



COMMISSION OF INQUIRY
RESPECTING THE DEATH OF DONALD DUNPHY

Transcript

Volume 11

Commissioner: Honourable Justice Leo Barry

Friday

27 January 2017

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry opened.

Commissioner Leo Barry presiding.

Please be seated.

THE COMMISSIONER: Good morning.

Ms. O'Brien, you can go ahead when you're ready.

MS. O'BRIEN: Thank you, Commissioner.

Our first witness this morning is Rochelle Nolan. And I'm going to ask that Madam Clerk affirm her.

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

MS. NOLAN: Yes, I do.

MS. SHEEHAN: State your full name, please.

MS. NOLAN: Rochelle Maureen Nolan.

MS. SHEEHAN: Thank you.

THE COMMISSIONER: Good morning, Ms. Nolan.

MS. NOLAN: Good morning.

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

I know we've met before but I'm Kate O'Brien, one of the co-counsel for the Commission of Inquiry. Before we begin with your evidence, I'm going to ask that the Commissioner enter a couple of exhibits.

Commissioner, I'd ask that you enter P-0303 and P-0387 please.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

Ms. Nolan, what community do you live in?

MS. NOLAN: Mitchells Brook.

MS. O'BRIEN: And how long have you lived in the house that you live in now in Mitchells Brook?

MS. NOLAN: Approximately 13 years.

MS. O'BRIEN: And I understand you are a next door neighbour of Mr. Donald Dunphy. Is that right?

MS. NOLAN: Yes.

MS. O'BRIEN: And is it fair to say that your house was on the other side of Mr. Dunphy's house? Then, Dick and Debbie Dunphy were on one side of him and you were on the other side of him.

MS. NOLAN: Yes, there's a meadow in between myself and Mr. Dunphy.

MS. O'BRIEN: Okay. So yeah, approximately how would you estimate the distance between your house and Mr. Dunphy's house?

MS. NOLAN: Probably 200 feet, 300. I'm not sure.

MS. O'BRIEN: Would there be enough space there, say, for another building lot –

MS. NOLAN: Oh god, yes.

MS. O'BRIEN: – for another house? Okay.

And are you – I know you just described it as a meadow between the two houses. Would there be a clear line of sight? For example, if you were at your property and you were looking over at Mr. Donald Dunphy's property would you be able to see?

MS. NOLAN: No, there's trees there actually.

MS. O'BRIEN: Okay. How long had you known – at the time of his passing, how long had you known Mr. Dunphy?

MS. NOLAN: Basically, since I moved to Mount Carmel around 23 years ago.

MS. O'BRIEN: Okay. So you lived in Mount Carmel for a while before you moved into the house that you're currently in.

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. And, you know – well, I'll take you up now just to talk about the time just prior to your moving next door to him, but during that period of time when you first moved to Mount Carmel, how well did you know Mr. Dunphy?

MS. NOLAN: Just in passing. Like, speak to him at the store, or waving to him on the road, or.

MS. O'BRIEN: Okay. Would you have considered yourselves friends? Or would you've considered him a friend or more of an acquaintance?

MS. NOLAN: An acquaintance, I guess.

MS. O'BRIEN: Okay. And did you –

MS. NOLAN: But everybody is friends in Mount Carmel, so.

MS. O'BRIEN: Okay. Did you know his wife?

MS. NOLAN: Briefly.

MS. O'BRIEN: Okay. And did your relationship with him change when you moved next door to him about 13 years ago?

MS. NOLAN: No.

MS. O'BRIEN: So would he – would you have visited his house?

MS. NOLAN: I did on one occasion, actually.

MS. O'BRIEN: And what was that for?

MS. NOLAN: I was having trouble with my phone and I asked could I use his phone so I could get mine repaired.

MS. O'BRIEN: Okay. And approximately how long ago was that?

MS. NOLAN: Oh, 11 years maybe, 12.

MS. O'BRIEN: Okay. So is that the only time you would have visited his house?

MS. NOLAN: Yes.

MS. O'BRIEN: Would he ever come over and visit yours?

MS. NOLAN: No.

MS. O'BRIEN: Okay. So although you were neighbours you weren't back and forth.

MS. NOLAN: No.

MS. O'BRIEN: Okay. Would you ever do anything together, you know, get together and –?

MS. NOLAN: No.

