from it were from Ms. Breen's cross-examination of Constable X. So I note that. And, Mr. Freeman, I certainly don't mean to be misleading the witness with the evidence.

So, just going back to an officer's training, would that be consistent with an officer's training to record any – to keep your ears open and record any utterances or, you know, spontaneous statements that a subject makes?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: Okay. And now, who was the – what was the next interaction. Who was the next person to go in the house? After you and Constable Cox left the house with the paramedics, who was the next person to enter the house?

CPL O'KEEFE: The next one would be Corporal Dion Foote.

MS. O'BRIEN: Okay.

CPL O'KEEFE: And he was in charge of our general investigation section in Holyrood.

MS. O'BRIEN: Do you know approximately what time Corporal Foote came to the scene?

CPL O'KEEFE: I'm not sure. It is in my notes when he entered.

MS. O'BRIEN: Okay. So we have your notes up here so – I think it might be in your written notes.

CPL O'KEEFE: Yes, it is.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I believe it was around twenty to five, quarter to five, but I have the time there.

MS. O'BRIEN: Okay, I note here in your – I'm just looking at your handwritten notes here. There's a note made at 1651, which doesn't appear in your typed notes but it says, Foote arrived – I'm not sure what that says, it's in P-0226. Relief?

CPL O'KEEFE: I had – my first staff sergeant told me my handwritten notes are like a thumbnail dipped in tar.

MS. O' BRIEN: Okay. So it is approximately that time. Is that more or less consistent with –

CPL O'KEEFE: Yes, approximately yes.

MS. O'BRIEN: Okay. So it's somewhere getting close to 5 o'clock.

CPL O'KEEFE: Yes, correct. (Inaudible.)

MS. O'BRIEN: Okay. Did you understand what – and here's the note there. Thank you, Madam Clerk. The note that I was just referring to is here.

Foote arrived –

CPL O'KEEFE: Yes, correct.

MS. O'BRIEN: What does that word way?

CPL O'KEEFE: It said briefed, so I just, I gave him the background of what had happened.

MS. O'BRIEN: Okay, so you briefed him, okay.

CPL O'KEEFE: And then 1657 he went inside. I walked him up to the, to the front door and then he went in.

MS. O'BRIEN: Okay, so that's what's note inside means.

CPL O'KEEFE: Yes, that's when he –

MS. O'BRIEN: What did you understand Corporal Foote was doing there?

CPL O'KEEFE: As far as I know, from my understanding was where there was a number of cats in room and Mr. Dunphy was there, Corporal Foote was to keep the cats away from disturbing any evidence.

MS. O'BRIEN: Do you recall what time Meghan Dunphy left the scene? Did you make any record of that when she left?

CPL O'KEEFE: No, I don't know.

MS. O'BRIEN: Okay.

And I know you said you don't remember all the conversation with her. Do you, do you recall her asking to be able to see her father's body?

CPL O'KEEFE: I don't, I really don't recall her asking. She may have and, of course, I would have to decline; I couldn't let her go in.

MS. O'BRIEN: Okay. Did you, do you recall whether you might have told her that she'd be – get a chance to once, you know, major crimes got there, there would be some opportunity for her to get in and –

CPL O'KEEFE: No, I don't recall saying that. That's not my call.

MS. O'BRIEN: Okay.

All right, so Corporal Foote is in the scene now; do you recall ultimately turning off Constable Smyth's vehicle?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Once, that was once Major Crime arrived. That would have been Corporal Burke and Sergeant Henstridge arrived and then the vehicle was turned off.

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

CPL O'KEEFE: That's in my report there as well.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I'd have to see the time but I do have the time, time there that it was turned off I believe.

MS. O'BRIEN: Okay. And maybe we'll bring that up again because it will assist you. I think P-0227, or sorry, my apologies, 0228.

Okay. And I note here, I think the note is here is it about 1710. Sorry, 7:10, 1910.

CPL O'KEEFE: 1910, 7:10 p.m., yes.

MS. O'BRIEN: Okay. It says here Corporals Burke and Henstridge of MCU. And what's MCU?

CPL O'KEEFE: That's the Major Crime Unit.

MS. O'BRIEN: Okay, advised the RNC vehicle could be shut off and secured. Same completed, key secured with Corporal O'Keefe.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Were they on scene at that time?

CPL O'KEEFE: Yes, they would have been then.

MS. O'BRIEN: Okay.

And so what did you do with the keys once you seized them?

CPL O'KEEFE: I just – I guess I held on to them until the exhibit custodian took them from me.

MS. O'BRIEN: Okay. And who was the exhibit custodian?

CPL O'KEEFE: That's Constable Galway.

MS. O'BRIEN: Okay. Do you know –

CPL O'KEEFE: Constable John Galway.

MS. O'BRIEN: – what time you provided Constable Galway with the items that you'd seized?

CPL O'KEEFE: It says right there it's 2150. That's 9:50 p.m.

MS. O'BRIEN: Okay. So those are the – you turned over the firearm magazines, OC spray –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – and also the keys to the vehicle –

CPL O'KEEFE: Correct.

MS. O'BRIEN: – at that time.

CPL O'KEEFE: That's right. Yes.

MS. O'BRIEN: Okay.

Do you, do you recall – do you have any other recall of any other events that night, anything that we haven't talked about?

CPL O'KEEFE: No, I don't think so. Not off the top of my head. You know, once I guess – you know between 5, 6 o'clock, that's when all the other, all the other members started showing up: Major Crime, Staff Sergeant Tiller, all the senior members. And then everything was turned over to them.

MS. O'BRIEN: Okay.

Sorry – and approximately what time was that?

CPL O'KEEFE: I can't say for sure what time everybody else started showing up, but as I said here in the notes, 10 past seven Major Crime were there, but I'm sure they were there well before that.

MS. O'BRIEN: Okay and we'll hear –

CPL O'KEEFE: And once I made –

MS. O'BRIEN: – from them.

CPL O'KEEFE: Yeah, once I made the initial calls when I was going to the scene, that meant the other members were en route as well.

MS. O'BRIEN: Okay.

Do you recall giving a briefing to the – were you there when the FIS or Forensic Identification Service team, the ident team arrived, Sergeant Saunders and Corporal Lee?

CPL O'KEEFE: Yes, I believe – yes, I would have been there. Yeah.

MS. O'BRIEN: Okay. Do you recall giving them a briefing?

CPL O'KEEFE: I don't recall. No, I don't.

MS. O'BRIEN: Okay. So you don't know what information, then, you might have or might not have passed on to them?

CPL O'KEEFE: I would have had to have give them a briefing. Like I said, I can't recall the conversation, but I would have been required to give them a briefing because, you know, I was one of the few in the home, so –

MS. O'BRIEN: Okay.

CPL O'KEEFE: They would have to know what I had seen.

MS. O'BRIEN: Okay.

What was your, you know, next action that night on this file? What do you next recall?

CPL O'KEEFE: After that, once Major Crime and the senior, I guess – senior-ranking members arrived, I was just doing site security basically.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yeah. That was –

MS. O'BRIEN: So –

CPL O'KEEFE: That was all. Just in the car and, you know, make sure the scene was secure.

MS. O'BRIEN: Okay.

So you left the scene, I think, at around 22 – I think it says here 2215 that night?

CPL O'KEEFE: Yes. Correct.

MS. O'BRIEN: All right. So that's around 10:15 in the evening you would have left?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

And did you do any site security for the scene subsequent to that evening?

CPL O'KEEFE: Yes, I believe it was the very next day I was, I was there as well.

MS. O'BRIEN: Okay, and when you did the site security the very next day, what is it you – how did you do that? Were you sitting in a car; were you standing on your feet?

CPL O'KEEFE: A bit of both, a bit of both. Sitting in a car, and, you know, you would get up and have a look a scattered time.

MS. O'BRIEN: Okay. Would you ever walk around the house?

CPL O'KEEFE: No, no, I wouldn't, I wouldn't go in past, past the tape, shall we say.

MS. O'BRIEN: Okay. And would you have been keeping a scene log or a record of who was coming and going on the scene, would that have been a part of it?

CPL O'KEEFE: We did have a scene log, yes.

MS. O'BRIEN: Okay. And–

CPL O'KEEFE: And that was turned over from member to member to member. So I would start it and then whoever came on next.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Correct.

MS. O'BRIEN: And just for the record, I believe – Madam Clerk, could you please bring up P-0230?

It's kind of we put two exhibits together of handwritten notes, but we understand this to be primarily the scene log I'm just going to ask. So I see here it says scene log and it seems to have been started by Constable Cox, and then it comes down and then we're getting further notes of who's coming in and of the scene. Is that what you were referring to in the scene log?

CPL O'KEEFE: Yes, yes, that's correct.

MS. O'BRIEN: Okay, so that's what would have been passed from officer to officer.

CPL O'KEEFE: Yes, that's right.

MS. O'BRIEN: And some of these notes would be yours, would they?

CPL O'KEEFE: Yes. Yes, that's right.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Correct.

MS. O'BRIEN: While you were there that evening, were there ever any RNC members on the scene?

CPL O'KEEFE: Not that I could see.

MS. O'BRIEN: And when you say not that I can see, I mean you were there watching who was coming and going from the scene. Would you not have seen it if –

CPL O'KEEFE: I didn't, like I said, I didn't see any uniformed police officer, I didn't see anybody I didn't know.

MS. O'BRIEN: Okay, all right. And I just, just need to take a moment here; I've got to clarify something.

You mention earlier that at one point Constable Smyth was in your vehicle making some calls you thought to a supervisor, making some calls on his phone. Did you overhear any of that conversation?

CPL O'KEEFE: No, no I did not.

MS. O'BRIEN: Okay.

CPL O'KEEFE: I didn't stay in the vehicle.

MS. O'BRIEN: Okay.

All right. So any other involvement in the investigation from you?

CPL O'KEEFE: No, no that was, that was it. After that second day, I believe I was just placed right back on, on detachment duties.

MS. O'BRIEN: Okay. So now on April 10 you called Constable Smyth?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. So can you tell the Commissioner about that? Why did you call him and what did you say?

CPL O'KEEFE: Yes, I called him. I guess it was a few days after the incident. It was, you know, I guess a very difficult incident for everybody involved. I was working that night and, you know, I guess everything was playing on my mind. And I wanted to call and just, you know, see how he was doing is the bottom line.

MS. O'BRIEN: He had had an email that he had written to the RNC, his fellow RNC members, and also to – he forwarded it, I know, to a couple of RCMP members. You were not one of those members who was forwarded that email, were you?

CPL O'KEEFE: No.

MS. O'BRIEN: No.

CPL O'KEEFE: No, I wasn't.

MS. O'BRIEN: Okay. Were you aware about – of that email when you made the call to him?

CPL O'KEEFE: I may have, if it was reported in the news.

MS. O'BRIEN: It –

CPL O'KEEFE: But I certainly didn't read it or see it.

MS. O'BRIEN: Okay. So it had been leaked to the media that day.

CPL O'KEEFE: Okay.

MS. O'BRIEN: Okay. So you may have had some knowledge of that before you called him. Is that what you're saying?

CPL O'KEEFE: Yes. Possibly, yes.

MS. O'BRIEN: Okay.

And were you working when you called him?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

And how did you get his number to call him?

CPL O'KEEFE: It must have been on the file.

MS. O'BRIEN: Okay. So you would have looked at the file, got his number –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – and given him a call.

CPL O'KEEFE: Yeah.

MS. O'BRIEN: And so you wanted to see how – it was playing on your mind, you said. So tell me, like what did you exactly say to him and what did he say?

CPL O'KEEFE: You know, it was a very, it was a very brief conversation. I spoke to him and I – I mean, I – I remember that I did say to him, I said: You know, I'm not calling as an investigator, I am not calling as a police officer, I said – you know, I just want to know how you're doing. You know, it's a very difficult situation. I mean it's been playing on my mind and that was pretty much it. I wanted to see how he was doing.

He said, you know, it's difficult for him and his family. I believe he mentioned that they were looking at taking a trip just to get away from everything and it was just – you know, it was just a general, kind of a caring conversation and that's it.

MS. O'BRIEN: Okay.

Were you aware at this time that the RCMP was investigating Constable Smyth?

CPL O'KEEFE: No, I wasn't made aware of – like other than our initial file, but I wasn't privy to anything like that.

MS. O'BRIEN: Did you know that that – did you understand that initial file to be an investigation?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Did you understand it to be a homicide investigation?

CPL O'KEEFE: I wasn't made aware of what the exact type of investigation it was, no. Because, like I said, once I was done that second day on the scene I was – I had no other dealings, dealings with it.

MS. O'BRIEN: All right.

CPL O'KEEFE: So I didn't know where their focus was. No.

MS. O'BRIEN: Okay. Did you know whether or not the investigation had been concluded at that time?

CPL O'KEEFE: Oh, it wasn't. It wasn't concluded, no.

MS. O'BRIEN: So you knew he was subject of on an ongoing investigation, you just –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – weren't sure the details.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And did you check with anyone about what kind of investigation it was before you made the call?

CPL O'KEEFE: No. I made it all on my own.

MS. O'BRIEN: Was that an appropriate call for you to make?

CPL O'KEEFE: You know, in looking back at it now – you know, it was mentioned by my supervisors. You know, maybe it wasn't but, I guess, at the time and knowing – you know, knowing what everybody had gone through, you know, I guess it was – it might have been just as much for me as for him.

You know, it's a very difficult situation for everybody and, you know, I just – I guess I just wanted him to know that somebody cared, you know, if that makes any sense.

MS. O'BRIEN: Sure. So you were empathizing.

CPL O'KEEFE: Absolutely.

MS. O'BRIEN: Is that a fair way to put it?

CPL O'KEEFE: Absolutely.

MS. O'BRIEN: And would that – you know, and were you empathizing with him as a fellow police officer? I mean was that part of what –

CPL O'KEEFE: Just as a human being.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Not so much as a police officer but, you know, I can only imagine. You know, I could see what everybody had gone through that day, be it Constable Smyth or Meghan and Billy or ourselves. This was a very, very difficult, difficult situation. And, you know, I guess – I guess it was a bit comforting, you know, just to know that somebody cared, somebody cared. And, like I said, that's all it was. There was no discussion of anything; it was just are you doing okay, you know.

MS. O'BRIEN: Had Constable Smyth not been a police officer, if he had been an ordinary civilian who is the subject of an investigation by the RCMP involving a shooting that he had committed, do you think you would have made that call?

CPL O'KEEFE: Probably not.

MS. O'BRIEN: No.

CPL O'KEEFE: No.

MS. O'BRIEN: So you would have – you made that call to him because he was a police officer?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: You know what; let's call a spade a spade. Probably, yes.

MS. O'BRIEN: Okay.

And now that you look at it in hindsight, do you consider that that raises a bit of a concern for impartiality or a lack of independence to have a member of the investigating force to call up the subject of the investigation –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – you know, to see how he's doing?

CPL O'KEEFE: Yes. I – in hindsight I probably shouldn't have called but, you know, I guess my feelings or, you know, my emotions from all that took over. But, I mean, in hindsight maybe I shouldn't have called, yes.

MS. O'BRIEN: Okay. Every time you say that, Corporal O'Keefe, you're saying I probably shouldn't have called, maybe I shouldn't have called. You know, would you go as so far to just say point-blank –

CPL O'KEEFE: Yeah. No, no –

MS. O'BRIEN: – I should not have made that call?

CPL O'KEEFE: No, right. Looking back, no, I would. I wouldn't have called.

MS. O'BRIEN: Okay. Now, the – did anyone ever raise this concern with you?

CPL O'KEEFE: Yes. Yes, eventually.

MS. O'BRIEN: Okay, so tell us about that.

CPL O'KEEFE: Well, it's – I heard from Corporal Foote was, I guess was directed to come and speak to me on it and to make some notes on the file.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yeah.

MS. O'BRIEN: And I'll ask, Madam Clerk, if you could bring up P-0229, please.

So here we have the Supplementary Occurrence Report. So this is one that you made. It says report time on – sorry, on April 10.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

CPL O'KEEFE: So that's – that would have been when I made the call.

MS. O'BRIEN: Okay, that's when you made the call.

CPL O'KEEFE: Correct.

MS. O'BRIEN: And you entered it, then, on May 4.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Is that right?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay so – and you made these notes here and entered these notes at the request of one of your superior officers?

CPL O'KEEFE: Yes, that's right.

MS. O'BRIEN: Okay.

And so did your superior officer – you know, what was the discussion your superior officer – I thought you said it was Corporal Foote who –

CPL O'KEEFE: Yes, well, I guess – well, Corporal Foote was the corporal in charge of the investigation section. He was speaking to Staff Tiller. And I was told, you know, you should go make some notes on that phone call.

MS. O'BRIEN: Okay.

Did they raise it with you like that's – did they say like this is a – you shouldn't have made this call. Did they raise any concern with you about you having made the call or did you just say, gee, you made the call; you should make some notes about the call.

CPL O'KEEFE: That's what I recall. I don't recall being reprimanded for it or – I really don't recall that. The big thing was to go make some notes on it.

MS. O'BRIEN: Okay.

CPL O'KEEFE: Yeah.

MS. O'BRIEN: So you don't recall anyone telling you it was inappropriate?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

CPL O'KEEFE: No.

MS. O'BRIEN: That it shouldn't have been done, you don't recall that?

CPL O'KEEFE: No, I don't recall that.

MS. O'BRIEN: Okay.

I'm just going to bring up an email. I know you were on the email but –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – just P-0231, please.

Can you make that a little bit larger, please, Madam Clerk? Thanks.

All right. So this is an email on April 14. So this is on April 14 and I understand you didn't make those notes then until May 4.

CPL O'KEEFE: Right.

MS. O'BRIEN: So this is on April 14. It says it's from Kent Osmond who we're going to hear from, but I understand he was the team commander of the investigation.

CPL O'KEEFE: Correct.

MS. O'BRIEN: With – he's with MCU to Staff Sergeant Rod Tiller: Hi Rod, I know you have already spoken with Cpl O'Keefe about his disclosing information to the family. However, I was informed this morning that Trevor also reached out to Sergeant Smyth regarding – following the shooting to see how he was doing, I don't know on what day that contact occurred.

So I'm going to stop right there Corporal O'Keefe, and just ask you – do you recall having been spoken to about your disclosing information to the family?

CPL O'KEEFE: I, I don't recall that. I don't recall that conversation. Sorry.

MS. O'BRIEN: Okay. Do you recall what the concern was? I mean, had you spoken to the family any other time than that evening on April 5?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay, so when you made your call to Constable Smyth you didn't also make a call to Meghan Dunphy to see how she was doing?

CPL O'KEEFE: No, no.

MS. O'BRIEN: Okay.

CPL O'KEEFE: We had a family liaison assigned at that time.

MS. O'BRIEN: Okay.

And it says then I have directed Corporal Foote to have Corporal O'Keefe draft comprehensive notes on that contact, as it was not previously known to the investigative team and not appropriate. I understand that we are all human beings with feelings, and this was no doubt done with the best of intentions. However, the RNC were completely plugged in to the MEAP side of things – and I think that's employee support –

CPL O'KEEFE: Member Employee Assistance Program.

MS. O'BRIEN: Okay. And the optics of a first responder of the file speaking to the person under investigation should have been a common-sense issue and should not have been done. I am raising this with you to ensure the notes are completed immediately and so you can assess how you wish to deal with this issue as his supervisor.

So you're saying that after that you got a message to basically make notes, but you don't recall any reprimand. You don't recall anybody telling you oh, Corporal O'Keefe, is, you know –

CPL O'KEEFE: No, and if there was, it was a very, you know, small conversation. Like you said, I wasn't, I wasn't hauled in, doors closed, and people pointing fingers at me. There was absolutely none of that. So I certainly don't, don't recall it.

MS. O'BRIEN: I know you went over when you started your testimony, you went over the training that you – I know you said you had not previous to this date received any training in related to, I think, investigating police use-of-force incidents. Am I remembering that right?

CPL O'KEEFE: That's right, yes.

MS. O'BRIEN: You know, since that date, have you received any training since?

CPL O'KEEFE: No.

MS. O'BRIEN: No follow-up?

CPL O'KEEFE: No training, but I've learned a lot.

MS. O'BRIEN: Okay. I just have a few – well, that's good. I just have a few more questions for you, and I may actually finish before the lunch break. I noted that your notes in your logbook and your typed notes, I think we reviewed that. You made your notes in your logbook the day of, on April 5 –

CPL O'KEEFE: Yes.

MS. O'BRIEN: – the ones that we reviewed, and the type – your Supplementary Occurrence Report were made some five days later on April 10.

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay.

And now, we know that the Alberta Serious Incident Response Team, otherwise known as ASIRT, did a review of the RCMP's investigation and ultimately prepared a report. Were you aware of that?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: Okay. And I understand that – I'm going to ask Madam Clerk to bring up P-0232, please. And if you could make that a little bit bigger.

I'm just looking at an excerpt from that report, Corporal O'Keefe. On page 8 of that report it says that : "Cpl. O'Keefe was one of the first RCMP officers on the scene that the subject officer presented himself to upon arrival. The notes and subsequent PROS report provided by Cpl. O'Keefe's documenting his encounters and discussion with the subject officer are extremely limited and, respectfully, inadequate."

When did you first learn that – I mean, this is a criticism of your note taking by ASIRT. Would you agree with that?