MS. O'BRIEN: Okay. How often would you talk to Mr. Dunphy?

MS. NOLAN: Every time you'd see him at the store he'd always ask how the young ones were, how my husband was doing, was he still working away, how's everything going?

MS. O'BRIEN: So just when you ran into him in the community?

MS. NOLAN: Yeah.

MS. O'BRIEN: And approximately how often would you run into him in the community?

MS. NOLAN: Three or four times a week, probably.

MS. O'BRIEN: Okay.

MS. NOLAN: Wave to him passing by in the car or –

MS. O'BRIEN: Okay.

MS. NOLAN: – walking by his yard, stop and have a quick chat.

MR. O'BRIEN: Now, we know Dick and Debbie Dunphy are also there in the neighbour. Would they be friends of yours or would they also be more of a, you know, neighbourhood acquaintance?

MS. NOLAN: Neighbourhood acquaintance.

MS. O'BRIEN: And did you know any of Mr. Dunphy's other siblings?

MS. NOLAN: Not – just, again, to say hello. And his daughter Meghan, of course; I knew her.

MS. O'BRIEN: Okay.

Now you mentioned your husband, and Mr. Dunphy might ask about your husband. Would your husband have had a relationship with Mr. Dunphy that was any different than yours?

MS. NOLAN: Not since we moved there. Maybe back in the early days when they were playing ice hockey or something.

MS. O'BRIEN: Okay. So they might have played hockey together years ago.

MS. NOLAN: Years ago.

MS. O'BRIEN: Okay.

But now, you know, in the past 13 years when he was Mr. Dunphy's neighbour, you know, would they get together any more frequently or would – for your husband would be the same thing as you seeing him around the community saying hello to him?

MS. NOLAN: Yes, yeah.

MS. O'BRIEN: The same thing, okay.

MS. NOLAN: The same thing.

MS. O'BRIEN: Okay.

How would you describe Mr. Dunphy?

MS. NOLAN: Quiet. He didn't socialize a whole lot. I don't – not that I know of. Well mannered, a gentleman for the most part. Friendly.

MS. O'BRIEN: Pardon?

MS. NOLAN: Friendly.

MS. O'BRIEN: Friendly.

So did the two of you get along?

MS. NOLAN: Yes, for the most part.

MS. O'BRIEN: For the most part. Okay. Did you ever have any disagreements or disputes?

MS. NOLAN: Once.

MS. O'BRIEN: Okay. So can you tell us about the once you had a disagreement or dispute?

MS. NOLAN: My children were over on the opposite side of his house on the road trying to get a kitten up off the side of the road and Donnie got a little bit upset with him. So they came home crying and I went over and spoke to him about it. We had a few words and that was it; all was well.

MS. O'BRIEN: Okay. So approximately how many years ago was this?

MS. NOLAN: Nine.

MS. O'BRIEN: So you had children and they were out playing you said across the road, so toward – on the water side of the road?

MS. NOLAN: Yes.

MS. O'BRIEN: Is that right, and so they were there with the kitten?

MS. NOLAN: Trying to get one of the kittens up clear of the water.

MS. O'BRIEN: Okay, and Mr. Dunphy saw them?

MS. NOLAN: Yep.

MS. O'BRIEN: And he came over and got upset with them, is that the idea?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. And so they came home to you –

MS. NOLAN: Yep.

MS. O'BRIEN: – upset, and so what did you do when your children came home upset because Mr. Dunphy got –

MS. NOLAN: Well, I went over and asked him what his problem was –

MS. O'BRIEN: Okay.

MS. NOLAN: – and he said they got no business over here. It's private property and whatnot. I said, Donnie, they were only trying to save the kitten; they thought he was going to go in the water. And I said, well, there was no need to getting upset with them, but that's it.

MS. O'BRIEN: Now when you're having that discussion with Mr. Dumpy, was he upset? You know was his voice raised? Was he expressing –

MS. NOLAN: Well yes, because I guess he thought a lot of his kittens too and thought that they were going to hurt them.

MS. O'BRIEN: Okay, and were you upset? Was your voice raised?

MS. NOLAN: Yes, 'cause he raised his voice at my children, which natural instinct.

MS. O'BRIEN: Okay, so you had a bit of a standoff with him there.

Did he say anything threatening to you at that time or did he say anything threatening to your children?

MS. NOLAN: No.

MS. O'BRIEN: And did you say anything threatening to him?

MS. NOLAN: No.

MS. O'BRIEN: Okay. And how long did this interaction last with Mr. –

MS. NOLAN: A couple of minutes, that's all.

MS. O'BRIEN: And when you ended it, did you just end up by you just going back to your property, him going back to his –

MS. NOLAN: Yes.

MS. O'BRIEN: – sort of thing? Okay. Did it ever come up between the two of you again?

MS. NOLAN: Never. We'd meet one another on the road or at the store and hi, how are ya.

MS. O'BRIEN: So you went right back –

MS. NOLAN: Oh, yes.

MS. O'BRIEN: – to your usual routine with him?

MS. NOLAN: Yep.

MS. O'BRIEN: Okay. Did you warn your children after that? Give them any warnings about Mr. Dunphy?

MS. NOLAN: I just told them not to go over around there. They got no business over there.

MS. O'BRIEN: At any other time, did you know Mr. Dunphy to get angry or upset or to into a confrontation with anyone?

MS. NOLAN: No.

MS. O'BRIEN: Did you ever hear Mr. Dunphy threaten anyone?

MS. NOLAN: Never.

MS. O'BRIEN: And did you ever see him act violently?

MS. NOLAN: Never.

MS. O'BRIEN: Okay. Did you ever hear him threaten violence?

MS. NOLAN: Never.

MS. O'BRIEN: Okay. And other than that one, did you ever have any other disputes between the two of you?

MS. NOLAN: Nope.

MS. O'BRIEN: Okay. Did you feel that Mr. Dunphy had propensity for violence –

MS. NOLAN: Never.

MS. O'BRIEN: – a tendency for violence?

So you have to answer the question, sorry. Did you ever feel that he had a propensity for violence or a tendency towards violence?

MS. NOLAN: No.

MS. O'BRIEN: No.

Okay, I'm just going to take you to – I know you were interviewed by the RCMP. Is that right?

MS. NOLAN: Yes.

MS. O'BRIEN: All right. I'm just going to take you just to a section of your transcript there. I'll ask Madam Clerk to please bring up P-0387. And, Madam Clerk, I want to go to page 21 of the exhibit, please. Thank you, and if you could just make it a little bigger there. That's great. Thank you very much.

I'm just going to read over, Ms. Nolan, just a couple of lines from your interview with the RCMP that was transcribed and I'm just going to ask you to give me a little bit more detail and tell me what you meant by them, okay?

MS. NOLAN: Okay.

MS. O'BRIEN: So here we see Constable Nippard was the RCMP officer who interviewed you. Do you remember that?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. So he said: Okay, did you take him for someone who could be violent? And you said: Ah, when he came, when I went over to speak with him, um, about coming, scaring the crap out of my oldest son. Well, when he came face to face with me, literally face to face, I'm thinking, yeah, I warn my children not to go handy because I'm thinking he could lose it at any time.

Oh, sorry, that's not you speaking there; he could lose it at any time. That's not you, but I'm thinking – here's you – he's burnt. I'm thinking that there's that much drugs in his system that he's probably paranoid.

And I understand the lines here that I'm pointing to, who here – the first initial has been blanked out, that's not you speaking in this case.

So I'm just going to ask you, Ms. Nolan, when you're talking about this and you, you said he's, I'm thinking – you were asked, you were asked directly, the question you were asked directly:

Did you take him for someone who could be violent? And that's the answer that you gave, including the words: he's burnt.

Can you just explain to us, to the Commissioner here today, what did you mean by that?

MS. NOLAN: It's basically just slang and I was getting flustered at this time, but –

MS. O'BRIEN: Who – what was getting you; what was making you flustered?

MS. NOLAN: Just talking about that incident.

MS. O'BRIEN: Okay. Having to talk to the police officer about the incident with the kittens?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. So you're just using slang.

I mean here, the question is here were you telling the police officers that you thought he could be violent?

MS. NOLAN: It wasn't supposed to come out that way, but again I was getting flustered. And he was pretty upset that day, as was I, thinking the children were going to hurt his kittens. So that's like hurting one of my children.

MS. O'BRIEN: Okay.

MS. NOLAN: I'd be just as angry.

MS. O'BRIEN: But, still, you're saying no concern that he'd be violent.