CPL O'KEEFE: Yes, yes.

MS. O'BRIEN: When did you first learn that ASIRT had, had made those statements?

CPL O'KEEFE: I guess it was approximately an hour before the report was released.

MS. O'BRIEN: By the – an hour before the report was released by whom?

CPL O'KEEFE: Well, before it was released to the public.

MS. O'BRIEN: By the Commission?

CPL O'KEEFE: Yes, sorry, the Commission, yes.

MS. O'BRIEN: So just before the Commission of Inquiry was going to make the ASIRT report public on its website, just an hour before that someone brought this to your attention.

CPL O'KEEFE: Roughly, yes.

MS. O'BRIEN: Roughly, okay. And who was that? Who brought it to your attention?

CPL O'KEEFE: That would have been Staff Sergeant Osmond, came in a told me.

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

CPL O'KEEFE: He told me that my name was going to be in the ASIRT report and it was with regards to improper note taking.

MS. O'BRIEN: Okay. So up until that time had anyone ever come to you and said, Corporal O'Keefe, your notes were not adequate?

CPL O'KEEFE: No.

MS. O'BRIEN: No one had ever raised that concern with you before that?

CPL O'KEEFE: No.

MS. O'BRIEN: Okay.

And your notes, would you have – would your notes have been disclosed in the ordinary course to the lead investigator?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Would you have submitted your notes into the PROS system?

CPL O'KEEFE: Yes, correct.

MS. O'BRIEN: So your notes would have been there for the primary investigator, say, Corporal Burke, to review?

CPL O'KEEFE: Yes.

MS. O'BRIEN: And your SOR, your typed notes, your Supplementary Occurrence Report, would have been in this –

CPL O'KEEFE: Every note that was made would go onto the file, yes.

MS. O'BRIEN: Would have been in the system for them to review?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. And the concern wasn't raised.

On August 31, 2016, you were interviewed by a fellow RCMP officer about your, about April 5, 2015. Do you recall that?

CPL O'KEEFE: Yes, Constable Fudge.

MS. O'BRIEN: Constable Fudge. And so that happened about 15 months later, you know, after the incident, right? The incident happened on April 5 of 2015.

So I'm just going to ask Madam Clerk to please bring up P-0227.

Had you ever previously been interviewed by a fellow RCMP officer about your involvement on a file?

CPL O'KEEFE: No, not that I can recall.

MS. O'BRIEN: Okay.

And did you know Constable Fudge?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay, and did he tell you why he was coming to take this statement from you?

CPL O'KEEFE: He called me and he explained that ASIRT had some questions that they wanted answered, or I don't know if it was ASIRT or Major Crime but they had some further questions based on what happened that day and he just wanted to make, get some clarification.

MS. O'BRIEN: Okay.

So you just gave him the details that we see here that you were the first supervisor on the scene. You had the first conversation with Smyth. That Smyth told you there was a firearm pointed at you and that he shot Mr. Dunphy. No other utterances were made?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. That you had seized the firearm; that you had locked the pistol in the car. Unsure there was a clip in the pistol or not; did not eject a round from the pistol when seized. So you remember that at that time, you hadn't ejected a round from the pistol?

CPL O'KEEFE: That's what I thought but, as I said, if you speak to the exhibit custodian, he might be able to clarify that a bit more.

MS. O'BRIEN: Okay, and you felt his demeanour was disbelief and that he was placed in a PC unit and transported back to Holyrood detachment.

So those were the details that you gave Constable Fudge on that date?

CPL O'KEEFE: Yeah, I think it was a bit longer than that but –

MS. O'BRIEN: That's the summary of it.

CPL O'KEEFE: That's the one, yes.

MS. O'BRIEN: Fair enough.

So did you – you know, you said they were coming to get more information. Did you understand or did anyone say we're coming to get more information from you because your notes were really not adequate?

CPL O'KEEFE: No. Nobody ever said that; they just said they wanted more information.

MS. O'BRIEN: Did you ask?

CPL O'KEEFE: I obliged.

MS. O'BRIEN: Okay, yeah, understood – did you ask why?

CPL O'KEEFE: No, because that's how it was explained to me that there were still some outstanding questions I guess from either ASIRT or the Major Crime portion and they just had some additional questions. I mean that's all I understood and I provided the information as best I could.

MS. O'BRIEN: Okay, all right. Thank you.

Commissioner –

THE COMMISSIONER: Okay, it's 12:30. Mr. Simmonds or Ms. Breen, you have some questions?

MS. BREEN: I do, yes, Mr. Commissioner.

THE COMMISSIONER: Rough idea of how long you'll need.

MS. BREEN: I'm normally not very long, Mr. Commissioner. I'm thinking about 30 minutes.

THE COMMISSIONER: Okay.

Well, we'll break. Mr. Kennedy, are you going to have any questions?

MR. KENNEDY: Again, 10 to 15 minutes.

THE COMMISSIONER: All right. We'll break until 1:30 for lunch now, Corporal. Anything before we rise?

Okay, thank you.

CPL O'KEEFE: Thank you very much.

MS. SHEEHAN: All rise (inaudible).

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Now, just before you start, Ms. Breen, I have a couple of points to deal with. First of all, it occurs to me – actually, I meant to mention it earlier – that many of these witnesses are not going to be controversial. A lot of their testimony is going to be fairly straightforward. And I'm going to suggest to counsel that on their examination that Commission counsel be allowed to lead to speed up the process, because there are a lot of times there are questions going, for example: Do you recall the date, no, I don't recall, then you got to go to the police officer's statement. Whereas if the counsel is allowed to lead and just says, now, on such and such a date this happened, this happened, I think it would speed up things.

Mr. Kennedy, Mr. Simmonds, Ms. Breen seem to be accepting that.

MR. KENNEDY: I have absolutely no problem with that, Commissioner.

THE COMMISSIONER: And you still have the right to object at any point.

Ms. Rasmussen, Mr. Freeman, do you have any concerns there?

MR. FREEMAN: Certainly, Mr. Commissioner, if we still have the ability to object if called for, then we're fine with –

THE COMMISSIONER: Yeah, if it gets to an area which is controversial, you know, which is where it's disputed, if I miss some way in which it's important that there be no leading question, then you'll get up and tell me and I'll make a ruling.

MR. FREEMAN: Yes, Mr. Commissioner. I believe it's actually Ms. Zdebiak here for RNC, not Lori.

MS. ZDEBIAK: Yes.

THE COMMISSIONER: Sorry?

MS. ZDEBIAK: Yeah, I'm Ms. Zdebiak, but –

THE COMMISSIONER: Oh no, I'm sorry.

MS. ZDEBIAK: – Commissioner, that's okay.

THE COMMISSIONER: I just assumed because you were –

MS. ZDEBIAK: Yes.

THE COMMISSIONER: That's right.

MS. ZDEBIAK: Oh no worries, no worries.

THE COMMISSIONER: Ms. Rasmussen is on the other side, yeah, in the other chair.

MS. ZDEBIAK: Yes.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: But, similarly, the RNC will take the same position.

THE COMMISSIONER: Yeah.

MS. ZDEBIAK: Thank you.

THE COMMISSIONER: Okay.

Very good – sorry, Ms. Zdebiak, I knew the difference.

Okay, so that's one point. The other point has to do with my ruling on the admissibility of a proposed experiment and this relates to the biomechanical aspects.

I haven't gone over the report and the notes again, but it strikes me that I might be in a position to make a ruling before having all of the forensic evidence gone in. I'm just thinking in terms of timing now, so that there's no delay if it were to go ahead. And it strikes me as to – I think I want to hear the medical evidence of Dr. McGarry which has to do with the ability of Mr. Dunphy or his disability and how that might slow him down.

But I think with the medical evidence in there, I would probably be able to – without waiting for the forensic evidence, unless I see something when I go through it tonight – I could probably have a ruling on that towards the end of this week. Dr. McGarry, I think, is scheduled for Wednesday or Thursday?

MS. CHAYTOR: Yeah, next Wednesday.

THE COMMISSIONER: Next Wednesday. So I would propose that I then hear submissions following Dr. McGarry's testimony and I'd make a ruling either – and I'm proposing that we do that next Friday. We have an afternoon free. I know you have things to do, but if we can fit it in there it would avoid us delaying and that probably won't take the full afternoon to hear.

I may be able to decide then on Friday or I may need the weekend, but, in any event, there'd be a decision and if it's the decision to go ahead with the experiment that should give your professor time, I would think, Mr. Simmonds, to do what have to be done.

MR. SIMMONDS: I get the impression that he can live within the timelines we set down. So I think that would be a reasonable – he actually is away for this week anyhow.

THE COMMISSIONER: Right.

MR. SIMMONDS: So that should work out.

THE COMMISSIONER: You mean this week, this week now.

MR. SIMMONDS: Yeah.

THE COMMISSIONER: Right, yeah. So we're not losing anything, right. But I don't want to stretch it out any longer than I have to because I don't want to have the Commission of Inquiry delayed.

Now, I understand, Mr. Kennedy, you're going to be considering your right to have to call an expert to deal with similar matters. It may be that I have the right in law, as Commissioner, to decide whether or not another expert would be needed, but I'm not inclined to go that way. So one of the things I have to consider is in balancing the probative value against the cost and delay. The cost is not a significant factor, judging by the estimate you've given me of what the charges would be to do that experiment and report on it.

But in terms of delay, that is a significant factor if it comes to having another expert retained to deal with – if there's disagreement with the results of the first report, you're then into another couple of weeks or months or more and that's going to possibly make it impossible to meet the time requirements that are set out in my terms of reference, my appointment.

So what I'm – give thought to that, and right now, tentatively, I'll suggest we'll be hearing further submissions on that as of next Friday. And you either get a decision on it Friday or the following Monday.

Do you have anything further Mr. Kennedy? Okay.

The RNC have any problem with that – or the RCMP, Mr. Freeman?

MR. FREEMAN: No, Mr. Commissioner, no problem with it –

THE COMMISSIONER: Okay.

MR. FREEMAN: – from our perspective.

Thank you.

THE COMMISSIONER: All right. Thank you.

So go ahead now, Ms. Breen.

MS. BREEN: Thank you, Mr. Commissioner.

Good afternoon, Corporal O'Keefe. Erin Breen for Meghan Dunphy.

CPL O'KEEFE: Good afternoon.

MS. BREEN: Corporal O'Keefe, on the day of April 5 you've told us that you were travelling in your police vehicle. Is that correct? You were out on the road when you first got the information that there had been a shooting in Mitchells Brook.

CPL O'KEEFE: Yes, that's right.

MS. BREEN: And we have in the RCMP disclosure – it hasn't been exhibited yet here at the inquiry, but we have a number of radio transmissions that were recorded at that time both from officers speaking on the radio, as well as you talking to your Comm Centre on various calls. What becomes clear from that is that – I think there's somewhere around 40 to 50 different transmissions. But, very quickly, is it not true that the Major Crimes section in St. John's was notified that this incident was ongoing?

CPL O'KEEFE: Yes, that's correct.

MS. BREEN: And that also very quickly you had notified Staff Sergeant Tiller, who would have been your immediate supervisor?

CPL O'KEEFE: Yes.

MS. BREEN: And that also the identification officers who would have to travel in from Central Newfoundland were put on alert almost right away?

CPL O'KEEFE: Yes.

MS. BREEN: Okay.

CPL O'KEEFE: I made that call myself. I told them to start coming.

MS. BREEN: And I believe it was – one of the officers was actually in Grand Falls-Windsor, so you would have known that that would have been at least a four- to five-hour wait for them to arrive?

CPL O'KEEFE: Yes, it would have taken some time.

MS. BREEN: Okay. Now Corporal O'Keefe, we have also heard, and you've told us, you hadn't received any training to respond to an officer related shooting, had you?

CPL O'KEEFE: No, no official training, no.

MS. BREEN: Either as a first responder or as an investigator?

CPL O'KEEFE: No, that's right.

MS. BREEN: Okay, and you hadn't received that as of April 5 and I assume you have not received that since, have you?

CPL O'KEEFE: No, that's right.

MS. BREEN: Okay. So this would have been an extremely rare occurrence in our province for something like this to happen.

CPL O'KEEFE: Yes.

MS. BREEN: Now I understand you also had been called as a first responder I think with either, was it Mr. Power or Mr. Reid?

CPL O'KEEFE: Mr. Reid back in 2000. Yes.

MS. BREEN: Okay. So since 2000, you know – and at this time you're responding as the most senior officer at the Holyrood detachment. Is that right?

CPL O'KEEFE: Yes.

MS. BREEN: So your responsibility would have been much higher in this instance than it was back in 2001.

CPL O'KEEFE: Yes. It was heightened, yes.

MS. BREEN: Corporal O'Keefe, has anyone made you aware that Sergeant Kent Osmond was sending instructions by email to Staff Sergeant Tiller almost immediately after this incident occurred?

CPL O'KEEFE: No, I didn't know there was emails being – I'm assuming there was contact between Staff Tiller and Major Crime, yes.

MS. BREEN: Okay. And for the benefit of Counsel, there is a document, it's document 077 in the RCMP disclosure. I presume at some point it will be exhibited, likely when Sergeant Osmond is called to testify.

You were not a party to that email, Corporal O'Keefe –

CPL O'KEEFE: No.

MS. BREEN: – but in terms of, did anyone let you know – Staff Sergeant Tiller, was he letting you know that he was being instructed by the Major Crimes Unit within the hour that this was happening, as to what to do at the scene?

CPL O'KEEFE: Well, I guess I was given some instruction by Staff Tiller, yes.

MS. BREEN: Okay. And at that time did you inquire as to where that instruction was coming from or were you just taking instructions?

CPL O'KEEFE: No, I was – well, I was taking instruction but I knew it would be the responsibility of a major crime unit to handle it. It wouldn't be handled, say, through the Holyrood detachment.

MS. BREEN: Okay.

Now you say you were on the road when you got the call. Did you have the necessary equipment in your vehicle to enter into a homicide scene?

CPL O'KEEFE: Such as?

MS. BREEN: Personal protective suits, booties, the kind of thing that Ms. O'Brien was questioning you about earlier?

CPL O'KEEFE: I'm not sure. I'm not sure what was in the back of the police vehicle at the time.

MS. BREEN: Okay. Do you have those readily available at the Holyrood detachment?

CPL O'KEEFE: Possibly.

MS. BREEN: Okay, you're not sure, though.

CPL O'KEEFE: Honestly, I'm not sure of what supplies are there right now at the time.

MS. BREEN: Okay. But on that date, that wasn't something that you had brought with you to go down –

CPL O'KEEFE: No.

MS. BREEN: – to respond in Mitchells Brook?

CPL O'KEEFE: No, and given the, I guess, the severity of the call, you know, stopping was not an option. It was just, get there immediately.

MS. BREEN: Okay. And to your knowledge, in those first few hours you've listed a number of different people who went into the house, and we'll go through that in a little more detail.

CPL O'KEEFE: Sure.

MS. BREEN: Did any of the people before Corporal Saunders or Corporal Lee arrived, who were the identification officers – and I believe they got there somewhere around 8:30 that evening. Did any officer wear a personal protective suit that you could see?

CPL O'KEEFE: No.

MS. BREEN: Okay.

Now I just want to go through some of the specific actions that you did take. What I understand you to be saying, Corporal O'Keefe, is that once you arrived on the scene you were utilizing your radio to speak with Staff Sergeant Tiller.

CPL O'KEEFE: No. No, that was by the phone.

MS. BREEN: Okay, your private phone?

CPL O'KEEFE: Staff Tiller wasn't on shift. It was a weekend so –

MS. BREEN: Right.

CPL O'KEEFE: – I would've made the contact with him through the cellphone in the police vehicle.

MS. BREEN: Okay. And you have said that as a first responder, the first thing you're looking for is a danger to yourself or to other first responders. But at that time you did not have any concerns for your own safety?

CPL O'KEEFE: No.

MS. BREEN: And that you knew that there had been a shooting but by that time you were satisfied that, number one, Mr. Dunphy – I believe the information from your radio was that he was deceased. Do you recall that?

CPL O'KEEFE: Yes.

MS. BREEN: And that, number two, Constable Smyth, who you understood had shot Mr. Dunphy, was waiting for you in the driveway?

CPL O'KEEFE: Yes.

MS. BREEN: Okay.

So in evaluating the situation that you were encountering then, I believe you have said to Ms. O'Brien, you know, you knew that it would be some form of an investigation, it was an officer involved shooting, but it didn't strike you at that time that this was, what we'll call a homicide investigation.

CPL O'KEEFE: No, not off the top of my head, no.

MS. BREEN: Okay. Did you receive any direction from Staff Sergeant Tiller as to what kind of investigation would actually be occurring?

CPL O'KEEFE: No, not at the time.

MS. BREEN: Okay. So he didn't tell you: look, we're going to be doing a Criminal Code investigation here, or we're going to be doing an investigation under the purview of the medical examiner, or – he didn't explain those things at that time?

CPL O'KEEFE: No. no.

MS. BREEN: Okay.

Now, Corporal O'Keefe, what I've understood from your testimony is that, you know, in hindsight you wish that your recording had been better –

CPL O'KEEFE: Yes –

MS. BREEN: – on that date. And you acknowledge that your handwritten notes are scant. And that –

CPL O'KEEFE: Yes, they were inadequate.

MS. BREEN: – you didn't load up your general occurrence report until five days later.

CPL O'KEEFE: Yes.

MS. BREEN: So that would explain why, you know, in terms of certain details or anything that Ms. O'Brien asked you, you can't recall because of the passage of time and that it wasn't noted at the time. Is that correct?

CPL O'KEEFE: Yes.

MS. BREEN: Okay. Did Staff Sergeant Tiller instruct you, Corporal O'Keefe, on what to do with Constable Smyth once you arrived at the scene?

CPL O'KEEFE: I can't recall.

MS. BREEN: Okay.

CPL O'KEEFE: I'm not sure.

MS. BREEN: Now, we know you obviously didn't arrest him or anything of that nature.

CPL O'KEEFE: Right.

MS. BREEN: Did you, or did Staff Sergeant Tiller talk to you about considering some kind of an investigative detention?

CPL O'KEEFE: No.

MS. BREEN: Okay.

Was it your understanding that Constable Smyth was free to – if he wanted to walk away from the scene that he could have left on his own accord?

CPL O'KEEFE: No, I wouldn't have allowed that, if that was the case. You know, we still had, you know, an investigation to conduct, you know, but I didn't have any fears that he was just going to up and leave.

MS. BREEN: And he appeared to be, from all accounts, that he was being quite co-operative at that time with the police.

CPL O'KEEFE: Yes, yes, for sure.

MS. BREEN: Okay.

I believe you told Commission counsel in your earlier interview, and this is at page 144, that you placed him in your police car to keep him warm and out of the way. Do you recall telling Commission counsel that?

CPL O'KEEFE: I don't recall it, but if it's there I said it.

MS. BREEN: Okay. And does that generally accord at that time you were concerned about his well-being?

CPL O'KEEFE: Oh, yes, yes.

MS. BREEN: Okay. And you were concerned as well because, you know, a crowd had started to gather, and in particular Meghan Dunphy was there –

CPL O'KEEFE: Yes.

MS. BREEN: – she was upset and she seemed to know that the officer who had shot her father was there.

CPL O'KEEFE: Correct.

MS. BREEN: So that was a concern for his safety it appears, that you put him in the police vehicle. Is that right?

CPL O'KEEFE: Yes.

MS. BREEN: Okay. And was that directed to you or was that at all instructed to you by Staff Sergeant Tiller?

CPL O'KEEFE: No, that's probably even a decision I made when I was there on my own.

MS. BREEN: Okay. And what I also understand is that at some point you became aware that other members were arriving to transport him to the detachment.

CPL O'KEEFE: Yes.

MS. BREEN: Okay. And again, was that Staff Sergeant Tiller who explained that to you, you know, just keep him there now –

CPL O'KEEFE: Yeah.

MS. BREEN: – and then someone will come get him?

CPL O'KEEFE: That would have been, I guess, Staff Tiller who would have made those arrangements.

MS. BREEN: Okay. So likely you feel that Staff Sergeant Tiller was making those arrangements.

And at this point, I can't see any note in the file or in any of the documents that we have to say that Staff Sergeant Tiller was at the scene at this time. It appears, from what we have, he was in fact at the detachment and greeted Constable Smyth when Constable Smyth was at – arrived at the detachment. Does that better accord with your memory?

CPL O'KEEFE: I guess – I guess so. I don't – all my conversations with Staff Tiller were by the phone.

MS. BREEN: Okay.

CPL O'KEEFE: That's how I was conversing back and forth with him.

MS. BREEN: I thought I had heard you to say that you – he was at the scene.

CPL O'KEEFE: No, I don't believe so.

MS. BREEN: Okay. So he wasn't at the scene?

CPL O'KEEFE: No.

MS. BREEN: Okay.

CPL O'KEEFE: Not initially, no. I'm sure he was there later on but –

MS. BREEN: Okay.

CPL O'KEEFE: – during the initial part he wasn't.

MS. BREEN: And you would have known, Corporal O'Keefe, that when you arrived at Mr. Dunphy's house and Constable Smyth was waiting for you, that there would be some conversation between you and Constable Smyth.

CPL O'KEEFE: Yes.

MS. BREEN: And did Staff Sergeant Tiller explain to you at that point that you should caution, or read a caution to Constable Smyth for any reason?

CPL O'KEEFE: No, no.

MS. BREEN: And I understand your evidence is that he was not cautioned at any time when this – while he was at the scene.

CPL O'KEEFE: No.

MS. BREEN: And he was speaking to various officers. I think we'll hear from Constable Cox and Constable Downey that they also had conversations with him at that time.

Now, Corporal O'Keefe, we've seen your general occurrence report that you did type up on April 10. At the heading of that general occurrence report, the offence it appears that the file was open under is pointing a firearm. Did you – was that you opening the file at the Holyrood detachment in relation to this matter or had that been open and you just uploaded your report?

CPL O'KEEFE: No, that file was – how it works is, when a call is received at our Communications Centre they will generate a file. So that file is generated and then downloaded to the members.

MS. BREEN: Okay. And in terms of entitling what the, I guess, offence is under investigation, is that something that a member will tell the Comms person? So in terms of them determining what is the offence here, where does that information come from?

CPL O'KEEFE: Oftentimes, the communications operator will say score a file – as we call it score. So that would mean, you know, assigning an offence or anything to a file. Then the police officers, we have the ability then to go in and change the scoring to something that's more appropriate.

MS. BREEN: Okay.

CPL O'KEEFE: For example, we could get a, say a speeding offence or some kind of a traffic offence, it could be scored as say speeding through the Communications Centre but when we review it, it could be an imprudent driving file and then we would go in and adjust it.

MS. BREEN: Okay. And to your recollection, did you know who opened this file as a pointing a firearm file with the complainant being Constable Smyth?

CPL O'KEEFE: I'm not sure who scored it, I don't know. I mean the file would have been opened through us, through me initially.

MS. BREEN: Okay.

CPL O'KEEFE: But the file that was opened was only there for a short time because then Major Crime would –

MS. BREEN: Take it over.

CPL O'KEEFE: – take it over. So the details on that initial PROS file were very scanty. It was taken over.

MS. BREEN: Okay. But what you're telling us is that from the very first instinct of certainly your interaction at the scene and with Constable Smyth, and based on what Constable Smyth had told you, it did not cross your mind at that time that Constable Smyth would be a suspect or a subject of an investigation, would he?

CPL O'KEEFE: Well, I don't know about a suspect, but I knew there would be some further investigation for sure.

MS. BREEN: Okay.

Now you've also told us, Corporal O'Keefe, that your priority at that time was to protect the scene.

CPL O'KEEFE: Yes.

MS. BREEN: And so your role would have been to ensure that there was no change to the scene in the time that you were in control of the scene.

CPL O'KEEFE: Correct.

MS. BREEN: And, you know, we all know any time a person enters into a scene they could potentially be bringing something in there that could change a scene. And any time a person leaves the scene they could be taking something away. You understand that from your basic training?

CPL O'KEEFE: Yes.

MS. BREEN: Okay. So the goal is to prevent, to the best of your ability, any unnecessary entries into the scene. Would you agree with that?

CPL O'KEEFE: Correct.

MS. BREEN: Okay.

Now, obviously someone had to confirm that Mr. Dunphy was in fact deceased and did not require medical attention.

CPL O'KEEFE: Correct.

MS. BREEN: And you have testified that both you and Constable Cox entered for that purpose as well as to clear the residence at that time. Is there any reason why two officers go in together to do that in this type of situation? Is that a part of your protocol?

CPL O'KEEFE: Well, I guess, there's a couple of reasons: number one was for officer safety – number one; number two, I think given the severity of this investigation, it was probably wise to have two members go in.

THE COMMISSIONER: Severity, sorry –

CPL O'KEEFE: Well –

THE COMMISSIONER: Don't you mean seriousness?

CPL O'KEEFE: Yes.

THE COMMISSIONER: Okay.

CPL O'KEEFE: It was, you know – I mean let's face it, this was a major incident, it's going to be a major file. So I just thought it was wise to have two of us go in.

MS. BREEN: Okay. But –

CPL O'KEEFE: You know so – and that would be for memory purposes. If there's something I don't remember, maybe Constable Cox might remember it.

MS. BREEN: Okay.

CPL O'KEEFE: Yeah.

MS. BREEN: But, Corporal O'Keefe, there didn't need to be two officers go in, certainly, to see if Mr. Dunphy was deceased. That would be more for the clearing aspect is that correct?

CPL O'KEEFE: I would think so. Yes.

MS. BREEN: And you certainly would have first-aid training and basic –

CPL O'KEEFE: Yes.

MS. BREEN: – first-responder training to determine if someone is in fact deceased. Is that right?

CPL O'KEEFE: Yes.

MS. BREEN: Okay.

Then shortly thereafter when you then allow in the two ambulance attendants, I'll ask you a similar question: Is there any reason to have two ambulance attendants when fairly – pretty much you knew at that point Mr. Dunphy was deceased.

CPL O'KEEFE: Well, I guess, you know, there was – they were partnered up. You know, I don't – I wasn't sure of their protocol. There was two of them, so we took the two of them in. That was a decision –

MS. BREEN: That's just what happened –

CPL O'KEEFE: Yes.

MS. BREEN: – at the time. It fair to say perhaps you weren't really thinking about, you know, keeping out the people who weren't absolutely necessary at that point?

CPL O'KEEFE: Well, I think the paramedics were necessary.

MS. BREEN: Oh yes.

CPL O'KEEFE: I'm a first-aider there; they have higher training than me. So, you know, it's important for them to come in and confirm our – what we thought.

MS. BREEN: Okay. Did you have any concerns at that point, though, that there had been now four people there before the identification section had arrived?

CPL O'KEEFE: No, I didn't have any big concerns. Like I said, myself and Constable Cox, you know, we were there. We were watching. We ensured that nothing was touched, moved, and these types of things.

MS. BREEN: Okay.

And again, I assume that the ambulance attendants, they weren't wearing any kind of protective suits either, were they?

CPL O'KEEFE: No. No, they weren't.

MS. BREEN: Okay, Corporal O'Keefe, you've told us that when the parameter, or when the tape for the scene went up that you include the black Yukon that was parked in the driveway, that you understood had been driven by Constable Smyth, was made part of the scene. That was a determination made by either you or Constable Cox and Constable Downey under your authority.

CPL O'KEEFE: Yes, yes.

MS. BREEN: Was there any reason why you did that? Did you feel that the Yukon was, you know, an important part of the scene that was there?

CPL O'KEEFE: Well, the vehicle was there in the driveway, it was on the property, so you try and err on the side of caution, so you just tape it all off and it's there, it's secured; and then once the Major Crime show up and the identification people show up, they can make that determination. So it's just secure the whole scene.

MS. BREEN: Sure.

CPL O'KEEFE: Secure everything and then we'll go from there.

MS. BREEN: And even though the shooting occurred in the living room, it would be part of your basic training to know that the scene could extend to anywhere that evidence could potentially be. Is that correct?

CPL O'KEEFE: I mean, really it could have taken in all of Mitchells Brook but, you know, that was the scene we were looking at so that's what we tried to rope off.

MS. BREEN: Okay.

And you were doing that in the assumption that someone from major crimes or someone, one of the ident officers would have likely searched that vehicle, or at least run an inventory of that vehicle later on.

CPL O'KEEFE: Yes. Yes, that would be their decision.

MS. BREEN: Now, Corporal O'Keefe, you've told us that when you entered the house – and we understand that you went into the house at about 1508 – that you did notice that there had been animals in the house. There was some cats in the house, and there was a concern there at that time that animals – and you know from your training that the presence of animals can possibly interfere with a scene.

CPL O'KEEFE: Yes.

MS. BREEN: Was there any precautions taken when you exited the house shortly after 3 to try and deal with the fact that there were cats there? I think there was at least four house cats who were in around the living room area –

CPL O'KEEFE: No, not at that time. I mean there was, you know –

MS. BREEN: Okay.

And so when you left it's possible that cats could have moved something there on the table or elsewhere, you're not sure?

CPL O'KEEFE: It's possible. There was nobody in the house at the time.

MS. BREEN: Okay.

We know that Constable Cox then was started the initial scene log and we have exhibited that before at the inquiry. Have you had a chance to have a look at that, Corporal O'Keefe?

CPL O'KEEFE: I don't believe so.

MS. BREEN: Okay. There is a gap in that scene log. Did that come to your attention while you were at the scene, that the last notation of Constable Cox, it looks like he started the scene log in his own personal notebook and it, it went from 1507 to about 1707 and then there's a gap until later when there's an official log that gets passed from officer to officer. Were you aware of that?

CPL O'KEEFE: Is it possible to pull that up just so I can have a reference there?

MS. BREEN: Okay.

CPL O'KEEFE: Please.

MS. O'BRIEN: Sorry, I don't know if it will help you, Ms. Breen. That will be addressed –

MS. BREEN: It will be addressed by another witness?

MS. O'BRIEN: It will be addressed by Constable Cox.

MS. BREEN: Okay, fair enough, I will move on from that.

Now, Corporal O'Keefe, we know that then Corporal – I believe he's now Sergeant Foote arrives at the scene.

CPL O'KEEFE: Yes.

MS. BREEN: And he enters into the scene and you go back into the scene with him as well at that time?

CPL O'KEEFE: Yes, but not into the home.

MS. BREEN: Okay, so you, 'cause –

CPL O'KEEFE: I just, I just went to the door. I didn't –

MS. BREEN: Okay.

CPL O'KEEFE: – I didn't enter a second time.

MS. BREEN: It appears from the log, 1651, that Foote and O'Keefe entered and that 1707 O'Keefe is out. But you're saying that could mean just outside the tape, is it?

CPL O'KEEFE: Yes, that's correct. I just went with Corporal Foote to the door –

MS. BREEN: Yeah.

CPL O'KEEFE: – explained everything to him. I didn't – once I left with the paramedics, I didn't enter the home again.

MS. BREEN: Okay, and also –

CPL O'KEEFE: But that, that could –

MS. BREEN: Sorry.

CPL O'KEEFE: – like I said, that, what Constable Cox is referring to was say entering beyond the tape –

MS. BREEN: I understand.

CPL O'KEEFE: – but not into the home.

MS. BREEN: Okay. And we know that later, and it's not noted in the log, but it's noted in other officers' notes, that Sergeant Conohan, Corporal Burke, and Corporal Henstridge arrive at 1910 and they enter into the scene.

CPL O'KEEFE: Okay.

MS. BREEN: Were you aware of that?

CPL O'KEEFE: Yes. Yes, they were.

MS. BREEN: You remember them being there?

CPL O'KEEFE: Yes.

MS. BREEN: And at that time did you know the purpose for which they were going into the house?

CPL O'KEEFE: Well, Corporal Burke and now Sergeant Henstridge, and they were there as part of major crimes. Staff Sergeant Conohan is one of our, is our drug expert, and he was there as part of the, the marijuana plants. That's why he was called in.

MS. BREEN: Okay, and were any of those officers, did they wear personal protective suits, because these are all the officers who have now arrived from St. John's major crimes, is that correct?

CPL O'KEEFE: Yes, two with Major Crime and Staff Conohan was with them, say, the drug section. And I, I'm not sure if they had the equipment or not. I can't, I can't say.

MS. BREEN: Okay, now the ident officers arrive at 2040. Would you have been the officer in charge of the scene up until 2040 when they arrived?

CPL O'KEEFE: No, I think it probably would have been handed over at that point in time. By that time Corporal Seaward arrived on scene.

MS. BREEN: Okay, so Corporal Seaward –

CPL O'KEEFE: Yes, 'cause

MS. BREEN: Would have taken over when you –

CPL O'KEEFE: Corporal Seaward you know, we're the same rank, we work the same detachment but he was senior to me, so, and he was the operations supervisor at that detachment. So by that, by that time I was no longer in charge, by the time everybody else showed up.

MS. BREEN: Okay. And Corporal O'Keefe, another question about your notes: You did not make any basic sketch did you, of what you had seen in the house when you first arrived.

CPL O'KEEFE: No, I did not, no.

MS. BREEN: Now, Corporal O'Keefe, you have also described part of your role as first responder, you do have some responsibilities as the most senior person has for notifications. So for example, notifying next of kin. And that's what, ultimately, you had to do on the spot there on that day, and probably something that you weren't really hoping to have to do, but it came upon you and you took the responsibility to do that.

CPL O'KEEFE: Yes.

MS. BREEN: So you spoke to Meghan Dunphy at the scene, and I believe you said that you do recall that she was likely asking to see her father, at that point –

CPL O'KEEFE: Yes.

MS. BREEN: She has testified that she was told, not just by you but by others as well, that she would have to wait until major crimes got there too, and that basically, wait until they get here and that her request would have to be dealt with later. Do you recall that kind of message being told to her?

CPL O'KEEFE: Yes – yes, that would make sense.

MS. BREEN: Okay. And Ms. O'Brien has asked you about, you know, the exact details of what you said to Meghan Dunphy on that day, and you didn't record those in your notebook, Corporal O'Keefe, did you?

CPL O'KEEFE: No, no.

MS. BREEN: And you didn't record them – the first notations you make of them are five days later when you enter it into a general occurrence report, is that correct?

CPL O'KEEFE: Yes.

MS. BREEN: So in terms of your ability to recall exactly what you said to her on April 10 would have been somewhat difficult, I would suggest, in light of the event itself.

CPL O'KEEFE: For very, very specific details, yes.

MS. BREEN: Okay. Now, Ms. Dunphy has said she recalls very clearly that you did say to her that her father was lying on the floor and that he was dead and that the gun was at his feet. Now I understand you say you wouldn't have said that because you had seen him sitting in the chair.

CPL O'KEEFE: Correct.

MS. BREEN: I do note though that in your general occurrence report you have said a long gun was on the floor at his feet. Is it possible that you said something along those lines and that got misconstrued in light of the, you know, the nature of the event?

CPL O'KEEFE: I know – the conversation I had with Meghan came on very, very quickly. And I – as I think I said earlier, I had to balance what I could say and I had to balance I guess the sympathy for the family. So it was certainly a balancing act there, but I know that I did not provide specific details as to what was in the house. I just didn't, and I know that for sure.

MS. BREEN: Yes, and you do note in your Supplementary Occurrence Report that you did not tell her where he had been shot?

CPL O'KEEFE: No, that's right.

MS. BREEN: You did not tell her that.

CPL O'KEEFE: No. And like I said, that's part of an investigation and it's part of my empathy for the family. There's things I just didn't want to say right at that time. They were upset just hearing what had happened.

MS. BREEN: Sure. And that you also would not have told her at that time that her father was sitting in a chair while he had been shot in the head?

CPL O'KEEFE: No.

MS. BREEN: You didn't tell her that.

CPL O'KEEFE: No, absolutely not.

MS. BREEN: Those would have been details that you would have wanted others – the people who were taking over, I assume – to determine whether or not that should be told to the family at that time, is that right?

CPL O'KEEFE: Yes, I would think so, yes.

MS. BREEN: Okay.

CPL O'KEEFE: Right at that time, I – you know, my role, unfortunately, was to let her know that her father had passed away.

MS. BREEN: Okay.

CPL O'KEEFE: That was the main thing that I had to let her know.

MS. BREEN: Corporal O'Keefe, I'm just wondering, did you know – on April 5, had you ever been given the information that Dr. Avis, who is the medical examiner, that a person, a member of the public may call his office to discuss with him anything about the body of their loved one or, you know, what the process is? Did you – were you aware of that on April 5, 2015?

CPL O'KEEFE: Yes, I've known people to call the medical examiner and get details from him, yes.

MS. BREEN: Okay. Was that any – did you provide Meghan Dunphy with that information on that day?

CPL O'KEEFE: I don't believe so.

MS. BREEN: Okay. Is that something you would have expected the liaison officer, whoever was ultimately appointed to be the family liaison, did you expect that there would be a family liaison at that time?

CPL O'KEEFE: Yes, there was a family liaison appointed, yes.

MS. BREEN: Okay. But when you were dealing with Meghan Dunphy, were you realizing at that point that, you know, you were in a significant situation that a family liaison officer would ultimately be appointed?

CPL O'KEEFE: Yeah, I figured somebody would be assigned to talk to Meghan, but up until that time, you know, it was me.

MS. BREEN: Right. And the information about being able to contact Dr. Avis, you would have expected that to have been provided to her by whoever was going to fulfill that role I assume?

CPL O'KEEFE: Well, I guess not just, you know the information from Dr. Avis but, you know, just any information she needed I would think it would be passed along.

MS. BREEN: Okay –

CPL O'KEEFE: And I'm pretty sure it would be answered.

MS. BREEN: – likely including that, though, as well. That was known to officers, generally, was it?

CPL O'KEEFE: Generally, I can't say. I really don't know if every police officer we have would be aware of that –

MS. BREEN: Okay.

CPL O'KEEFE: – that a family member could call the medical examiner's office. I think if you took a poll, many would not know.

MS. BREEN: Corporal O'Keefe, I just want to ask you now, I want to run through just a list to see whether or not Staff Sergeant Tiller instructed you to do any of the following on the day of April 5, okay.

CPL O'KEEFE: Okay.

MS. BREEN: Did he tell you to read rights and/or caution to Constable Smyth?

CPL O'KEEFE: No.

MS. BREEN: Did he ask you or suggest that you should ask Constable Smyth if he would agree to allow police to seize his cellphone?

CPL O'KEEFE: No.

THE COMMISSIONER: Sorry, I missed that.

MS. BREEN: Mr. Commissioner, the question was: Did Staff Sergeant Tiller instruct Corporal O'Keefe to ask Constable Smyth whether he would consent to allow police to seize his cellphone? I believe his answer was no.

Did Staff Sergeant Tiller instruct you to take photographs of Constable Smyth at the scene?

CPL O'KEEFE: No. And just to jump in, a lot of that would not come from me knowing that, you know, this was very early in the investigation. We – you know, as first responders we had other priorities. So this would have went to our identification section, our Major Crime section.

MS. BREEN: Yeah, and I'm just – because where you were at the scene with Constable Smyth for, you know, over an hour – I'm not suggesting to you, Corporal O'Keefe, that you yourself would have known or thought to do these things, I'm wondering because there appears to have been instructions coming from St. John's for things for you to do at the scene. So I just want to run through the list to see if any of these things were suggested to you.

CPL O'KEEFE: Sure.

MS. BREEN: Did you – were you told to tell Constable Smyth to not discuss any aspects of the shooting with fellow officers?

CPL O'KEEFE: No.

MS. BREEN: Did Staff Sergeant Tiller ask you or suggest that Constable Smyth be transported to any kind of medical facility for further monitoring?

CPL O'KEEFE: Not – no.

MS. BREEN: Did anyone suggest he be conveyed to any kind of medical facility or his consent be sought to perform any alcohol or drug screens?

CPL O'KEEFE: No.

MS. BREEN: Did anyone instruct you, Corporal O’Keefe, to record the serial number, make, model or calibre of Constable Smyth’s gun at the scene?

CPL O’KEEFE: No.

MS. BREEN: Okay.

Corporal, did you meet with the lead investigator after April 5 for the purpose of reviewing any of your information?

CPL O’KEEFE: No.

MS. BREEN: All right.

Now, your report wasn’t uploaded until April 10. Did Corporal Burke or Sergeant Osmond contact you at all to interview you about what happened at the scene?

CPL O’KEEFE: No.

MS. BREEN: Corporal O’Keefe, do you know, or do you recall early on – and I’m talking in the first days of this – whether you were aware that Sergeant Osmond had complained about you giving too much information to Meghan Dunphy at the scene and that he suspected this may be a source for why the media had too many details?

CPL O’KEEFE: Yeah, no.

MS. BREEN: So that wasn’t discussed with you by Staff Sergeant Tiller, was it?

CPL O’KEEFE: No.

MS. BREEN: Okay.

Those are all my questions.

Thank you very much.

CPL O’KEEFE: Thank you, Ms. Breen.

THE COMMISSIONER: Go ahead, Mr. Kennedy.

MR. KENNEDY: Thank you, Commissioner.

I have six or seven questions.

Good afternoon, Corporal O’Keefe.

CPL O’KEEFE: Hi, Mr. Kennedy.

MR. KENNEDY: I have a number of specific questions for you. You testified that you didn’t find it unusual that Constable Smyth was going, or was doing his work on an Easter Sunday. Is that correct?

CPL O’KEEFE: That’s correct.

MR. KENNEDY: You indicated that in your discussion with Commission counsel, prior to the hearing, that there was never any indication from Constable Smyth that what he was doing was urgent. Is that – do you remember saying that?

CPL O'KEEFE: I don't recall saying that, no.

MR. KENNEDY: Is it – was there any indication – I can refer you to page 218 if you want, but was there any indication of Constable Smyth that there was anything urgent?

CPL O'KEEFE: No, no there was nothing. No indication that it was urgent.

MR. KENNEDY: Also in discussion with Commission counsel, when asked why Easter Sunday, or a holiday, or something along those lines, you indicated that as an officer you could be off for four or five days and you just go out and get it done and get it clued off before you went off shift.

CPL O'KEEFE: That's correct, yeah.

MR. KENNEDY: That's part of working shift schedule, is it?

CPL O'KEEFE: Yes, that's right.

MR. KENNEDY: Another one of the things you noted, Corporal, that it's not unusual, especially if – maybe all over our province, maybe all over Canada, but for police officers to be visiting people on their own.