MS. NOLAN: No.

MS. O'BRIEN: Is that what you're saying?

Thank you, Madam Clerk. That's my questions on that exhibit.

What kind of state or condition was Mr. Dunphy's property in?

MS. NOLAN: Rundown, maybe; unable to do for himself of course.

MS. O'BRIEN: And we understand that he had a number of cats around the property.

MS. NOLAN: Yes.

MS. O'BRIEN: Was that ever a sore point between the two of you? All – like all the cats being around or the state of his property, did that ever come up between the two of you?

MS. NOLAN: No, not between the two of us. I'd get upset when they'd come over in my yard.

MS. O'BRIEN: The cats?

MS. NOLAN: Yeah.

MS. O'BRIEN: Did you ever raise that with Mr. Dunphy –

MS. NOLAN: No.

MS. O'BRIEN: – the cats coming over in your yard?

MS. NOLAN: The only way to control them was to tie 'em on and you can't tie on a cat.

MS. O'BRIEN: Okay.

Prior to Mr. Dunphy's death, did you know anything about his dispute or his frustration with WorkplaceNL or Workers' Compensation?

MS. NOLAN: Just that he was frustrated – listening to him on *Open Line* a scattered time.

MS. O'BRIEN: So you heard him on the *Open Line*, did you?

Is it any – ever something that you spoke to him about directly?

MS. NOLAN: No, not that I can recall.

MS. O'BRIEN: Okay.

Did you follow him on Twitter?

MS. NOLAN: No.

MS. O'BRIEN: And we've seen some testimony that he had a sign up on his house, you know, a Workers' Compensation poverty house. Do you, do you – did you know about that sign?

MS. NOLAN: I knew there was a sign, but I didn't know what was on it.

MS. O'BRIEN: Okay. And how would you have known there was a sign.

MS. NOLAN: You could see it on the front of the house.

MS. O'BRIEN: So – what, on the road?

MS. NOLAN: Yeah.

MS. O'BRIEN: Okay.

MS. NOLAN: When you were walking past.

MS. O'BRIEN: Okay.

Did you know if Mr. Dunphy had friends who would visit him regularly?

MS. NOLAN: The only one that I really saw there actually was Colin Dinn.

MS. O'BRIEN: Okay. And how would you know Colin Dinn was there?

MS. NOLAN: Well, Colin Dinn's vehicle.

MS. O'BRIEN: His vehicle. So you'd see Colin Dinn's vehicle in the driveway, is that what you're saying?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay.

Now, I'm just going to take you to April 5, 2015, Ms. Nolan, and I'm going to ask you: Did you see anything unusual around Mr. Dunphy's property that day?

MS. NOLAN: Before the cop showed up?

MS. O'BRIEN: Yes.

MS. NOLAN: No.

MS. O'BRIEN: Okay. And then tell us about the cop showing up.

MS. NOLAN: Well, that was after everything was after happening of course, but there was a vehicle parked in front of my house before all this went down. And my oldest son said, Mom, that's a cop vehicle and I said it's not, b'y. He said yes it is. I said no. He said yeah it is. I said – anyway, we argued back and forth for a couple of minutes and he said, yeah it is. I said oh well. I said what do he want. What are you after doing I said?

MS. O'BRIEN: Okay.

MS. NOLAN: Joking with him.

MS. O'BRIEN: When – you came in and did an interview with us prior to your giving your testimony here today. And on that day you did a bit of a drawing for Ms. Chaytor and I. Do you recall that?

MS. NOLAN: Yeah.

MS. O'BRIEN: I'm going to bring that up because it may help us go through this evidence.

MS. NOLAN: Sure.

MS. O'BRIEN: I'm asking, Madam Clerk, to bring up P-303, please.

So can you – do you know approximately what time your son saw what he believed to be a undercover police vehicle in front of the house?

MS. NOLAN: That was around 20 after 1.

MS. O'BRIEN: Okay.

MS. NOLAN: Because we were just cleaning up from Easter Sunday dinner, actually.

MS. O'BRIEN: Now, I'm going to ask you, Madam Clerk, to make it a bit smaller so people can see the exhibit.

And is it possible to rotate the exhibit? Maybe I can do that – and maybe I can't.

Okay. Maybe we don't have that ability but okay.