CPL O'KEEFE: No, that's true. We – most of our detachments are rural, small, small numbers of officers and there are times you have to go by yourself.

MR. KENNEDY: Now when you arrive on the scene – and you didn't know Constable Smyth prior to then?

CPL O'KEEFE: No, no.

MR. KENNEDY: Okay. You went up to him and you – did he introduce himself, did you introduce yourself, how did the interaction begin?

CPL O'KEEFE: Well, I knew who he was, I guess, just from the call and everybody who was there, him and Constable Cox, and I'm guessing that I introduced myself and told him who I was, that I was, you know, Corporal O'Keefe from Holyrood detachment.

MR. KENNEDY: Okay, did you ask him what happened?

CPL O'KEEFE: Yes.

MR. KENNEDY: And at that point, Constable Smyth told you that – I'm just going to get exactly what was said Officer, just one second. Basically you deal with this both in your continuation report or your general occurrence report, and if we could look at P-0228 Madam Clerk, please? And you also deal with it in your interview with Commission counsel.

First, I'm going to refer you to this comment by – that you gave to Commission Counsel; this is at page 66, the date is November 30 2016, I think you were being examined by Ms. O'Brien. The question – you indicated that I began to have a chat with Sergeant Smyth. Ms. O'Brien said: What was that chat? Corporal O'Keefe: Very very brief; it wasn't a lot of detail but I went up, I

introduced myself. He told me who he was. I basically asked, you know, what happened. And he said he was in the house speaking to Mr. Dunphy, Mr. Dunphy became agitated and pointed a gun at him and at that time Sergeant Smyth had to shoot him.

CPL O'KEEFE: Yes.

MR. KENNEDY: Now, there's been questions raised here about the notes and whether or not you made notes but that particular conversation is something that will stick in your mind, isn't it?

CPL O'KEEFE: Yes.

MR. KENNEDY: And do you have any reason to doubt that what you said to Commission counsel that day is exactly what was said to you?

CPL O'KEEFE: No that's, that's basically it, yeah.

MR. KENNEDY: Now, you've heard there's been questions asked as to whether or not, where Constable Smyth was standing and what he did at the scene. I think when you first come into contact with him he's standing by his vehicle, is he?

CPL O'KEEFE: Yes.

MR. KENNEDY: Okay. You – he was co-operative with you?

CPL O'KEEFE: Yep, very.

MR. KENNEDY: He didn't attempt to leave the scene at any time?

CPL O'KEEFE: No, not at all.

MR. KENNEDY: He responded immediately when asked what happened?

CPL O'KEEFE: Yes.

MR. KENNEDY: Provided you with his gun and use-of-force equipment immediately.

CPL O'KEEFE: Yes, he did.

MR. KENNEDY: When asked to sit in a car, he did that.

CPL O'KEEFE: Yes.

MR. KENNEDY: So I think the term someone used or it might have been a term used at one point whether he was wandering around; that's not what Constable Smyth was doing, was he?

CPL O'KEEFE: No, no. No, he wasn't.

MR. KENNEDY: He was either in the car or standing up in a set position.

CPL O'KEEFE: Yes. He wasn't walking all over the place, no.

MR. KENNEDY: He wasn't trying to get back into the house or get in to access his vehicle or anything like that?

CPL O'KEEFE: No, no.

MR. KENNEDY: Sir, you've also asked in terms of the – whether or not when you went into the house, whether or not you had protective equipment on and whether or not things were moved. Now, can you say for certain and perhaps the – and I don't know, I didn't think I was going to use a picture, Commissioner, so do we need – does the Clerk need to know the picture in advance? I just wanted to get a picture of the scene to show.

Let's just use Scenes 037, 038 to begin with, or one of those, Madam Clerk; it doesn't have to be both.

I apologize, Commissioner –

THE COMMISSIONER: Not a problem

MR. KENNEDY: Mr. Commissioner, I can move on to something else, give the Clerk the couple of photos I want to refer to and she can get them up while I'm – if you wish.

THE COMMISSIONER: Okay, why don't you read out the numbers?

MR. KENNEDY: Okay. If we could just have photos either 037, 038 – actually, Photo 040 would be good. I think that's a confidential photo, Commissioner. And photo number 045. So if we had Photo 040 and Photo 045.

So, Corporal O'Keefe, you were, you were asked about protective, protective, wearing protective gear; you didn't have protective gear. Now, with protective gear, your understanding the purpose of wearing protecting gear would be to prevent contamination of the scene?

CPL O'KEEFE: Yes.

MR. KENNEDY: Now, the picture I wanted to show you we will see is one, in terms of the amount of garbage and what you referred to as clutter that was on the floor. It was very significant, wasn't it?

CPL O'KEEFE: Yes, it was.

MR. KENNEDY: In fact, I think you told Commissioner counsel that – and I can refer you to this comment on page 101, if you want – this was the worst house you had ever seen.

CPL O'KEEFE: That would be accurate, yes.

MR. KENNEDY: I think you went and stated that you'd been in many houses, by far the worst, and you had been some bad places.

CPL O'KEEFE: Yes, that's right.

MR. KENNEDY: Were you referring to the state of disrepair, the amount of garbage on the floor, the smell, or all of the above?

CPL O'KEEFE: Everything, all of the above.

MR. KENNEDY: Okay.

So, Sir, in terms of the movement or potential movement of anything at the scene, can you – and again, when I get the photo up I'll show you – but do you remember there being a lot of garbage around the chair in which Mr. Dunphy was sat, there being BOOST bottles and Gatorade bottles and all kinds of things like that?

CPL O'KEEFE: There was a lot of garbage everywhere.

MR. KENNEDY: So was it possible to move around that chair without moving something?

CPL O'KEEFE: Yes.

MR. KENNEDY: Okay.

CPL O'KEEFE: You know, if you're looking at, you know, garbage and these types of things, yes.

MR. KENNEDY: Okay.

So we'll come back to that when the picture comes up, Sir.

Now, there has been a question of what you said to Meghan Dunphy, and if we could – I'll just refer you, because the Clerk is doing something else. But in your report, it's one of your Supplementary Occurrence Reports, Sir; it's Exhibit P-0228. I don't think it's contentious, so I'll just ask if this is accurate, you state: Meghan was told that her father had been shot and was deceased. She asked if her father had a gun and she then continued by stating that it was most likely her grandfather's old gun and it wasn't probably even loaded.

Do you remember that being said to you by Ms. Dunphy in your contact with her?

CPL O'KEEFE: I, I don't recall it, but as I said, I've had it in my report.

MR. KENNEDY: It is in your report, isn't it?

CPL O'KEEFE: Yes.

MR. KENNEDY: Yeah.

So was there reference to the possibility of Mr. Dunphy, or was it confirmed at the scene by Ms. Dunphy, that Donald Dunphy could have had a gun?

CPL O'KEEFE: I'm not sure, Mr. Kennedy. I'm really not sure.

MR. KENNEDY: Okay. So when you report – if we look at this report it's inputted, it appears to me it's at April 10.

CPL O'KEEFE: Yes.

MR. KENNEDY: So is there any reason that what's in this report on April 10 wouldn't be accurate?

CPL O'KEEFE: No, that would be – I stand by my report, yes.

MR. KENNEDY: Sir, one of the issues here that has been raised, I think, by counsel was the fact that there was an allegation that you had divulged information to Ms. Dunphy and that somehow or other information leaked to the media?

So did you, other than what you made clear that Mr. – her father – was deceased, did you tell Meghan Dunphy or provide any other information to her which would have ultimately ended up in the media?

CPL O'KEEFE: No. No, I don't. I don't believe so. No.

MR. KENNEDY: Okay.

CPL O'KEEFE: I was very cognizant of that.

MR. KENNEDY: So there's a reference – and this is, was put to you during – by Commission counsel and they were asked was this concern ever raised by one of you superior officers with you and you said: No, I didn't speak to the media. So did you speak to the media –

CPL O'KEEFE: No. No.

MR. KENNEDY: – at any time?

CPL O'KEEFE: The only, the only conversation – there was media on the scene and I told them that I'm not the, I'm not the spokesperson in this matter and that's it. They weren't told anything at all.

MR. KENNEDY: And, Madam Clerk, have you found either Scene 044 or Scene 045? Either. 044, I think, is a confidential photo, if we could have that put up first, please.

UNIDENTIFIED FEMALE SPEAKER: Number 045?

MR. KENNEDY: 044 is fine, yes.

UNIDENTIFIED FEMALE SPEAKER: 044?

(Inaudible.)

MR. KENNEDY: No, It's my fault, Madam Clerk.

THE COMMISSIONER: I don't think he gave you 044 as the first number, he gave you 045.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) yeah.

MR. KENNEDY: Sorry. Again, either one of those is fine.

THE COMMISSIONER: 045 is easier, I think.

UNIDENTIFIED FEMALE SPEAKER: 045.

MR. KENNEDY: Okay, that's fine, Commissioner.

UNIDENTIFIED FEMALE SPEAKER: Okay, 045 (inaudible).

MS. CHAYTOR: 045 is a public exhibit.

THE COMMISSIONER: Yeah, we made it that number.

MR. KENNEDY: Do you see the clutter that's there, the garbage that's on the floor? Is that generally consistent with your recollection of what you saw on that date in question, Sir?

CPL O'KEEFE: Yes.

MR. KENNEDY: Now do you see Mr. Dunphy's hands? Did you notice anything unusual about his hands when you were in there that day?

CPL O'KEEFE: No. No, I did not.

MR. KENNEDY: Okay.

In terms, Sir, of – well, I ask you how the paramedics or how anyone would get to Mr. Dunphy without potentially moving some of that garbage. If someone approached from the left would you agree with me that there's a high likelihood that there would be garbage moved or displaced?

CPL O'KEEFE: Yes. Yes.

MR. KENNEDY: Yeah. And, then, even on the right you'll see that there's not as much clutter but there's still some. And there's a heater, for example.

CPL O'KEEFE: Yes.

MR. KENNEDY: Okay.

Now, if I could now have – that will be fine for the pictures, Commissioner. If we could now have Exhibit P-0302 put up, please.

This was referred to earlier today. It was one of the general occurrence files, Corporal, that would have been contained, I guess, into the PROS report. The audit showed that this general occurrence file had been opened. Do you remember that being shown earlier today?

CPL O'KEEFE: Yes. Yes.

MR. KENNEDY: Okay, we'll just wait for it to come to the screen, Sir.

MS. O'BRIEN: Sorry, Madam Clerk, P-0302.

MS. SHEEHAN: Yes.

MS. O'BRIEN: Okay. It –

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MS. O'BRIEN: Okay.

We had it in the work tray earlier. Okay.

MR. KENNEDY: Okay.

So if you look at this General Report, this, as I've indicated, appear to have – the PROS report, then, you went into the General Report. This is dated 2012, it looks to me, and it's a section 7(1) of the CDSA occurrence is the reference. Correct?

CPL O'KEEFE: Yes.

MR. KENNEDY: See that?

CPL O'KEEFE: Yes.

MR. KENNEDY: Then you'll see – and I just want to make sure, is this in relation to Mr. Dunphy? It relates to March 29, 2012. It refers to caller is aware of a crime because people are talking about it. Donald Dunphy has a grow operation. "That high school kids are talking about how the suspect will be ready to sell this upcoming weekend (Mar 30, 2012) that the plants have been harvested/cut and drying." It's been ongoing for years.

Do you see that?

CPL O'KEEFE: Yes.

MR. KENNEDY: So this relates to Mr. Dunphy. Correct?

CPL O'KEEFE: Yes.

MR. KENNEDY: Do you know if there was any investigation or follow-up by the police in relation to this allegation?

CPL O'KEEFE: From what I could understand, it was investigated. It was determined that Mr. Dunphy had a permit to grow, grow the marijuana and the file was concluded. It didn't go any further.

MR. KENNEDY: But the allegation here is that the suspect will be ready to sell to high school kids. Do you know if that was investigated?

CPL O'KEEFE: I have no idea. I don't know.

MR. KENNEDY: My, my last question for you, Sir, when you come into the house you indicate that there's a – the garbage. How overpowering is that smell immediately upon either entering the front porch or the living room. Do you smell it from the porch?

CPL O'KEEFE: Yeah, it was quite strong. As soon as we entered, it was there.

MR. KENNEDY: And when you – would you describe it as overpowering?

CPL O'KEEFE: Yes.

MR. KENNEDY: And what was the smell?

CPL O'KEEFE: I mean as soon as we walked in it was a smell of cat and cat urine; it was that type of smell.

MR. KENNEDY: Okay.

Thank you very much, Corporal.

CPL O'KEEFE: Thank you, Mr. Kennedy.

MS. ZDEBIAK: Thank you.

Good afternoon, Corporal O'Keefe.

CPL O'KEEFE: Good afternoon.

MS. ZDEBIAK: I'm representing the RNC. I just have a very few questions for you this afternoon.

CPL O'KEEFE: Sure.

MS. ZDEBIAK: Corporal O'Keefe, you were asked if you had any training that you took part in with the RNC previously.

CPL O'KEEFE: Yes.

MS. ZDEBIAK: And your answer was not a lot and whatever there was, it was years ago.

CPL O'KEEFE: Yes.

MS. ZDEBIAK: And you also indicated you're not on any joint task forces with the RNC?

CPL O'KEEFE: No, that's right.

MS. ZDEBIAK: And now I'm just going to ask you a question here generally about this sort of thing. In terms of RCMP training nationally in other jurisdictions across the country, are you aware of whether the RCMP engages in training with other provincial police forces across country?

CPL O'KEEFE: I'm not sure. I know they probably engage in some training at the Canadian Police College.

MS. ZDEBIAK: Okay.

CPL O'KEEFE: You know, that's open – I guess other forces can attend courses there as well.

MS. ZDEBIAK: Right.

CPL O'KEEFE: But I'm not sure about other provinces and how they operate.

MS. ZDEBIAK: I see. And what about joint task forces with other provincial police forces?

CPL O'KEEFE: I'm not sure.

MS. ZDEBIAK: Okay. But you are aware of joint training?

CPL O'KEEFE: Yes.

MS. ZDEBIAK: That exists.

CPL O'KEEFE: Yes.

MS. ZDEBIAK: Yeah. So that's not unusual sort of on a national scale.

CPL O'KEEFE: No.

MS. ZDEBIAK: In terms of RCMP relationship with other –

CPL O'KEEFE: No, exactly, yes –

MS. ZDEBIAK: – police forces.

CPL O'KEEFE: I'm sure it's fairly standard across the country where other police forces will piggyback on our training.

MS. ZDEBIAK: Okay.

CPL O'KEEFE: It's fairly common.

MS. ZDEBIAK: Thank you very much.

You were also asked if you received any training in investigations of police use-of-force incidents, specifically, and you indicated you hadn't been. Do you know if any such training actually exists?

CPL O'KEEFE: Not to my knowledge.

THE COMMISSIONER: Training – sorry – as to what?

MS. ZDEBIAK: Investigations of police use-of-force incidents.

THE COMMISSIONER: Okay.

MS. ZDEBIAK: I'm just asking whether he knows if that exists.

CPL O'KEEFE: I would just like to clarify when it was mentioned about incidents, we, you know we – I haven't received any training about an actual incident but we are certainly trained in use of force, a use force-of-force model.

MS. ZDEBIAK: That was my next question actually, thank you, yes. As a police officer of course in terms of your basic training this would be, you know, I guess after a number of years become a matter of course but –

CPL O'KEEFE: Yes, but now we are re-certified –

MS. ZDEBIAK: Right. Oh, okay.

CPL O'KEEFE: So we do get re-certified; we have our training sessions, scenario-based, just to kind of keep us up to date and current.

MS. ZDEBIAK: So you'd understand then from that, a basic understanding of what is your authority as a police officer to use force –

CPL O'KEEFE: Yes. Yes, correct.

MS. ZDEBIAK: And you'd perhaps recognize an excessive use of force, or an, you know, an unauthorized use of force.

CPL O'KEEFE: Yes. Yes, that's right.

MS. ZDEBIAK: And you would as well, your training would have prepared you for basic investigative skills – you'd have basic investigative skills –

CPL O'KEEFE: Yes. That's right.

MS. ZDEBIAK: – from that training as well.

CPL O'KEEFE: Yes.

MS. ZDEBIAK: Okay.

Thank you very much, Corporal O'Keefe; those are my questions for you.

CPL O'KEEFE: Thank you.

THE COMMISSIONER: Mr. Freeman, do I recall you didn't have any questions, or –

MR. FREEMAN: Just a few, Mr. Commissioner.

THE COMMISSIONER: Okay, go ahead.

MR. FREEMAN: Madam Clerk, I wonder if you could call up Exhibit P-0302 again, please? If you could just scroll down so that the blue is at the top? Is that possible? Oh, it changes pages. Okay, so we can start there. So I just wanted to ask you about the cut-and-pasted information that's in that PROS report –

CPL O'KEEFE: Sure.

MR. FREEMAN: – that you're fairly sure you would have looked at on April 5, Corporal O'Keefe; is that right?

CPL O'KEEFE: You know, I can't say for sure I looked at that actual report. The file was open, so I don't know if I looked at the report or just, say, the occurrence summary.

MR. FREEMAN: Okay.

CPL O'KEEFE: But, you know, if I did look at that report, you know, I obviously would have seen that.

MR. FREEMAN: Right. And you see the Caution V, CR Query Recommended –

CPL O'KEEFE: Yes.

MR. FREEMAN: And you said Caution V means caution violence.

CPL O'KEEFE: Violent, yes.

MR. FREEMAN: And you had said that not all violence flags are the same or that they are of varying seriousness, I believe you said that this morning; is that right?

CPL O'KEEFE: Yes, that's right.

MR. FREEMAN: So the point of that Caution V is to encourage the user to make a CR query recommended. Is that how that reads?

CPL O'KEEFE: Yes, a criminal record query.

MR. FREEMAN: So that means that if you see this V, go on and make a criminal record query.

CPL O'KEEFE: Yes.

MR. FREEMAN: Okay.

CPL O'KEEFE: So the criminal record query you would type in – as you see up top, FPS –

MR. FREEMAN: Which is?

CPL O'KEEFE: If anyone is – if you're on the, say, CPIC system with that number you've been assigned a number based on fingerprints and that's the number there –

MR. FREEMAN: Okay.

CPL O'KEEFE: – which would be assigned, I guess, Mr. Dunphy.

MR. FREEMAN: Right.

So this encourages you, if you see this V, to dig deeper and see how significant the violence, or the V flag is?

CPL O'KEEFE: Yes.

MR. FREEMAN: So unless – I'll get you, Madam Clerk, to scroll down to the next page – so it seems like Mr. Lush, Lee Lush, Constable Lush, has cut and pasted in the CR below as well. Is that what this looks like to you?

CPL O'KEEFE: Yes, that's it there.

MR. FREEMAN: So if you do dig deeper into that V flag, this is what you see, you get the CR.

CPL O'KEEFE: Yes.

MR. FREEMAN: And so what in that CR do you, in your experience, would have led to the V flag? Is it the uttering threats that's withdrawn under a peace bond at the bottom or can you say whether it's the possession of a substance?

CPL O'KEEFE: I can't say for sure why it would be there. Just for a simple drug charge that's there in 2001, I can't see it. There was, in 2005, uttering threats withdrawn and, you know, for a peace bond. So I don't know. I don't know why.

MR. FREEMAN: You can't say whether it's automatic that uttering threats leads to a V flag or violence flag in a CPIC?

CPL O'KEEFE: No.

MR. FREEMAN: But having – sorry, go ahead.

CPL O’KEEFE: Yeah, you know, the other thing too, where this – I mean these files were fairly old; I don’t know if we could actually go in and review that actual file.

MR. FREEMAN: Right.

CPL O’KEEFE: We’ve since gone over to a new system since then.

MR. FREEMAN: Sure. Fair enough.

And this is actually that’s been cut and pasted into PROS –

CPL O’KEEFE: Yes.

MR. FREEMAN: – really not where it should be, perhaps. It’s more, it’s from CPIC, I guess; that’s where it originally originated.

CPL O’KEEFE: Yes, exactly. That’s what would come up on the CPIC screen.

MR. FREEMAN: Right.

So if you were to dig deeper into the V, violence flag and look at the CR, like the document, the first document suggested – I believe it was the CNI document that would suggest that – you would see the possession and the uttering threats. So, I mean, where on the scale of seriousness of V flags would this lie? Is that something you could –?

CPL O’KEEFE: It would, for me as a police officer, would be fairly low –

MR. FREEMAN: This –

CPL O’KEEFE: – if an uttering threat charge was withdrawn for a peace bond.

MR. FREEMAN: So this isn’t something that would make you insist on a second officer attending a scene?

CPL O’KEEFE: No. Not for me, no.

MR. FREEMAN: Okay. But you do agree that Constable Cox did offer to go along with Officer Smyth.

CPL O’KEEFE: Yes, he did. Yes.

MR. FREEMAN: Okay. Thank you.

So I’m done with that exhibit, Madam Clerk.

You were asked by Commission counsel about not clearing the cat room and the addition and not securing fully the back of the home. Do you recall that? And I believe you said you did a risk assessment. Is that right?

CPL O’KEEFE: Yes.

MR. FREEMAN: And you made a judgment call?

CPL O'KEEFE: Yes.

MR. FREEMAN: And you had no reason to believe, then, in fact that anyone came or left from the rear of the house –

CPL O'KEEFE: No.

MR. FREEMAN: – after you arrived.

CPL O'KEEFE: I did not. No.

MR. FREEMAN: And that would – that's not something you have any reason to believe.

CPL O'KEEFE: No.

MR. FREEMAN: And no reason to believe, in fact, that anything at the scene was moved by anyone.

CPL O'KEEFE: No, absolutely not.

MR. FREEMAN: Or that there ever was anyone in any of those rooms that went unsearched.

CPL O'KEEFE: No, that's correct.

MR. FREEMAN: There's no factual reason to believe any of those things?

CPL O'KEEFE: No.

MR. FREEMAN: And you – in not posting officers at the back of the home, I believe you said it was a judgment call you were making based on the resources. You had to work with what you had.

CPL O'KEEFE: Yes. Correct.

MR. FREEMAN: And so can you elaborate on some of the things that went into that risk assessment? So in not clearing the cat room and the addition, what were some of the factors that were going into it, I mean, in terms of – I don't want to suggest things to you, necessarily. So what was going into your considerations when you said we're going to close this door and leave it as is?

CPL O'KEEFE: Well, I guess, we knew – we knew what we were dealing with right from the get-go, that Constable Smyth had been in the home for a period of time speaking with Mr. Dunphy. The incident happened. He had left the home, he was waiting for us. We arrived on scene. We had three or four police cars. There were, you know, a number of members there. So we really had no reason to believe that there was anybody else in the home or in – around the area.

MR. FREEMAN: And –

CPL O'KEEFE: And like I said, when we were there, I really didn't think that somebody would, you know, actually try and come down and sneak past us and run that risk of sneaking past, you know, three or four police officers and a bunch of police cars.

MR. FREEMAN: Fair enough.

CPL O'KEEFE: Right, in my experience I didn't think, I thought that that wasn't going to happen.

MR. FREEMAN: Okay.

And a small issue. I noted in your transcript of your interview with Commission counsel you had mentioned that you heard cats in the ceiling when you first arrived, rustling. Do you recall that?

CPL O'KEEFE: Yes.

MR. FREEMAN: Did you –

THE COMMISSIONER: Heard what?

MR. FREEMAN: Cats in the ceiling of the home when he first arrived.

CPL O'KEEFE: I can't, I can't say it was cats, but there was some animals going around in the attic for sure. I could hear the rustling up there.

MR. FREEMAN: Okay.

CPL O'KEEFE: Yeah.

MR. FREEMAN: You were asked about making the weapon safe, so that would be Constable Smyth's weapon.

CPL O'KEEFE: Yes.

MR. FREEMAN: And you can't recall whether there was a round in the chamber or not.

CPL O'KEEFE: No –

MR. FREEMAN: And you said that maybe some, another officer or exhibit custodian could maybe be able to get to the bottom of that better than you.

CPL O'KEEFE: Yes, I think so, yes.

MR. FREEMAN: Do you remember if that weapon can go into what's called a lock back position?

CPL O'KEEFE: Yeah, yes it can.

MR. FREEMAN: And so I understand that the box that the weapon was put in had a foam insert.

CPL O'KEEFE: Yes, it fits – we have the same boxes.

MR. FREEMAN: And does it –

CPL O'KEEFE: So it fits in perfectly.

MR. FREEMAN: Does it fit the weapon with the lock back open or with the lock back closed, if that's the right phrasing? Do you know that?

CPL O'KEEFE: That's a good question. I've done this hundreds and hundreds of times. Gee, off the top of my head I can't recall.

MR. FREEMAN: Fair enough.

CPL O'KEEFE: I think –

MR. FREEMAN: I just was curious if that would refresh your memory at all.

CPL O'KEEFE: Yeah, yeah.

MR. FREEMAN: Okay.

Thank you. Those are all of my questions, Mr. Commissioner, and thank you, Corporal O'Keefe.

CPL O'KEEFE: Thank you.

THE COMMISSIONER: Anybody else have any questions for Corporal O'Keefe?

MR. KENNEDY: Excuse me, Commissioner, I got one point on clarification, if Commission counsel will help me. It's not a question, or do you –

MS. O'BRIEN: I –

MR. KENNEDY: If Ms. O'Brien has questions, I can do it after. I just want to make sure I didn't miss the opportunity.

MS. O'BRIEN: No, that's fine. I did have one or two questions on redirect.

THE COMMISSIONER: Okay, let's hear from Mr. Kennedy first.

MR. KENNEDY: Yeah, I just wonder if Commission counsel can help me. Exhibit P-0302, the one that we just had up on the general occurrence, was that uploaded to kiteworks? I had downloaded all of – I thought I had downloaded all of the exhibits last night. I had the audit trail, and I'm just wondering, did I miss something, or where can I find that exhibit?

MS. O'BRIEN: It would have been uploaded to kiteworks. It's a fairly recent document we received from the RCMP, so it would, would have been fairly recently uploaded. So it's there, and we can certainly make sure you have a copy of it. Did you, did you have – yes.

MR. KENNEDY: No, obviously I downloaded the – I thought I downloaded all the exhibits about 10 o'clock –

THE COMMISSIONER: Which was that? That was the one –

MR. KENNEDY: The gen– yeah, the audit trail, Commissioner, led then to the opening of a general occurrence report that dealt with the production charge with the investigation that was up on the screen and I just wondered whether or not that was in another file or actually in the exhibit file for Corporal O'Keefe, that's all.

THE COMMISSIONER: Okay. Thank you.

Yes, Ms. O'Brien.

MS. O'BRIEN: Thank you.

Just with respect to one point there, a question from Mr. Freeman, you say that you could hear rustling in the attic when you were in the house?

CPL O'KEEFE: Yes.

MS. O'BRIEN: Okay. Did you note that anywhere in your notes?

CPL O'KEEFE: I don't believe so.

MS. O'BRIEN: Did you report that to any other officer?

CPL O'KEEFE: I can't recall specifically, but, you know, it was all part of the animal issue in the home, so.

MS. O'BRIEN: Okay. But how did you know it was – I mean you heard noises, how did you know it was noises caused by animals?

CPL O'KEEFE: I just figured it was, it was animals. You could hear the small feet, the claws if that's how you want to describe it.

MS. O'BRIEN: Okay. So it –

CPL O'KEEFE: It was animals. It wasn't anything else.

MS. O'BRIEN: Okay.

Thank you.

THE COMMISSIONER: No further questions for Corporal O'Keefe?

All right. Thank you, Corporal. You're excused.

CPL O'KEEFE: Thank you, Mr. Commissioner.

Thank you, folks.

THE COMMISSIONER: Now quarter to three, probably we took our break earlier. Who do we have –?

MS. O'BRIEN: The next witness is Sergeant Dion Foote.

THE COMMISSIONER: Okay, we'll start with Corporal Foote after the break.

MS SHEEHAN: All rise.

The Commission of Inquiry is recessed.

Recess

MS. SHEEHAN: The Commission of Inquiry is in session.

Please be seated.

THE COMMISSIONER: Go ahead, Ms. O'Brien.

MS. O'BRIEN: Thank you.

We're ready to begin with our next witness, Sergeant Dion Foote.

Sergeant Foote, you're going to be affirmed by the Madam Clerk.

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

SGT FOOTE: I do so.

MS. SHEEHAN: Please state your full name.

SGT FOOTE: Dion, D-i-o-n; last name Foote, F-o-o-t-e.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

Before we begin, Commissioner, I'd like to enter the following exhibits for Sergeant Foote: Exhibit P-0234 to P-0248 inclusive.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

And I'm not sure if these exhibits have been entered. It's not indicated here whether they've been entered or not, but just for greater certainty I will also be referring to, with Sergeant Foote, confidential Exhibits C-0007, C-0008, C-0009, C-0010, C-0011 and C-0012. So if we could get an order for those, please.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

Thank you.

Sergeant Foote, we've met before but I'm Kate O'Brien, one of the co-counsel for the Commission of Inquiry. I'm going to ask you – start with a few questions on your police training and experience. How long have you been a member of the RCMP?

SGT FOOTE: Twelve years.

MS. O'BRIEN: Okay.

And I understand that your current rank is sergeant.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: But at the time of these events that took place that we're going to be talking here today, you were a corporal.

SGT FOOTE: Yes, Ma'am. That's correct.

MS. O'BRIEN: Okay. So in the documents we're going to see you referred to as Corporal Foote, regularly.

Now, we know that all RCMP officers receive a certain amount of basic training.

SGT FOOTE: Uh-huh.

MS. O'BRIEN: Did you have any specialized training that would be relevant to the role you had in the matter of the investigation regarding the matter of Donald Dunphy?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: So you never had any specialized training in homicide investigations?

SGT FOOTE: I worked on a lot of major cases and major files but not particularly a homicide.

MS. O'BRIEN: Okay. And had you ever received any investigation on of a use-of-force-by-a-police-officer-type incident?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay.

What was your position with the RCMP on April 5, 2015?

SGT FOOTE: I was corporal at Holyrood GIS. I was the unit commander there.

MS. O'BRIEN: Okay. And GIS stands for General –

SGT FOOTE: It's the General Investigation Section.

MS. O'BRIEN: General Investigation Section.

SGT FOOTE: Yes.

MS. O'BRIEN: And just – you can correct me if I'm wrong here, but I understand that the GIS could maybe be described as an assistance unit?

SGT FOOTE: In Holyrood, yes.

MS. O'BRIEN: Okay.

SGT FOOTE: In other detachments around the province, it was more like – the Royal Newfoundland Constabulary, I think, called it CID.

MS. O'BRIEN: Okay.

SGT FOOTE: Major crimes, larger crimes, they work on those kinds of files.

MS. O'BRIEN: Okay. So for the GIS unit that you were attached to in Holyrood, you would describe that one as an assisting unit?

SGT FOOTE: Yes, Ma'am. Yeah.

MS. O'BRIEN: So would you regularly be assigned, then, to work on larger files and assist with larger investigations?

SGT FOOTE: Yes.

MS. O'BRIEN: Okay. Such as ones like this one that were being run by the major crimes unit.

SGT FOOTE: Absolutely.

MS. O'BRIEN: Is that right?

SGT FOOTE: Yes, Ma'am.

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

SGT FOOTE: Staff Sergeant Rod Tiller.

MS. O'BRIEN: Okay.

SGT FOOTE: At that time you meant?

MS. O'BRIEN: Yes, at that time.

SGT FOOTE: Yeah.

MS. O'BRIEN: Thank you.

Prior to April 5, 2015, had you ever been involved in the investigation of a shooting incident?

SGT FOOTE: I've been involved in shooting investigations but not where anybody was shot.

MS. O'BRIEN: Okay, so where nobody was shot but where a firearm was discharged?

SGT FOOTE: Yes.

MS. O'BRIEN: Okay.

And had you ever been involved in the investigation, prior to this, of a use-of-force-by-a-police-officer incident?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay.

And prior to April 5, 2015, did you know Constable Smyth or any members of his family?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: And prior to you getting involved in this investigation or during your investigation, were you ever asked by a superior officer whether or not you knew Constable Smyth or his family?

SGT FOOTE: No.

MS. O'BRIEN: And I'm going to ask the same question for Mr. Dunphy and his family. Prior to that date, did you know Mr. Dunphy or his family?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: And prior to your involvement in this incident or during your involvement in it, were you ever asked by a superior officer whether you knew Mr. Dunphy or any member of his family?

SGT FOOTE: No, not that I recall.

MS. O'BRIEN: Okay.

Have you ever been on any joint operation or joint task force with other members of the RNC?

SGT FOOTE: I worked for six years with our tactical unit. It's a public order unit. We did some training a couple of times over a six-year period with the Public Order Unit from the Royal Newfoundland Constabulary. That'd be a two- or three-day training.

MS. O'BRIEN: So a couple of times you did two or three days of training when –

SGT FOOTE: Yes.

MS. O'BRIEN: – you were with the tactical unit?

SGT FOOTE: Yes.

MS. O'BRIEN: Okay, but would that be considered a joint operation or a joint force or just your tactical teams training together.

SGT FOOTE: That's just training.

MS. O'BRIEN: Okay. And have you been on any joint operation or joint task force with the RNC?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay. And so you just described some training that you've done previously with the RNC. Have you ever done any other training with RNC members?

SGT FOOTE: Yeah, when I took the DataMaster test, course, I took that with some RNC members.

MS. O'BRIEN: Okay, and that's the breathalyzer course?

SGT FOOTE: Yes, Ma'am. Yeah.

MS. O'BRIEN: So you did that with some RNC members.

SGT FOOTE: That would have been in '05 or '06, something like that.

MS. O'BRIEN: So you've done some –

SGT FOOTE: Yeah.

MS. O'BRIEN: That's another example of training you've done.

SGT FOOTE: Yes.

MS. O'BRIEN: Okay.

On April 5, 2015, it was an Easter Sunday. Were you off duty that day?

SGT FOOTE: Yes, Ma'am, I was.

MS. O'BRIEN: So we know that this event happened and you received a call to come into work.

SGT FOOTE: Yes.

MS. O'BRIEN: Is that right?

SGT FOOTE: Yeah.

MS. O'BRIEN: And now looking at your – I've reviewed your notes and I understand that you would have arrived at work at around 1552 p.m. in the afternoon. Does that sound about right, eight minutes to 4 p.m. in the afternoon when you arrived at the Holyrood detachment?

SGT FOOTE: Yeah, if that's what my notes say. I don't have them in front of me here.

MS. O'BRIEN: Okay. And is that where you would have gone to the Holyrood detachment –

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: – when you were called in?

SGT FOOTE: Yeah.

MS. O'BRIEN: Okay.

Now, when you arrived at work, what had you been told, what did you understand had happened?

SGT FOOTE: Oh, I received a call from Telecoms advising me that my supervisor was looking for me. And I called him and he advised there had been a shooting down in, I believe initially they said, Mount Carmel. So I went home, changed and went straight to work at the Holyrood detachment.

MS. O'BRIEN: So you understood it was a shooting in Mount Carmel. Did you have any more details like that? Did you know like, for example, that a police officer had been involved in the shooting?

SGT FOOTE: Not that I recall. Not at that time, no.

MS. O'BRIEN: Okay. So what happened once you arrived at the Holyrood detachment?

SGT FOOTE: I went in to see my supervisor. There were a few people around at the detachment. He was trying to gather his thoughts as to what needed to get done. And somebody had mentioned, I believe it was him, that there were a lot of cats at the residence and there was the deceased still sitting in his living room. And there was a concern that what if the cats did something with the scene because we needed to maintain the scene until forensics got there.

I honestly can't say if I suggested it or he did, but I had said, well, I'll go down there and stay there with the deceased until our forensics get there and he was all over that, so I took off right away and went down there.

MS. O'BRIEN: Okay, the he, the supervisor you're speaking of here this would be Staff Sergeant –

SGT FOOTE: Staff Sergeant Rod Tiller – sorry about that.

MS. O'BRIEN: Tiller, okay.

So at that time when you get to the detachment you learn obviously that someone's dead as a result of a shooting incident.

SGT FOOTE: Yes, Ma'am

MS. O'BRIEN: And do you find out at that time that that the shooting was done by an RNC officer?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay. So you have all that information when you go. Did you have Constable Smyth's name? Did you know the name of the RNC officer when you left?

SGT FOOTE: I don't think so.

MS. O'BRIEN: Okay.

SGT FOOTE: Maybe, but I can't recall.

MS. O'BRIEN: Okay.

So at this point either you volunteer or he asks you to go down to the scene and do some guarding. How long did you understand it was going to be before the identification teams or the forensic identification section arrived on site?

SGT FOOTE: Well, I knew we had two forensic officers out of Clarendville, so I wasn't anticipating it being more than an hour or two but you can never say. It depends on what they're dealing with at the time. So I went down there figuring I'd be there for an hour or two and it turned out to be maybe four or a bit more.

MS. O'BRIEN: Okay.

So I understand again from your notes that you would have arrived on the scene at Mitchells Brook at around 1651 p.m., so just nine minutes to five that evening; does that sound right?

SGT FOOTE: Okay.

MS. O'BRIEN: Does it –

SGT FOOTE: You're reading it; I'm not.

MS. O'BRIEN: That's fine.

SGT FOOTE: Yeah.

MS. O'BRIEN: Okay.

Do you recall who was on the scene when you arrived there in Mitchells Brook?

SGT FOOTE: Corporal O'Keefe was there. Constable Cox was there. I believe Constable Downey was there in the area as well and there may have been another police officer or two, but I remember those three because they worked out of the Holyrood detachment.

MS. O'BRIEN: Okay.

Was Constable Smyth on the scene or had he already left at that time?

SGT FOOTE: No, he was not there.

MS. O'BRIEN: Okay. So what did you do when you arrived on scene?

SGT FOOTE: I spoke briefly with Constable Cox. I think we were discussing about if the house was clear, if it was secure and –

MS. O'BRIEN: Did he tell you that the house was clear?

SGT FOOTE: Yeah, I can't remember if it was him or Corporal O'Keefe said that but, you know, they advised that the house was secure. And we talked about the cats on the property and inside the property. And I said well, I'm coming down to go inside. I'm going to stand at the entrance to the living room. Corporal O'Keefe had said Mr. Dunphy was sitting in the living room in his chair, so he took me to the house. We walked inside. He showed me the living room and I stood there in the archway and Corporal O'Keefe left.

MS. O'BRIEN: So you understood at that time that the house had been cleared?

SGT FOOTE: Yes, that was my understanding.

MS. O'BRIEN: All right.

So no officer told you that there was areas, rooms in the house that they had not gone into?

SGT FOOTE: Nope, no one had mentioned that.

MS. O'BRIEN: Okay.

And what were you wearing?

SGT FOOTE: Civilian clothes like I'm wearing now. I had my plain clothes holster on with my gun. I had my briefcase. I had my jacket on. I honestly can't say for sure if I was wearing my vest. I think I was, but I can't say for sure.

MS. O'BRIEN: And when you say your vest, you mean bulletproof –

SGT FOOTE: My, my bulletproof vest, yes, Ma'am.

MS. O'BRIEN: Bulletproof vest? Fair enough.

SGT FOOTE: I think I was but I can't say for sure. And I was wearing jeans and a golf shirt and a jacket.

MS. O'BRIEN: Were you wearing gloves?

SGT FOOTE: No.

MS. O'BRIEN: Were you wearing any protective booties over your shoes?

SGT FOOTE: No.

MS. O'BRIEN: Any protective –

SGT FOOTE: No.

MS. O'BRIEN: Protective suit.

SGT FOOTE: No.

MS. O'BRIEN: Okay. You're going down there, you were understanding you were going down there to guard a scene?

SGT FOOTE: Yes.

MS. O'BRIEN: Did you have that type of protective clothing available to you at the Holyrood detachment?

SGT FOOTE: Not that I was aware. I didn't know what I was getting into when I left to go down there.

MS. O'BRIEN: Okay, but you understood you were going down there to guard a scene –

SGT FOOTE: Oh no, I understood that, absolutely. Yep, yep.

MS. O'BRIEN: With, you know, a body there and you were going to be guarding it from cats. So you understood that much.

SGT FOOTE: Uh-huh, I did.

MS. O'BRIEN: But did you, did you – did you just not think to look for any protective gear, is that what you're telling me, or ...?

SGT FOOTE: No.

MS. O'BRIEN: I understand we're going to get evidence from the forensic identification team –

SGT FOOTE: For sure.

MS. O'BRIEN: And when they go in, they suit up. Right?

SGT FOOTE: Yep.

MS. O'BRIEN: So they put on all kinds of gear –

SGT FOOTE: Uh-huh.

MS. O'BRIEN: And I understand that we're going to hear from them that they do that so that they don't risk contaminating the scene.

SGT FOOTE: Uh-huh.

MS. O'BRIEN: And so you were going there to the scene, so I was just asking you had you thought to look –

SGT FOOTE: Well, it was an urgent situation because we didn't know if the cats would cause any contamination to the scene, so I was trying to get there as quick as I could so I could go in and deal with that.

MS. O'BRIEN: Okay. And so you didn't have any discussions with Staff Sergeant Tiller about protective gear?

SGT FOOTE: Nope.

MS. O'BRIEN: Okay. So tell me about, you know, what do you observe when you go into the house?

SGT FOOTE: When I opened the door – and the door wasn't closing properly, but when I opened the door there was just an overwhelming smell; it was just really strong. It was a cross between urine and feces and other smells. There was an old smell there, and anyway I walked in, I could hear a tarp kind of blowing in the wind; there was plywood up against an entrance to a small kitchen that was straight ahead of me and to the right was the living room, and there was an archway going into, or an opening going into the living room.

And I looked in there and the room was in disarray. There was garbage everywhere. It was plywood on the floor; the floor wasn't finished. There was a cool breeze blowing through the house. I don't know if it was because of the door or because of an opening in the kitchen or wherever, but the door kept blowing open and closed like there was air sucking through. And there were cats everywhere, absolutely everywhere.

MS. O'BRIEN: The plywood at the entrance to the kitchen, was it blocking off the entrance to the kitchen?

SGT FOOTE: No, I could see through. I could see through to the kitchen.

MS. O'BRIEN: Okay. So it had been pulled to the side, is that what you suggest?

SGT FOOTE: Yeah, it looked like it had. Yeah. There was a – I think there was a little table there in the corner, maybe, and it was leaning up against that.

MS. O'BRIEN: Okay.