So this is – and, Ms. Nolan, I’m going to take you through this just to – you can just make sure that I’m understanding correctly. So what I understood you to be drawing – this right here – this box right here with “Mine” on it represented your house.

MS. NOLAN: My property, yeah.

MS. O’BRIEN: Okay, your house– okay, your property. And here I understood this was the window. So you were showing your kitchen window here.

MS. NOLAN: Yes.

MS. O’BRIEN: And was it through that window that you and your son saw the vehicle?

MS. NOLAN: Yes.

MS. O’BRIEN: Okay.

And here you drew your driveway and then you indicated the meadow.

MS. NOLAN: Yeah.

MS. O’BRIEN: And then over here you indicated Donnie Dunphy’s house, Mr. Dunphy’s house. And I think this you indicated to be his driveway.

MS. NOLAN: Yes.

MS. O’BRIEN: Okay.

So at around 1:20 you’re saying you were just finishing your Easter dinner lunch?

MS. NOLAN: Yeah.

MS. O’BRIEN: Okay. And your son noted a vehicle outside the window.

MS. NOLAN: Yes.

MS. O’BRIEN: Okay.

And I understand – I’ve lost my mouse – I understand, I think it was you initially drew it here, then you crossed that off, I think, and put it up here so that it was kind of directly in front of your window. Is that right?

MS. NOLAN: Well, it was back a little bit from the window.

MS. O’BRIEN: Back a little bit from their windows but approximately in this area on the road?

MS. NOLAN: Yes.

MS. O’BRIEN: Okay.

And so your son thought it was a police vehicle?

MS. NOLAN: Yes.

MS. O'BRIEN: And how – why did he think it was a police vehicle?

MS. NOLAN: He could tell by the wheels.

MS. O'BRIEN: He could tell by the wheels. Okay.

THE COMMISSIONER: Tell by the what?

MS. NOLAN: The wheels.

MS. O'BRIEN: Okay. And how long – was the vehicle stopped there?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. And how long was it stopped there?

MS. NOLAN: Roughly about 15 minutes, give or take five minutes or so.

MS. O'BRIEN: Okay. Could you see anyone in the vehicle?

MS. NOLAN: Whoever was driving.

MS. O'BRIEN: So you could see there was a driver there?

MS. NOLAN: Yeah.

MS. O'BRIEN: Could you see any details of the driver? For instance, could you tell if it was a man or a woman or any – any details?

MS. NOLAN: A man.

MS. O'BRIEN: Okay, anything else that you remember?

MS. NOLAN: It looked to me like he had a softball hat on but –

MS. O'BRIEN: Looked like he had a softball –

MS. NOLAN: I'm not sure, yeah.

MS. O'BRIEN: But you're not sure. Okay.

Were you able to tell what he was doing?

MS. NOLAN: I assumed he was on the phone because he had his hand up, kind of like this, leaning on the door.

MS. O'BRIEN: Okay.

MS. NOLAN: And I assumed that's why he was stopped there. I just figured it was somebody – I said (inaudible) on the phone.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Was he in the vehicle when you say he was leaning on the door?

MS. NOLAN: Yes.

THE COMMISSIONER: So he was inside and you're, you're –

MS. NOLAN: Like this.

THE COMMISSIONER: – demonstrating with your left arm on the witness box that his elbow would have been on the driver's window side. Is that correct, on the window?

MS. NOLAN: From what I can remember, yes.

THE COMMISSIONER: With the window down?

MS. NOLAN: No, up.

THE COMMISSIONER: Window up? Okay.

MS. O'BRIEN: Did you ever see him get out of the vehicle?

MS. NOLAN: No.

MS. O'BRIEN: And do you recall whether the vehicle was running or if it was stopped?

MS. NOLAN: It was running.

MS. O'BRIEN: And for that period of time that he was there – you said 15 minutes plus or minus five either way – were you watching him the full time or were you going about your business in the kitchen?

MS. NOLAN: Well, I was going about my business putting dishes away and over in the sink and trying to clean up after dinner.

MS. O'BRIEN: What colour was the vehicle?

MS. NOLAN: Dark, black.

MS. O'BRIEN: Okay.

And other than your son thought it had wheels that made it look like an undercover cop car, do you recall anything else about it, like what shape it was or would you even know make, model, those kind of details?