Looking in the living room did you see any weapons?

SGT FOOTE: Yeah, I saw a green – I think it was green or blue – it was a greenish-blue Tupperware container about this size. And there was a gun leaning up against it partways on the top and the barrel was touching the floor. And it was just to the left of where the deceased was sitting.

MS. O'BRIEN: Did you see any other weapons?

SGT FOOTE: There was a piece of round – I think it was a round piece of wood with maybe, I can't recall if there was duct tape on it or something maybe, sitting in the floor at the entrance to the archway going into the living room.

MS. O'BRIEN: Okay.

And where was, where was Mr. Dunphy's body?

SGT FOOTE: Mr. Dunphy was sitting in the chair and his hands were by his side, by his legs. And that's immediately when you walk into the living room.

MS. O'BRIEN: How far into the living room did you go, Sergeant Foote?

SGT FOOTE: Three or four feet, maybe. There was a little space heater, round space heater sitting just to the left of Mr. Dunphy's chair.

MS. O'BRIEN: Uh-huh.

SGT FOOTE: And it was on, and I kind of stepped in next to that and took a quick look at him and – almost immediately, as soon as I stepped to that area, I was kind of keeping cats away from going into that room. So I kind of really wasn't focused on anything else at that point.

MS. O'BRIEN: Okay.

Do you recall if there was – so you're saying you kind of didn't go beyond the heater?

SGT FOOTE: No.

MS. O'BRIEN: Or you stayed towards –

SGT FOOTE: Yeah.

MS. O'BRIEN: – just to the area where the heater was.

SGT FOOTE: Yeah.

MS. O'BRIEN: Was the television on or do you recall a television, actually in that (inaudible).

SGT FOOTE: There was a television on the wall over a fireplace –

MS. O'BRIEN: Uh-huh.

SGT FOOTE: – and there was something on the screen. I don't know what it was doing but it didn't seem to be working properly. You know when your TV is not hooked up properly it might say video or audio or something was flashing on the screen, but the TV wasn't on. There was nothing on the TV.

MS. O'BRIEN: Could – was there any sound coming from the TV?

SGT FOOTE: No, I couldn't hear anything coming from it.

MS. O'BRIEN: Okay.

So you say you saw cats. I mean, how many cats did you see inside the house?

SGT FOOTE: I don't know. I've guessed many times, 30, 40.

MS. O'BRIEN: Inside the house?

SGT FOOTE: Yeah. They were running around and they seemed comfortable there. There were a lot of cats there. There were a couple in the living room when I first walked inside and I shooed them out of there and they ran down the hallway. And I kind of stayed in the entrance to the living room for the next four hours making sure they didn't go in there and disturb anything.

MS. O'BRIEN: You say there was a couple of cats in the living room when you went in. Did you see those cats anywhere near the body?

SGT FOOTE: No. There was a little coffee table and there was a smaller table, I believe an end table, right in front of Mr. Dunphy. And then there was a couch to the left and a couple of cats were in behind there and ran out kind of when I stepped in next to Mr. Dunphy. And they –

MS. O'BRIEN: The cats were under the couch?

SGT FOOTE: They were behind it, I think, right around the couch, anyway, and they ran out. And I don't know, it was probably a minute or two later I saw a cat's tail sticking out under Mr. Dunphy's chair. And I stamped my foot and hissed at it and it ran out from behind the chair, out by my feet, out through the archway. But there were no cats on either of the tables or up on Mr. Dunphy.

MS. O'BRIEN: And what about near the gun?

SGT FOOTE: No.

MS. O'BRIEN: Okay. I understand that you took some photographs while you were in the house. And what did you use to take those photographs?

SGT FOOTE: I had a camera in my briefcase from our office in Holyrood. And my thought process was if the cat disturbed what I was looking at, if I took four or five pictures, at least I would have them to show this is what I saw when I first walked in. I'm not forensically trained so I just took four or five pictures of the room and the way Mr. Dunphy was sitting just in case something got disturbed.

MS. O'BRIEN: Okay. I'm going to just take you through those photos –

SGT FOOTE: Yeah, for sure.

MS. O'BRIEN: – just very quickly. These are confidential exhibits, Commissioner, so ask that Counsel turn off or flip their monitors.

All right, the first exhibit I'm going to ask Madam Clerk to bring up is C-0007.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible) C-0008 now.

MS. O'BRIEN: C-0008? Okay.

UNIDENTIFIED FEMALE SPEAKER: C-0007 is (inaudible).

MS. O'BRIEN: No, I'm not –

MR. SIMMONDS: (Inaudible) there's only five pictures which would be (inaudible).

UNIDENTIFIED FEMALE SPEAKER: Yes.

MS. O'BRIEN: Yes, there's only five pictures in this grouping.

MR. SIMMONDS: 0008 is the first one.

UNIDENTIFIED FEMALE SPEAKER: Yeah, okay.

MS. O'BRIEN: Thank you.

Yes. Sorry, C-0008 is the first one. Thank you.

Sorry, Mr. Simmonds.

MR. SIMMONDS: (Inaudible.)

MS. O'BRIEN: Okay.

MR. SIMMONDS: Thank you.

MS. O'BRIEN: Okay.

So the first – so we should now have up an Exhibit C-0008. And I apologize for that, it's just an error in my notes. We're seeing a photograph here. Do you have that before you, Sergeant Foote?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay. Is that one of the photographs that you took? And –

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: All right.

So this is a photograph of Mr. Dunphy. And does that accurately represent how you saw the scene that day?

SGT FOOTE: Yes.

MS. O'BRIEN: All right.

And then I'll quickly ask to go to the next exhibit which is C-0009. And it's just a slightly different angle of the same subject. Is that correct? So that's going to be –

SGT FOOTE: I –

MS. O'BRIEN: Sorry. C-0009; do you have it there now?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay. So that's one of the other photographs you took?

SGT FOOTE: Yeah.

MS. O'BRIEN: All right.

And then if Madam Clerk could please bring up C-0010. And this one has been marked as a confidential exhibit. I don't know that it need be, but it's a photograph of the living room.

SGT FOOTE: Uh-huh.

MS. O'BRIEN: Do you recognize that? And so is this generally the scene that you saw that day?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: And are we seeing the rifle, the gun that you saw in this photograph?

SGT FOOTE: Yeah, it's up against that blue tub on the floor there.

MS. O'BRIEN: That you just described.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: And on the television here we see a box here. Is this what you were describing a few minutes ago?

SGT FOOTE: Yeah. Yeah.

MS. O'BRIEN: Something showing on the screen?

SGT FOOTE: Yes.

MS. O'BRIEN: All right.

And the next photograph that you took would be Exhibit – it seems to be, it's a public one, actually, this one. P – well that's – P-0011 is public.

MS. CHAYTOR: I think it's a mistake. It should be C-0011.

MS. O'BRIEN: Oh, C-0011. Okay. So this is C-0011. Is that up for you Sergeant Foote?

SGT FOOTE: Yes, I got it.

MS. O'BRIEN: Okay. So that's one of the other photographs you took. And so we're seeing – do you see the other weapon that you spoke about earlier in the scene?

SGT FOOTE: Yeah. The stick is there on the floor. And it's right next to the heater, yeah.

MS. O'BRIEN: Okay. And so when you say that you saw a cat's tail sticking out from under the chair, would that have been in the area there under the pocket that we can see in that photograph?

SGT FOOTE: The tail was actually right behind the chair by the wall.

MS. O'BRIEN: Okay. So it was in – was the cat in between the chair and the wall?

SGT FOOTE: Yeah. Yeah, I didn't see him there at first and when I looked I saw its tail. And as soon as I stomped my foot and hissed at him, he ran out the door.

MS. O'BRIEN: Okay. And the other cats, you say, were over behind the sofa.

SGT FOOTE: They were over near the couch, yeah.

MS. O'BRIEN: The couch. Okay.

And finally Exhibit C-0012 and this is just somewhat of a blurry shot of about the same scene. I'll just confirm that's the last photograph that you took.

SGT FOOTE: Yes.

MS. O'BRIEN: Okay.

All right. Thank you.

So did you ever touch anything in the living room?

SGT FOOTE: I never touched anything in the house.

MS. O'BRIEN: Okay, never touched anything in the house.

SGT FOOTE: Never.

MS. O'BRIEN: Okay. And did you see – so you didn't touch anything. I take it you didn't move anything?

SGT FOOTE: No.

MS. O'BRIEN: Did you see anything get moved while you were in there?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay. So you didn't see cats knock anything down –

SGT FOOTE: No.

MS. O'BRIEN: – or interfere with anything at any time?

SGT FOOTE: No. The only thing in the house I made contact with was one cat, unfortunately –

MS. O'BRIEN: Okay.

SGT FOOTE: – who tried to get in the room and I was trying to block it, and I kicked it.

MS. O'BRIEN: A cat?

SGT FOOTE: Yeah.

MS. O'BRIEN: Okay, that was trying to get in the living room?

SGT FOOTE: Yes, I kind of stuck my foot out to block it from getting in the living room and kicked it up against the wall.

MS. O'BRIEN: Okay.

And so once you got the three cats that were in there out of the living room, for the entire time that you were there did any cats get to enter the living room again?

SGT FOOTE: No, Ma'am, not while I was there.

MS. O'BRIEN: So you successfully kept the cats out?

SGT FOOTE: Yep. I had my ASP baton out, my expandable ASP baton in one hand and I had my briefcase in my other hand and that's how I stood in that archway for four hours.

MS. O'BRIEN: Okay. So you used the baton where you took –

SGT FOOTE: Well, I just had it out, just kind of a –

MS. O'BRIEN: Okay.

Now, in your notes – and, Madam Clerk, we can bring it up, it's P-0234, but you make a note there at 1739: all cats secured at this point besides the three that continually try to get in the living room.

SGT FOOTE: Yeah, but when I say secured I just meant out of the living room.

MS. O'BRIEN: Okay. That's what I was going to ask you. So your note there –

SGT FOOTE: Yeah, I see it.

MS. O'BRIEN: 1739, I think it's a little further down. Yeah, here we go. So we see here: all cats secured – all cats secured at this point besides the – just as I read out there.

SGT FOOTE: Um-huh.

MS. O'BRIEN: So when you say secured here, just explain to me what you mean by that.

SGT FOOTE: Just that they were not in the living room. They were in other parts of the house, away from Mr. Dunphy.

MS. O'BRIEN: Okay. Did you ever enter any other parts of the house?

SGT FOOTE: No.

MS. O'BRIEN: So you just stayed in that sort of hallway –

SGT FOOTE: Yeah.

MS. O'BRIEN: – entranceway to the living room the whole time?

SGT FOOTE: Yes.

MS. O'BRIEN: So you didn't go shut any doors to shut off cats in any rooms?

SGT FOOTE: No.

MS. O'BRIEN: All right.

So you say there was three continually trying to get in the living room?

SGT FOOTE: Yeah.

MS. O'BRIEN: So there was three specific – are you saying three specific cats?

SGT FOOTE: Yeah, there was a beautiful white cat and I don't know, I can't recall if it was Persian. It was a beautiful cat. I'm a cat person, I've always had cats. Um, and then there was a calico that was hanging around there. There was a brown cat that was there as well. And then there was another cat that had a lot of fur missing off it. It looked really sick and was kind of there in the hallway with those three cats. They repeatedly kept trying to get in the living room. And so I just – it was almost like they were taking turns. And that went on for quite a while and I'm going to say, for sure an hour. Every few minutes one of the cats started coming towards the doorway, and I'd stomp my foot or say something to it or hiss at it. It would turn around and take off for a few seconds.

MS. O'BRIEN: Okay. So other than those four cats that were persistently trying to get in, were you seeing other cats in the house?

SGT FOOTE: Oh, yeah. There were cats down the hall, and there were cats going in and out of – I believe there was a, when I moved over to the right of the entrance and I was back-on to Mr. Dunphy there was a – I think there was a bathroom first when you turn to go down the hallway, 'cause it was open a crack and cats were going in and out of there. And I could hear cats in there scratching litter and you could smell what they were doing in there. And then to the right, when I was back on to the living room, there's a little kitchen area. And there were cats in there on the counter and up on the cupboards and up on the appliances and that.

MS. O'BRIEN: Okay.

SGT FOOTE: Yeah.

MS. O'BRIEN: And so you estimate the number of cats you actually saw?

SGT FOOTE: I wrote down 30, 40. It could have been more, might have been a few less.

MS. O'BRIEN: Okay. Any places that you could see where there was damage done to the ceiling such that you could see up into the –

SGT FOOTE: Oh, there looked – kind of like when I was in the archway looking into the living room, there looked like there was a tarp, a tarp up in the ceiling area.

MS. O'BRIEN: In the living room?

SGT FOOTE: No, I don't recall it in the living room. It kind of looked like it might have been out in the kitchen, up over the area, maybe where the living room meets the kitchen up in the ceiling.

MS. O'BRIEN: Okay.

SGT FOOTE: That's how I recall it.

MS. O'BRIEN: Okay. Do you recall seeing any cats up in, in –

SGT FOOTE: I could hear them running over my head, back and forth.

MS. O'BRIEN: You could hear cats running in the attic space, you're saying.

SGT FOOTE: Yeah, yeah.

MS. O'BRIEN: Okay. Did you ever see any cats in that –

SGT FOOTE: I remember looking up, and I'm not sure now if I saw, I'm trying to picture it. There were cats up on something looking down at me. I don't know if it was a shelf, if it was a refrigerator, if it was up in the opening in the ceiling.

MS. O'BRIEN: Okay, so you don't have any clear memory of that.

SGT FOOTE: No.

MS. O'BRIEN: Okay. Did anyone else enter the house while you were there?

SGT FOOTE: Two major crimes investigators showed up, Corporal Burke and Corporal Monty Henstridge, and also seconds after that Staff Sergeant Steve Conohan showed up.

MS. O'BRIEN: Okay. So we see your notes here. Is there a way to make this a bit bigger, Madam Clerk, so we can see the full page of the notes, the full width of the notes? Yeah, there we go. Make the window bigger is what I meant. Okay.

So Corporal Henstridge and Corporal Burke showed up at 1911 or –

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay. And then Staff Sergeant Conohan showed up.

SGT FOOTE: Yes.

MS. O'BRIEN: And how long were these officers in the house and where did they go?

SGT FOOTE: I don't know, five, seven minutes, maybe 10 minutes.

MS. O'BRIEN: Okay.

SGT FOOTE: They just kind of came in and looked in at the scene where I was standing. They looked down the hallway. I can't recall if Staff Sergeant Conohan walked down the hallway or not. They took a quick look in the kitchen. They stood near where I was standing and chatted about the layout of the house. And I think they might have mentioned about waiting on forensics

to show up or something. And it was a cramped space there in that hallway and they left probably within eight to 10 minutes.

MS. O'BRIEN: Okay, your notes here record at 1917 all members leave house.

SGT FOOTE: So it's six minutes, I guess.

MS. O'BRIEN: Okay. So the, did you stay on after they left?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay. Sergeant, Staff Sergeant Conohan, did you understand why he was there? Did you know what -?

SGT FOOTE: His role had to do with some marijuana plants that were at the house.

MS. O'BRIEN: Okay.

SGT FOOTE: I could smell, kind of smell it. I don't know if it was fresh or burnt, or old or what. There was a hint of that in the air as well and that was his role. That's what I was told.

MS. O'BRIEN: Okay.

Commissioner, for your reference, we will be hearing from Burke and Osmond, Corporal Burke and Corporal Osmond, later on and Staff Sergeant Conohan will give further evidence, but I think he was there as a specialist to take down grow operations. So that was his purpose there.

These officers, these three officers that were there, were they wearing any protective clothing?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay. Were they wearing gloves?

SGT FOOTE: Nope.

MS. O'BRIEN: Okay. Did you see them touch or disturb anything while they were there?

SGT FOOTE: Nope, they didn't touch anything that I saw. They just looked around, chatted for a couple minutes and left again.

MS. O'BRIEN: Did any of them go into the living room?

SGT FOOTE: Burke and Henstridge stepped into the room and took a look at Mr. Dunphy. They didn't go all the way in, but they went in a little ways. That's what I recall.

MS. O'BRIEN: Okay.

SGT FOOTE: Yeah, they did step in a little ways, yep, to take a look.

MS. O'BRIEN: So you stayed there on your, sort of your guard duties until the Forensic Identification Section officers arrived; is that right?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: And I understand, we can just look at your notes, but I understand that was around 2100 or here you have it recorded as 2107 hours.

SGT FOOTE: Yeah.

MS. O'BRIEN: And that would be Sergeant Saunders and Corporal Kelly Lee; Chris Saunders and Kelly Lee. And that's when they came into the residence and they relieved you at that point.

SGT FOOTE: Yes.

MS. O'BRIEN: Is that right?

SGT FOOTE: That's correct.

MS. O'BRIEN: Okay. So about – at that time you'd been on guard for approximately four hours.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: As you said earlier, okay.

SGT FOOTE: Yep.

MS. O'BRIEN: And – okay.

So what did you do after you were relieved by Saunders and Lee?

SGT FOOTE: I chatted with them for a couple minutes and went outside, was just telling Corporal Lee to be careful about the front step because it was kind of broken. You had to maneuver around it there. We were just chatting for a couple minutes.

Then I went down Mr. Dunphy's driveway and I think Constable Cox was there and Corporal – I can't recall if Corporal O'Keefe was still there; I think he was. It might be in my notes. I was chatting with one of them anyway for a little bit. Then I went and sat in my cruiser for a while, warmed up. It was an unmarked SUV. I was probably there for a half an hour or 40 minutes or so after I was done talking with forensics and then I started heading back to Holyrood.

MS. O'BRIEN: Okay. Now I understand that you're ultimately assigned to be the file coordinator on this file; is that right?

SGT FOOTE: Yeah, so the next day I went into work as per usual just to see, you know, if they had anything specific that they needed me to assist with. And when I got in there I was advised by – I can't remember who advised me, I think it was Staff Sergeant Tiller, that major crimes wanted me to go into headquarters to assist them with the PROS – that's the program we use, the coordination of the tasks that would be assigned to members. So they wanted me to assist with that part of the investigation.

MS. O'BRIEN: Okay.

Commissioner, we are going to be hearing some testimony from, in particular, Corporal Steve Burke who was the primary investigator on this file, and Corporal Burke will give us some evidence with respect to the structure to the Major Crime Unit and the procedure or process that they use to investigate major cases such as this one. And Corporal Burke will give us testimony to the Major Case Management Command Triangle.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: And, Commissioner, you and the public may have already seen this triangle. There is a diagram of it in the RCMP's investigative report that has been published on our website several weeks ago. It's actually already been entered into evidence as Exhibit P-0003 if anyone's interested. But as we'll see in more detail with Corporal Burke, the Command Triangle has essentially three key positions –

SGT FOOTE: Yes, Ma'am

MS. O'BRIEN: Correct, Sergeant?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: And they make up three corners of the triangle and the top apex is the Team Commander, who in this case was Sergeant Kent Osmond – right?

SGT FOOTE: Yes, correct.

MS. O'BRIEN: And at the bottom left of the triangle is the Primary Investigator who we'll hear is Corporal Burke and at the bottom right is the position know as the File Coordinator –

SGT FOOTE: Yes.

MS. O'BRIEN: – and that was the role that you were filling, right, Sergeant Foote?

SGT FOOTE: Yes, yep.

MS. O'BRIEN: So as I just said, Corporal Burke will give us a lot more detail on the Command Triangle but can you just briefly tell the Commissioner and tell us what the file coordinator does? I know you said that you would be assisting them with the PROS software but if you could give us just a little more detail on that.

SGT FOOTE: Yeah, primarily, for the majority of the next two weeks, I sat at a desk at the RCMP Headquarters and created, the term is a task electronically in the PROS program that we use. I would create a task and Sergeant Osmond or Corporal Burke or myself we would consult on things that needed to get done: a statement from a neighbour; speak to somebody in the community; maybe gathering medical records; different things, statements and whatnot.

I would create a task and assign it to one of the investigators who was working on this file. That would be the electronic portion of it. Then there would also be a hard-copy folder that I would put in a file folder box with the number coinciding with the task in the computer. And if somebody went out and got a statement from someone, they would give me a copy, then, to put in that hard folder. And that primarily was my role.

I did, I did do some groundwork throughout the next few weeks. There were a couple of things I did follow up on, but primarily I was at the office at headquarters and the other four members were following up on tasks.

MS. O'BRIEN: And when you say at the office at headquarters, do you mean in St. John's at White Hills or –

SGT FOOTE: Yes, Ma'am, at – and at the major crimes office at White Hills.

MS. O'BRIEN: And did you perform that role of file coordinator throughout the investigation?

SGT FOOTE: For the first couple of weeks. I worked out of Holyrood so I was kind of temporarily seconded. I was seconded to Holyrood – to major crimes for a couple of weeks.

MS. O'BRIEN: Okay. And, Commissioner, we'll be hearing a lot more detailed evidence on the creation of tasks and how tasks were managed when we get more detail into the, how the investigation was run by Corporal Burke.

Okay. Thank you.

Just a couple of questions there on that; you've just said in creating and assigning tasks you would consult with Burke and Osmond.

SGT FOOTE: Yes. Yeah.

MS. O'BRIEN: Is that correct?

SGT FOOTE: Yeah.

MS. O'BRIEN: Okay.

And I assume some tasks would have been, would have been assigned based on which officer was available.

SGT FOOTE: Oh, for sure. Yeah.

MS. O'BRIEN: Okay. And for more significant tasks, more, you know, key tasks shall we say, would the assignment then sometimes be on consideration of the skills –

SGT FOOTE: Yeah. Oh yeah.

MS. O'BRIEN: – or the training –

SGT FOOTE: For sure.

MS. O'BRIEN: – of a particular officer?

SGT FOOTE: Yeah. It could be, it could be Corporal Henstridge where his background was in interviewing and interrogation and he was a polygraph technician – or he is now, he was in the process of becoming. Or it could have been Sergeant Osmond who had been in that role a long time and had a lot more experience than some of the other members.

MS. O'BRIEN: Okay. So would Henstridge and Osmond been officers who were particularly singled out for skills in doing interviews?

SGT FOOTE: Oh yeah.

MS. O'BRIEN: Okay.

Now I understand you said you took a couple of – you did do a couple of, sort of, task – took on a couple of tasks yourself.

SGT FOOTE: Yes. Yeah.

MS. O'BRIEN: And I understand one of those was you were tasked with obtaining Mr. Dunphy's medical records.

SGT FOOTE: Yeah. Corporal Burke had asked me one day if I could follow up on that, make a few phone calls and just follow that up to see if, you know, the process of getting those records. So I called the medical examiner's office a couple of times. I dropped by one day and then was advised a form was required, a specific form and I had – I filled that form out and sent it to medical records at Mount Pearl Square.

MS. O'BRIEN: Okay. So this would be to get Mr. Dunphy's Eastern Health records –

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: – Eastern Health file?

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: All right. And did you ultimately receive those records?

SGT FOOTE: Yeah. I don't have my notes in front of me, but I did get them a week or two later.

MS. O'BRIEN: Okay.

SGT FOOTE: Yep.

MS. O'BRIEN: Commissioner, I'm not going to ask the witness to review those, but those records have been entered as a confidential exhibit, Exhibit C-0007.

Now I know, having reviewed your notes, Sergeant Foote, that you did some review of Mr. Dunphy's Eastern Health file, is that right?

SGT FOOTE: Yeah, it's over my head. I didn't understand it. I was just perusing through it, yeah.

MS. O'BRIEN: Okay. So you have no medical training? So you took some notes on it but –

SGT FOOTE: I wrote down some medications and a few of the diagnoses that the doctor had given over the year, but no –

MS. O'BRIEN: Okay.

SGT FOOTE: – I didn't comprehend any of it really.

MS. O'BRIEN: Okay, so I won't ask you any questions on those.

Now, I know you did talk briefly also with Mr. Dunphy's current family doctor – his then current family doctor, Dr. Thomas McGarry. Do you recall –?

SGT FOOTE: Yeah, there was a Dr. Walsh and then a Dr. McGarry.

MS. O'BRIEN: Okay.

SGT FOOTE: Yes.

MS. O'BRIEN: And I understand Dr. McGarry was his doctor at that time or leading up to the time of his death and that Dr. Paul Walsh was his family doctor previously.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Okay.

We're going to hear from Dr. McGarry directly here at the inquiry but I would just like to review with you briefly the communications that you had with Dr. Paul Walsh.

SGT FOOTE: Sure. Yeah.

MS. O'BRIEN: Okay.

All right, I'm going to – to assist you with this, Sergeant Foote, I'm just going to ask that we bring up Exhibit P-0242, please.

MR. KENNEDY: Commissioner, I'd just like to make one point here and it's – obviously, it's an inquiry, it's not a major point, but I do note that although Sergeant Foote had some contact with Dr. Walsh, who refused to give a statement based on patient confidentiality, so it will simply be whatever weight you decide to give to it.

THE COMMISSIONER: Yeah. I know that's recorded somewhere there, yeah.

MR. KENNEDY: Yeah.

MS. O'BRIEN: It is. And it's going – it's actually recorded directly in the note that I'm going to take Sergeant Foote to.

So, Sergeant Foote, can you just review. This is your Supplementary Occurrence Report of yours involving an entry that was made for April 13, 2015.

SGT FOOTE: Yes, Ma'am.

MS. O'BRIEN: Can you just tell the Commissioner what interaction you had with Dr. Walsh.

SGT FOOTE: I spoke briefly with Dr. Walsh. And I was asking him you know if he had any concerns, any mental health issues or any indication of violence or anything when he was dealing with Mr. Dunphy and he advised never. I also wrote here and he had stated: "There was nothing, not a thing."

He advised he has not been Mr. Dunphy's family doctor for a number of years; seen him on a couple of occasions when Mr. Dunphy's current doctor, Dr. McGillivray was away – sorry, Dr. McGarry was away. But he again stated he never had any issues with Mr. Dunphy.

MS. O'BRIEN: Okay.

All right. Thank you.

Now we also heard some detailed evidence, when Constable Smyth was on the stand, regarding two re-enactments that he performed at the scene of Mr. Dunphy's house. And the first of those re-enactments was on April 8 of 2015. Did you attend that re-enactment?

SGT FOOTE: I attended the first one, yes.

MS. O'BRIEN: Okay. And we understand that the video from that re-enactment was ultimately lost.

SGT FOOTE: Yeah, there was an error there somewhere.

MS. O'BRIEN: Okay.

SGT FOOTE: Yeah.

MS. O'BRIEN: And you did some detailed notes as to what you observed at the re-enactment, I take it, on the April 8 re-enactment?

SGT FOOTE: Yeah. Well, what happened – can I explain?

MS. O'BRIEN: Oh yes.

SGT FOOTE: Oh yeah. Well, what happened was the re-enactment was being recorded, so there's going to be video and audio of what happened. So I don't know if anybody was taking many detailed notes while it was happening because you had audio and video going. That was going to explain everything that was said and done.

And then I don't know if it was that night or the next day, we were advised there was an issue with the download and it got lost. Someone – there was an error so if you recall anything from what happened, can you make a report on it, can you write it down. So that's what I did and I think that's what a few others that were there did.

MS. O'BRIEN: Okay, so you did some detailed notes at that time.

SGT FOOTE: Yeah.

MS. O'BRIEN: And we do not need to bring this up on the screen but, Commissioner, Sergeant Foote's typed notes have been entered as P-0247.

THE COMMISSIONER: What is it?

MS. O'BRIEN: P-0247.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Sergeant Foote, did you attend the second re-enactment that occurred on April 10?

SGT FOOTE: No, Ma'am.

MS. O'BRIEN: Okay.

Did you ever have any direct communication with Constable Smyth?

SGT FOOTE: I said hi to him in passing in the parking lot. That's the first and last time I've ever spoke to the man.

MS. O'BRIEN: Okay. In the parking lot where?

SGT FOOTE: Oh sorry, at Mr. Dunphy's house.

MS. O'BRIEN: At Mr. Dunphy – so that day, on April 8, you said hi to him –

SGT FOOTE: Yeah.

MS. O'BRIEN: And that's, that was the first time you spoke to him?

SGT FOOTE: He was walking in because I was kind of at the door and I was holding the door and there was people coming and going. I said hi to him and I said hi to another mem – person that was with him. I think it was Janes, or Constable James, or Janes or something.

MS. O'BRIEN: James.

SGT FOOTE: And Justice Riche, I said hi to him. And yeah, I said hi to everybody that was there.

MS. O'BRIEN: Okay. And you had not had any communicate – any conversation or discussions with Constable Smyth since that time?

SGT FOOTE: No.

MS. O'BRIEN: And did you ever receive any communications with him: text, email?

SGT FOOTE: None.

MS. O'BRIEN: Nothing –

SGT FOOTE: Never.

MS. O'BRIEN: Nothing like that, never.

SGT FOOTE: No.

MS. O'BRIEN: Okay. And have you – the Commission of Inquiry has been underway now for a couple of weeks. Have you watched any of the proceedings as they've been ongoing?

SGT FOOTE: Nope, none. Not a thing.

MS. O'BRIEN: Okay. All right.

Did you have any other involvement in this file that we did not cover even if – even if we did just cover it in a very cursory way?

SGT FOOTE: No.

MS. O'BRIEN: Yeah.

SGT FOOTE: As days went by my role kind of diminished, and where I worked out of Holyrood and I was just seconded to Major Crimes, within a couple of weeks I was back working at Holyrood.

MS. O'BRIEN: Okay.

SGT FOOTE: So I worked on it for a couple of weeks.

MS. O'BRIEN: And just looking at your exhibit, we can just bring it up there. If we could just – I am going to ask you now to bring up Exhibit P-0247, Madam Clerk. These are your notes of the re-enactment.

So here we see – here's your notes of the re-enactment; you have a number of bullets there. Are these done sequentially? Or did you record, you know, things in the sequence that Constable Smyth did or said them?

SGT FOOTE: That's definitely not in the order that he said them. It was just kind of as it came to my mind going over what he said and the little bit I saw of what he did. If it's in order it's by accident.

MS. O'BRIEN: Okay. So this is not supposed to be a –

SGT FOOTE: No.

MS. O'BRIEN: – sequential listing.

SGT FOOTE: No.

MS. O'BRIEN: Okay. And did you actually – I know there was a number of people there and we know it's not a big room. Were you, did you – were you able to keep your eyes on Constable Smyth the entire time he did the re-enactment?

SGT FOOTE: No, Ma'am. I saw some of it.

The door was banging non-stop. There were interruptions. Justice Smyth – sorry, Justice Riche was having a hard time hearing things. Basically, a third of the way through, I was holding the door trying to see what I could see, but it wasn't a requirement that I see what happened. So I was listening but I couldn't see it all.

MS. O'BRIEN: Okay. Thank you.

Those are all my questions. The Commissioner may have questions for you and other counsel will likely have questions for you.

Thank you very much, Sergeant Foote.

SGT FOOTE: Thank you.

THE COMMISSIONER: Mr. Simmonds.

MR. SIMMONDS: (Inaudible.)

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. SIMMONDS: No, this here.

Sergeant, I'm going to ask you about the cats. I'm not going to belabour it but I have to tell you that it's – from my client's point of view, Ms. Dunphy's, it's very important.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: You indicated that there may have been as many as 30, 40 cats there.

SGT FOOTE: When I was there, for sure.

MR. SIMMONDS: Yeah. You got there about 10 to five –

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: – in the afternoon. Correct?

SGT FOOTE: Correct, Sir.

MR. SIMMONDS: Okay. And did you note there was a problem with the outer door?

SGT FOOTE: Yeah, it wasn't – it didn't seem to be closing properly.

MR. SIMMONDS: Okay.

SGT FOOTE: Yeah.

MR. SIMMONDS: You hadn't been around the back of the house –

SGT FOOTE: No, Sir.

MR. SIMMONDS: – where there were pens made for the cats. You hadn't seen any of that?

SGT FOOTE: No, Sir, I had not.

MR. SIMMONDS: But you did note four cats in particular that appeared to want to stay in the living room.

SGT FOOTE: Absolutely.

MR. SIMMONDS: Okay. The rest of the cats were roaming –

SGT FOOTE: Doing their own thing.

MR. SIMMONDS: – wildly throughout the house.

SGT FOOTE: Yeah, they were doing their own thing. They seemed comfortable there.

MR. SIMMONDS: Because Ms. Dunphy believes that the door was left open and that's how these other cats got in. That the four in particular that you saw that were, appeared to be fairly headstrong, that they wanted to get back into the living room, were four that he had as house pets. Is that consistent with the activity of the cats that they did seem to want to get back in where he was seated?

SGT FOOTE: They did, Sir. They were relentless.

MR. SIMMONDS: Okay.

And I don't mean to be mean here, but I have to ask, why would you kick one of the cats?

SGT FOOTE: I was just trying to stop it. It wasn't like I was kicking somebody's cat. I'm a cat lover, I've always had cats.

MR. SIMMONDS: Okay.

SGT FOOTE: It tried to get past me. I stuck my foot out to stop it and I hooked it on my foot.

MR. SIMMONDS: She believes that was –

SGT FOOTE: It wasn't like I was – I wasn't running around kicking cats around the house.

MR. SIMMONDS: She believes that was Jake that got kicked and that was one of his –

SGT FOOTE: A beautiful cat.

MR. SIMMONDS: Beautiful cat.

SGT FOOTE: And I felt horrible about it, but I had to stop the cat from getting in the living room.

MR. SIMMONDS: No, no, okay, I hear what you're saying.

The other thing that's trouble, Sir, is that – and there's been evidence already on this – there was a tarp over a hole in the ceiling, and you say you heard that tarp blowing when in fact you went in.

SGT FOOTE: I could hear it rustling in the wind, yeah.

MR. SIMMONDS: Is it possible that was the sound you heard, because unless some of these cats got up in that period of time, to her knowledge there were never cats up in – and she was at the house regularly. There were never cats up in the ceiling in that area of the house.

SGT FOOTE: I could hear – listen, I could hear stuff running around up over my head.

MR. SIMMONDS: Okay.

SGT FOOTE: It was quite, it was quite disconcerting when you can hear that.

MR. SIMMONDS: Sure.

SGT FOOTE: But –

MR. SIMMONDS: But you don't know how they got there and this –

SGT FOOTE: I don't know how they got up there.

MR. SIMMONDS: This tarp was blowing in the wind when you –

SGT FOOTE: I could hear it rustling and flapping, but I don't know how the cats got up there.

MR. SIMMONDS: Okay, okay.

You, and again I'm going to ask – I don't think anybody can see my monitor, so I'm not going to tip it up – but there were a number of pictures that were entered in which you took, exhibits 008, three zeroes and an eight, up to 0012.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: And you took them with your – with the camera that you had in your attaché case or your suit–

SGT FOOTE: Yes, Sir; yes, Sir.

MR. SIMMONDS: – briefcase.

SGT FOOTE: Yeah.

MR. SIMMONDS: Okay.

And if I go to your notes, I believe you indicated your notes made at 0825 on the 6th, you indicated that the pictures were taken within 15 minutes of you attending at the scene.

SGT FOOTE: Yeah, roughly.

MR. SIMMONDS: Roughly.

SGT FOOTE: Yeah.

MR. SIMMONDS: Okay. Now these pictures are important. To your knowledge nothing had been moved.

SGT FOOTE: Not to my knowledge, Sir.

MR. SIMMONDS: And you certainly – nothing was moved prior, while you were there –

SGT FOOTE: Not –

MR. SIMMONDS: – prior to taking these pictures.

SGT FOOTE: Not a thing.

MR. SIMMONDS: Not a thing.

If I could go to Photos 0008 – oh, I'm sorry, these are the confidential ones, but you do have them – and 0009. Those are the two. I want to go to C-0008 first if we could, Madam Clerk.

You have that photo up in front of you?

SGT FOOTE: Yeah, I do, Sir. Yes.

MR. SIMMONDS: Ms. Chaytor, is there – I've got it blocked with the thing so they can't see it. Okay. That's satisfactory, you can't see it between me and – that photo gives a very – how far were you away from the chair when you took that photo?

SGT FOOTE: A couple of feet.

MR. SIMMONDS: A couple of feet.

SGT FOOTE: A couple of feet, sorry.

MR. SIMMONDS: A couple of feet. No, I can – thank you.

That gives a – and as you said, nothing moved. Within 15 or 16 minutes of you getting there you take this photo and you're a couple of feet away from the chair. Correct?

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: Okay.

That photo shows the deceased in the chair, but it shows the chair in its positioning in relation to the wall.

MR. SIMMONDS: Okay.

MR. SIMMONDS: Does that photo, to your knowledge, accurately reflect what you saw yourself that day? And there is a reason for these questions with respect to the location of the chair.

SGT FOOTE: Yeah.

MR. SIMMONDS: Does that photo reflect what you saw?

SGT FOOTE: That's what I took and that's what I recall.

MR. SIMMONDS: Okay.

And you took another photo from – 0009, that was taken, I suspect, moments after the first one, or 0008. Yes, that's nine.

SGT FOOTE: Yeah. Yes, Sir.

MR. SIMMONDS: That photo appears that you stepped maybe a foot closer.

SGT FOOTE: Yeah, I'm probably in a foot or two and about a foot closer. Yes, Sir.

MR. SIMMONDS: A foot closer. And that again depicts the position of the chair, vis-à-vis the wall when you took it.

Now to your knowledge, at that point in time – the officers that were there before you were Corporal O'Keefe –

SGT FOOTE: Yes, Sir, and Constable Cox.

MR. SIMMONDS: Constable Cox and maybe Constable Downey, I believe.

SGT FOOTE: Maybe, yeah.

MR. SIMMONDS: Maybe Constable Downey.

Constable O'Keefe did not come back in the house with you. He came to the entrance, you went on in.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: And so you were sort of the guardian of the scene –

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: – with respect to the cats until other people arrived and then you told us officer, Staff Sergeant Conohan and Henstridge and Burke arrived.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: But up to that time that was the way you saw the scene when you got there.

SGT FOOTE: Yeah. Yes, Sir.

MR. SIMMONDS: Yes?

SGT FOOTE: Yes.

MR. SIMMONDS: That was the only five photos you took, though, was it?

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: And then you were asked, I think, to email those –

SGT FOOTE: To Corporal Burke.

MR. SIMMONDS: – to Corporal Burke to make them part of the file –

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: – at large.

I understand you did have conversations also – and again, I can refer you to your notes. But you had conversations, brief conversations because they both had concerns about the legality of turning in – turning evidence over, information over until they had received the proper release with the two doctors that you spoke to.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: And I believe both doctors were virtually saying the same thing. Paul – Dr. Walsh had been the doctor previously, hadn't been for the last few years, Dr. McGarry had. But both doctors had the same basic statements to you in the information they would give you –

SGT FOOTE: They did, Sir.

MR. SIMMONDS: – that there was no indication of mental illness and that there was no indication of violence or any trace that would appear to lead up to violence.

SGT FOOTE: Yes, Sir. They both said the same thing.

MR. SIMMONDS: They both said the same thing.

SGT FOOTE: Essentially, yes.

MR. SIMMONDS: Okay.

The last two areas I want to touch on with you, Office Foote; you were the, I'll call, the taskmaster. You were the person that was setting out the tasks; you were given instructions by either Staff Sergeant Osmond or Corporal Burke. And then you would put those on the computer and prepare the hard copies and you would assign officers to do those things.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: At some point in the investigation after a period of days, you assigned Constable Galway to go and collect the glasses that were at the scene in the house. Correct?

SGT FOOTE: I was asked to do that by either Sergeant Osmond or Corporal Burke. And then I –

MR. SIMMONDS: So this was past –

SGT FOOTE: Yes.

MR. SIMMONDS: I'm sorry; I didn't mean to cut you off.

SGT FOOTE: Sorry, Sir.

MR. SIMMONDS: This was passed on to you as an instruction –

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: – assign someone to do it.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: And you assigned Constable Galway to do that.

SGT FOOTE: Yes, because Sergeant Osmond said he's looking after the exhibits so get John to do it.

MR. SIMMONDS: Okay.

And you would expect if he's going to seize an exhibit, even if it is after the fact somewhat, that it would be properly seized, properly noted, information taken with respect to the seizure of it.

SGT FOOTE: I wasn't there, but I would expect.

MR. SIMMONDS: Okay.

Do you know if there are any notes existing with respect to that?

SGT FOOTE: Not off the top of my head, Sir, I don't.

MR. SIMMONDS: Okay. Was there any report back to you or anything you can recall putting in the file with respect to –

SGT FOOTE: I just remember Sergeant Osmond or Corporal Burke – again, I can't remember which one – said that John had the glasses.

MR. SIMMONDS: Had the glasses.

SGT FOOTE: Yeah.

MR. SIMMONDS: That was as much as – okay.

SGT FOOTE: I didn't have anything to do with any of the exhibits other than a couple of transports back and forth from headquarters to Holyrood.

MR. SIMMONDS: Because something like that, an exhibit seize, should have a particular protocol, be properly bagged, all of the things that would need –

SGT FOOTE: No, the exhibit custodian would do that, though, not the file coordinator.

MR. SIMMONDS: No, no, absolutely.

SGT FOOTE: Yeah.

MR. SIMMONDS: And proper notes made with respect to that.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: Okay.

Also I understand that on April 16, which is now 12 days, 11, 12 days after the event that people were – an officer was sent to Ms. Dunphy to get the cellphone – that was her father's cellphone. Do you recall that?

SGT FOOTE: Yeah, I recall that. I recall – I don't have my notes in front of me, but I do recall someone having to get the cellphone and I think I went and picked it up then at the Holyrood Detachment and took it to our tech crime guys at headquarters.

MR. SIMMONDS: And if I'm not mistaken, the cellphone was seized at the scene but there was a consent obtained but it wasn't obtained until the 16th at I think 11:50 in your notes, which came to us as a kind of a booklet for the notes from the April 14 to the May 22.

SGT FOOTE: Okay.

MR. SIMMONDS: Okay.

Corporal Burke requested I attend Holyrood to get – I think that's signed consent for Mr. Dunphy's cellphone. I'm sorry, I can't pick out the rest of it, but you did take care of that?

SGT FOOTE: I went and picked it up at the detachment in Holyrood and then drove it to headquarters in St. John's and handed it over to the Corporal there at tech crimes.

MR. SIMMONDS: Okay.

SGT FOOTE: Yes, Sir.

MR. SIMMONDS: Outside of what's set in your notes, were there any other information that we – with respect to this matter?

SGT FOOTE: No, Sir. No, Sir.

MR. SIMMONDS: Thank you very much. Those are the questions that I have.

THE COMMISSIONER: Thank you.

Mr. Kennedy.

MR. KENNEDY: Yes, thank you.

Commissioner, I have two or three questions. Again, I apologize but I wonder if (inaudible) Scene 044, it's a confidential exhibit, if that can be brought over.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: (Inaudible.)

The difficulty with, Commissioner, identifying the pictures in advance is that these last couple of pictures have arisen from the cross-examination by counsel.

THE COMMISSIONER: That's all right. You just have to put up with a little bit of wait, Mr. Kennedy, if –

MR. KENNEDY: Okay, thank you Commissioner.

THE COMMISSIONER: – our very efficient Clerk has not been given adequate notice.

MR. KENNEDY: Okay.

If you look at that picture there, that's one of the pictures taken by one of your identification people. Does that appear to be similar to what you saw on the date that you were there in the house, Sir?

SGT FOOTE: Yeah. That's was – I mean, I wasn't in there in front of him like that but that's what – yeah, that's the state the room was in. That's what the room looked like, yeah.

MR. KENNEDY: Okay.

And Sir, did you in your – when you notice anything unusual about the position of Mr. Dunphy's hands?

SGT FOOTE: Yeah, his hands are sitting on his sides as if he's holding something.

MR. KENNEDY: In fact, in your Supplementary Occurrence Report which you prepared – if I could have P-0235 brought up, please. This is Supplementary Occurrence Report prepared by yourself.

Okay, if you just stop there you'll see that you, this – it appears to me from what I can read here is that later that night you prepared this report, did you, and entered into your system?

SGT FOOTE: Yes, Sir.

MR. KENNEDY: And you'll see there in the last paragraph or the last couple lines in, under 1657, you're describing what you see inside the residence.

SGT FOOTE: Yep.

MR. KENNEDY: Okay. And then you go on, the last comment is there was shot gun – second-last sentence, there was shot gun on the floor in front of the deceased’s left foot with the barrel touching floor and the handle leaning on a plastic storage tub. Correct?

SGT FOOTE: Yes, Sir.

MR. KENNEDY: The deceased’s hands were by the sides of his legs and were positioned as if they were holding something.

SGT FOOTE: Yes, Sir.

MR. KENNEDY: When you looking at holding something, were you referring to the rifle?

SGT FOOTE: Well, the ways his hands were, that’s what it looked like; looked like he was holding a rifle, gun, shot gun, whatever; the rifle that was on the floor there.

MR. KENNEDY: Now, when we’ve talked about the re-enactments, Sir, you were present, Sergeant, at the first re-enactment.

SGT FOOTE: Yes, Sir.

MR. KENNEDY: But as you’ve indicated there was audio and video, so you weren’t paying as much attention as you normally would in terms of making contemporaneous notes.

SGT FOOTE: Well, there was six or seven other people there and it was being audio and video recorded. If we were just there without audio and video, we would have all been writing as it was going but because the audio and video was – the audio was the back up to the video and it didn’t happen; it didn’t work.

MR. KENNEDY: Okay.

SGT FOOTE: So then we were asked can you make notes of what you remember and what you saw. So that’s how it went down.

MR. KENNEDY: Yeah, if I could have just Exhibit P-0247 brought up for a second. If we go to the next page, please.

So if I read this correctly, Sergeant Foote, you’ll see a report time is April 8 at 8:30. Is that when the re-enactment took place?

SGT FOOTE: The re-enactment took place – no, it was in early afternoon on the 9th.

MR. KENNEDY: Okay. So when you have your report time at 8:30, that just indicates –

SGT FOOTE: Well, I was indicating that’s when the sequence of events started for that day leading up to the re-enactment.

MR. KENNEDY: Go back, please, to the top of the page. And then you’ll see that your entered time, it looks like you made the notes within 24, approximately 24 hours; a little more than 24 hours later.

SGT FOOTE: Yeah, it was the next day. Yes, Sir.

MR. KENNEDY: Okay. And you indicate there in your – if I could go down, please, a little bit, Madam Clerk, at 1322. You indicate that you were – you heard the majority of what Constable Smyth had to say.

SGT FOOTE: Yes, Sir.

MR. KENNEDY: However, due to small space and the number of people present inside, you observed very little of the re-enactment.

SGT FOOTE: I'm going to say I maybe saw a third of it.

MR. KENNEDY: Okay. And essentially – and this is just a caveat – that you did the best you could the next day to put your notes together, not expecting to have to make notes. And they may be in the right order but if they are, they're not – by accident.

SGT FOOTE: Yeah, they're probably not in the right order.

MR. KENNEDY: So this is not meant to be a full summary of everything that Constable Smyth said and did that day, is it?

SGT FOOTE: No, Sir.

MR. KENNEDY: Okay.

My last question for you, Sir, or the second – third – second-last question, actually. During your interview with Commission counsel you were asked at one point having regard to the state of the house – and I think you'd indicated it was the second-worst situation you'd ever entered –

SGT FOOTE: Yes, Sir.

MR. KENNEDY: – with the previous one being in Ontario.

SGT FOOTE: Yes, Sir.

MR. KENNEDY: You were asked by Commission counsel whether or not approaching that house for your personal – conducting a risk assessment for your personal safety, that although you would take it into account you were still going to enter the house anyway.

SGT FOOTE: Yes.

MR. KENNEDY: If you went there to do the job, you were going to do the job. Is that correct?

SGT FOOTE: One hundred per cent.

MR. KENNEDY: So what does the state of the house or disarray – how does that factor into your own personal risk assessment?

SGT FOOTE: Well, I was confident that Constable Cox and Constable O'Keefe – Corporal O'Keefe – had secured the house. So with regards to my own personal safety, I wasn't concerned at that point. With regards to the disarray of the house, I mean –

MR. KENNEDY: Yeah. No, the way it was put to you though, let me – perhaps I should read it to you, Sir. It wasn't about what you did on that day.

SGT FOOTE: Okay.

MR. KENNEDY: The way I read the question at – maybe you were talking about a different thing. But the way I read the question is at pages 158, 159 of your examination on November 30, there's discussion of were you – when you entered the house in Ontario was that, were you as a police officer?

SGT FOOTE: Yes, I was a police officer with the Peel Regional Police.

MR. KENNEDY: Okay.

So Ms. Chaytor said to you: As a police officer, if you showed up there and saw that house in the state that you saw it, would it be a factor in your risk assessment?

SGT FOOTE: It would.

MR. KENNEDY: Sergeant Foote says: With regards to my safety. Ms. Chaytor says: Well, if you're there to do a risk assessment. Sergeant Foote says: Well, I'm going to go in and speak to the person regardless of what the condition of the house was in.

SGT FOOTE: Uh-huh.

MR. KENNEDY: Ms. Chaytor says: And would it heighten or change your risk assessment? It would concern me that why would someone live in this mess and why would someone live in these conditions. That would be a concern of mine.

SGT FOOTE: It would be.

MR. KENNEDY: Yeah. So basically the question appeared to be, you know, a hypothetical situation, if you went to a house like you saw with Mr. Dunphy's would the state of the house cause you not to enter the residence.

SGT FOOTE: No, it wouldn't.

MR. FREEMAN: Mr. Commissioner, excuse me, just interrupt for a second. There are some questions like that that you'll find in the discoveries with Commission counsel where we were being quite liberal with allowing questions for educational purposes, hypothetical questions and I just ask you to take note of, you know, what weight you want to give to that in this context.

THE COMMISSIONER: Yes, I'm not sure what the – what do you see as the relevance, Mr. Kennedy.

MR. KENNEDY: Well, Commission counsel seemed, in my interpretation, suggesting to Constable Smyth that when he saw the state of that house or that's a factor, he should have turned around and went back as opposed to –

THE COMMISSIONER: Well, I think it was suggested as one element in the risk assessment.

MR. KENNEDY: So this (inaudible) –

THE COMMISSIONER: Mr. Freeman, what is your concern about that?

MR. FREEMAN: My concern is that there are hypothetical questions like this put to some of the officers at discovery where there may a semblance of relevance or a hypothetical where we

were hoping to help Commission counsel especially to educate themselves on certain things; where this member is there for a different purpose and really the risk assessment in a hypothetical scenario or a risk assessment that he might have done in Ontario, really what he's being asked for here is opinion evidence as to what he would have done had he approached the Dunphy house and so that's – I'm just concerned that, the use of that–

THE COMMISSIONER: Well, it seems to me that it's a bit of common sense and possibly some opinion evidence from an experienced police officer. Although not one necessarily with a lot of training in risk assessment, as I understand, and I don't want to downplay your skill but –

SGT FOOTE: Sir, every home I go to, regardless of what the situation is, I look at the house, I survey the property. That's just built in right now and that's not gonna stop –

THE COMMISSIONER: No, I don't see it –

SGT FOOTE: – me from speaking to someone or going into (inaudible) –

THE COMMISSIONER: Yeah, I appreciate your point, but I don't see it as a serious thing. Sorry, Mr. Freeman, go ahead; I didn't mean to cut you off.

MR. FREEMAN: No, thank you, Mr. Commissioner. I just want to note that I just get concerned about the possibility of each member being asked to walk through hypothetically what they would have done and what their risk assessment would have been in this particular scenario.

THE COMMISSIONER: Well, again, yeah, that's been raised; one of the other counsellors raised it earlier on. I think Mr. Williams raised it in terms of if the family was being interviewed, I understand. Although I don't think he raised it since. In terms of, well, you have to address your questions, keeping in mind the purpose for which the witness was called. And I don't think the rules of evidence would restrict if an experienced police officer such as Sergeant Dion – I'm sorry, Sergeant Foote, was called. I don't see that there's any restriction on counsel getting his opinion as somebody who has had some experience in the area.

Is there an area of law that I'm not – that I'm missing there, Mr. Freeman?

MR. FREEMAN: No, Mr. Commissioner, I certainly don't mean to belabour it and if – I have every confidence that Corporal Foote can answer questions about risk assessments, no doubt. I just, I – police officers tend to straddle this line between expert and non-expert and he's not here as an expert and he is giving an opinion, but certainly he can talk about his experience.

THE COMMISSIONER: Right, but he's, but he's – I'm, I think I'm entitled to allow in opinion evidence from individuals who may not have had training in it but have had experience in risk assessment. And I would think that the length of Sergeant's – Sergeant Foote's work with the RCMP and his personal involvement in sites, such as the one in Ontario, would give him, I think, a basis upon which I could accept his testimony. But I don't think it's going – I don't see the future of the hearing going in that direction very much unless I'm missing something.

MR. KENNEDY: No, Commissioner –

MR. FREEMAN: Thank you, Mr. Commissioner. That's fine.

MR. KENNEDY: Sorry, I didn't, I didn't really – all I'm doing is raising an issue. If it's one factor, as you pointed out –

THE COMMISSIONER: Right.

MR. KENNEDY: – raised by Commission counsel, it's not a big issue.

THE COMMISSIONER: Right.

MR. KENNEDY: I don't need to belabour it.

The last issue I want to deal with, if we could have P-0244 brought to the screen, please. This is a Supplementary Occurrence Report that's prepared by you – It appears to be entered, anyway, on April 15, 2015, Sergeant.

It appears that on April 15 yourself and Corporal Burke attended the residence of retired Justice Riche to drop off disclosure.

SGT FOOTE: Yes, Sir.

MR. KENNEDY: How many binders or what was – do you know what information was provided to Justice Riche on that date?

SGT FOOTE: It was a big package of materials. But to say how many binders, off the top of my head, Sir, I couldn't tell you.

MR. KENNEDY: Did you give him everything that you had –

SGT FOOTE: Everything I had up to that point.

MR. KENNEDY: Okay.

The next – then you'll see on May 1 – so it looks to be a couple of weeks later – the second lot of disclosure for Mr. Riche is completed. So then that's requesting a due date extension, it's –

SGT FOOTE: Yes, Sir.

MR. KENNEDY: You need more time. Is that correct?

SGT FOOTE: Yeah.

MR. KENNEDY: On May 7 you went with Corp – Constable Nippard and –

SGT FOOTE: No. That's –

MR. KENNEDY: Oh.

SGT FOOTE: Corporal Burke went with – that's Corporal Burke's documentation now at the bottom of my supplementary report.

MR. KENNEDY: Oh –

SGT FOOTE: He's the primary investigator so he's the supervisor.

MR. KENNEDY: Okay.

SGT FOOTE: So he's writing now that he updated that supplementary report.

MR. KENNEDY: Okay.

So just so I understand it correctly, you attended at the first – or at one visit –

SGT FOOTE: Yes, Sir.

MR. KENNEDY: – to drop off materials. Then on the May 7 entry, it's actually Corporal Burke who's now entering – who's supplementing this report.

SGT FOOTE: Yes.

MR. KENNEDY: Okay.

SGT FOOTE: Because as a supervisor, the primary investigator, he's documenting on the reports as well, concluding tasks and whatnot throughout the program.

MR. KENNEDY: And there were four binders of materials delivered, including previously disclosed material.

SGT FOOTE: There was a lot of material.

MR. KENNEDY: Yeah.

On the first date that you met, yourself and Corporal Burke met with retired Justice Riche, was there any discussion as to the role that Justice Riche was expected to play?

SGT FOOTE: We were chatting about some unrelated stuff not even related to this, briefly, just kind of chit-chatting about stuff. He did – yeah, you know what, he said something along the lines: I have to go through all this material to ensure that, you know, the investigation was done appropriately yet. I'm not investigating what happened down in Mitchells Brook, I'm investigating the investigation – I'm reviewing the investigation –

MR. KENNEDY: Okay.

SGT FOOTE: Something along those lines.

MR. KENNEDY: Okay. So did you make any notes of what Justice Riche said or did it mean anything at that point?

SGT FOOTE: No, Sir. We were just handing over documentation –

MR. KENNEDY: Okay.

SGT FOOTE: – and just kind of bantering back and forth.

MR. KENNEDY: So what he said to you was that he wasn't investigating what happened in Mitchells Brook but he was investigating –

SGT FOOTE: But he was investigating – he was overviewing, giving oversight to our investigation.

MR. KENNEDY: Did he use the word that he was investigating the investigation?

SGT FOOTE: No, I think that was a bad choice of words on my part.

MR. KENNEDY: Okay (inaudible).

SGT FOOTE: I think it was.

MR. KENNEDY: Okay. Thank you very much, Corporal – Sergeant.

SGT FOOTE: Yeah.

THE COMMISSIONER: Ms. Zdebiak, go ahead when you're ready.

MS. ZDEBIAK: Thank you very much, Mr. Commissioner.

Sergeant Foote, I'm Wendy Zdebiak representing the RNC. I just have a few brief questions for you this afternoon.

SGT FOOTE: Absolutely.

MS. ZDEBIAK: Just reviewing about the questions you were asked in terms of your training.

SGT FOOTE: Uh-huh.

MS. ZDEBIAK: In particular, you were asked about any training that you had in the past that involved the RNC as well as the RCMP?

SGT FOOTE: Yes.

MS. ZDEBIAK: And you noted that when you were with the Public Order Unit for, I think you said, six years.

SGT FOOTE: Yeah, it was five to six years. Yeah.

MS. ZDEBIAK: And you said over that period of time there were approximately two to three times you had training with the similar unit with the RNC?

SGT FOOTE: Yes, Ma'am, probably 25 to 30 members from the RNC Public Order Unit.

MS. ZDEBIAK: And this was – what years did this span approximately?

SGT FOOTE: Probably between 2007 to 2013, maybe even '14.

MS. ZDEBIAK: And you didn't work with that other unit though.

SGT FOOTE: No.

MS. ZDEBIAK: It was just a matter of –

SGT FOOTE: We had a couple of days of scenarios and training together.

MS. ZDEBIAK: Okay. Okay.

SGT FOOTE: But we never worked together.

MS. ZDEBIAK: And you also noted that you had completed some DataMaster training with the RNC in 2005 and 2006?

SGT FOOTE: Yeah, it was a course offered at RCMP headquarters and there were three or four RNC members there as well.

MS. ZDEBIAK: Okay.

And it's like a daylong type course, is it?

SGT FOOTE: It was a week –

MS. ZDEBIAK: A week-long – oh, I'm sorry.

SGT FOOTE: It was a two-week-long course.

MS. ZDEBIAK: Oh, okay, two-week long course.

SGT FOOTE: Yes, Ma'am.

MS. ZDEBIAK: Thank you.

And you also indicated you were not indicated in joint forces operations with the RNC?

SGT FOOTE: No, Ma'am.

MS. ZDEBIAK: So you've just noted this training.

SGT FOOTE: Yeah.

MS. ZDEBIAK: And also in your background you talked about your experience with Peel Regional Police.

SGT FOOTE: Yeah, I worked six years in Peel Regional Police.

MS. ZDEBIAK: So that's of course a provincial police force?

SGT FOOTE: It's a city –

MS. ZDEBIAK: Oh, city police –

SGT FOOTE: – municipal police –

MS. ZDEBIAK: Okay.

SGT FOOTE: – policing Mississauga –

MS. ZDEBIAK: Okay.

SGT FOOTE: – Brampton and the community of Snelgrove, just north of Brampton.

MS. ZDEBIAK: Thank you.

THE COMMISSIONER: Lots of business there I hear.

SGT FOOTE: Busy, busy.

MS. ZDEBIAK: I'm sure it is busy, yes.

Now, I wonder if you could speak, you know, given that you've had experience in different jurisdictions and with different police forces –

SGT FOOTE: Uh-huh.

MS. ZDEBIAK: – in this case, about RCMP training nationally. Like for instance, in other jurisdictions are you aware of whether there is joint training between, well, I guess, in your personal experience, municipal police forces and RCMP and/or provincial police forces and the RCMP (inaudible).

SGT FOOTE: When I was with Peel Regional Police I took a course in Mississauga with the RCMP and Toronto Police.

MS. ZDEBIAK: Okay.

SGT FOOTE: All three police forces were represented.

MS. ZDEBIAK: And are you aware of this type of training generally, like this joint training between RCMP and other provincial or municipal police forces, generally, other than even your personal involvement?

SGT FOOTE: Yeah, I think it happens quite regularly.

MS. ZDEBIAK: So it's not, it's fair to say that's not unusual on a sort of national basis?

SGT FOOTE: No, that happens across the entire country, as far as I know.

MS. ZDEBIAK: And also in terms of training, you were asked if you received any training in investigations of police use-of-force incidents.

SGT FOOTE: Uh-huh.

MS. ZDEBIAK: And you indicated you hadn't received that specific type of training. Now, do you know if that type of training exists?

SGT FOOTE: I don't even think it does. I mean, how often do you deal with something like this? I mean, it's so rare –

MS. ZDEBIAK: Right.

SGT FOOTE: I don't even think there's a specific course for that.

MS. ZDEBIAK: Okay.

SGT FOOTE: I mean, if you're trained in investigating major files like double robberies and suicides where people might jump in front of a train or whatnot – I've been involved in those kind of files –

MS. ZDEBIAK: Sure.

SGT FOOTE: – so I've worked major files before.

MS. ZDEBIAK: Right, right.

SGT FOOTE: I haven't specifically worked a homicide, as a critical role in the homicide investigation, but I've worked a plethora of major files over my 18-year career so –

MS. ZDEBIAK: Of course, yes.

SGT FOOTE: Yeah.

MS. ZDEBIAK: And your basic training I would suggest to you as an officer –

SGT FOOTE: Uh-huh.

MS. ZDEBIAK: – in terms of use of force, you know, your ability to use force, your authority to use force, that would give you that ground –

SGT FOOTE: Yeah, absolutely.

MS. ZDEBIAK: Is that, would that be fair?

SGT FOOTE: Absolutely.

MS. ZDEBIAK: Yeah, so you have that background knowledge as well as the experience and training basic investigative skills?

SGT FOOTE: Absolutely.

MS. ZDEBIAK: Thank you very much, Sergeant Foote.

Those are all my questions for you.

SGT FOOTE: Thank you.

THE COMMISSIONER: So no further questions, Sergeant Foote. Thank you very much, Sergeant.

UNIDENTIFIED MALE SPEAKER: That's okay, no redirect from us.

THE COMMISSIONER: Oh, I missed it.

UNIDENTIFIED MALE SPEAKER: I actually have no redirect, so you read my mind.

THE COMMISSIONER: All right, sorry about that.

UNIDENTIFIED MALE SPEAKER: Thank you.

MR. SIMMONDS: And I just – it is, the –

THE COMMISSIONER: I'm too fast for you, okay, go ahead, Mr. Simmonds.

MR. SIMMONDS: It is our understanding that course does exist. There's a course in the US with respect to this very issue of – it may not be in Canada. And to be fair to the officer, he doesn't know of it, but that's not to say it does not exist.

THE COMMISSIONER: It may be of interest to me on phase two.

MR. SIMMONDS: Certainly, fair enough.

THE COMMISSIONER: Thank you, Sergeant. You're excused, I believe.

SGT FOOTE: Thank you, Mr. Commissioner.

Thank you.

THE COMMISSIONER: Okay, is that – are we finished. Do you have another witness –

MS. O'BRIEN: Not for today, Commissioner.

THE COMMISSIONER: Not for today, okay.

So we'll recess until 9:30 tomorrow morning.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.