MS. NOLAN: No. It looked like a black double-cab pickup with a black cap on the back. Or a single cab, can't really recall exactly.

MS. O'BRIEN: So it looked like a pickup truck either double or single cab with a black cap over the back of the pickup truck area.

MS. NOLAN: Yeah. Yes.

MS. O'BRIEN: Okay.

And when you said around 1:20 or so, is that – would that have been the time you first saw the vehicle or you're estimating you first saw the vehicle?

MS. NOLAN: That's approximately the time he stopped there.

MS. O'BRIEN: Okay.

Did you see the vehicle when it left?

MS. NOLAN: Moved on, yeah.

MS. O'BRIEN: Okay. Where did it go?

MS. NOLAN: Up the road towards Donnie's.

MS. O'BRIEN: Okay. And did you notice anything about, else about it? Did you see it doing anything else?

MS. NOLAN: It slowed down before Donnie's driveway because there's a little upgrade before – after my place and before you get to Donnie's.

MS. O'BRIEN: Okay.

When it slowed down, like, could you see the brake lights?

MS. NOLAN: Yes.

MS. O'BRIEN: So you could see the brake lights activated?

Did you see it turn into Donnie's driveway?

MS. NOLAN: No because the trees are right there.

MS. O'BRIEN: So if it had turned into Mr. Dunphy's driveway you would not have been able to see it?

MS. NOLAN: No.

MS. O'BRIEN: Okay, but you saw it brake in that area –

MS. NOLAN: Yes.

MS. O'BRIEN: – approximate area?

MS. NOLAN: Yeah.

MS. O'BRIEN: Okay. So when you – we gave – when you gave – when we went over this diagram, when you made this diagram I understood you'd indicated on the diagram here, it was approximately in this area that you saw the vehicle brake?

MS. NOLAN: Yes.

MS. O'BRIEN: And then it went – then after that it went out of your sight?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay.

Did you see it use its indicator light? Did you see its –

MS. NOLAN: No.

MS. O'BRIEN: Okay.

Ms. Nolan, what's the next event that you remember that would be relevant to this inquiry?

MS. NOLAN: I continued to talk to the grandchildren and my daughters and son. And my son and his girlfriend and her brother and their baby left to go back to Seal Cove to have Easter supper with her mom. And when he got out around the Deer Park area he called and said, Mom, there's something big on the go in the bay. But he had called prior to that and said that the vehicle that was stopped in front of my house was then at Donnie's.

MS. O'BRIEN: Okay. So your son had called prior to that to let you know that the vehicle that you'd seen in front of your house he saw at Donnie's house?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. Do you know approximately what time that was or would you have any way of knowing it?

MS. NOLAN: Roughly around 2, from what I can remember.

MS. O'BRIEN: Did you record any times that day?

MS. NOLAN: No.

MS. O'BRIEN: You didn't make any notes of it?

MS. NOLAN: No.

MS. O'BRIEN: So you're just going from your memory as best you can; is that what you're doing?

MS. NOLAN: Yes.

MS. O'BRIEN: Okay. So roughly around 2 he called to say he saw the vehicle at Mr. Dunphy's house.

Okay. And then you got another call from him, you say, when he was in around Deer Park.

MS. NOLAN: Yeah, I think that was probably around 20 after 2 or so.

MS. O'BRIEN: Okay. And what did he say when he called back again?

MS. NOLAN: There's something big on the go in the bay. There's three or four cop cars gone in. And again, I'm not sure if that was 20 after 2 or 20 to 3.

MS. O'BRIEN: Okay.

And approximately how long after your son and his girlfriend (inaudible) left, how long was it between when you saw what you believed to be the undercover police vehicle pull away and go

slow down by Mr. Dunphy's house, and when your son left the house? Do you remember approximately how long that would have been?

MS. NOLAN: Around 40 minutes.

MS. O'BRIEN: Okay.

And did your son mention seeing an officer in Mr. Dunphy's driveway or did he just see the vehicle?

MS. NOLAN: Just the vehicle.

MS. O'BRIEN: And so you got this call from your son letting you know that there was something going on in the bay because he could see the police cars coming.

When did you first hear about the shooting?

MS. NOLAN: That was a little while after the cops arrived at Donnie's.

MS. O'BRIEN: Did you go over to Mr. Dunphy's house that night?

MS. NOLAN: No, Sir – Ma'am.

MS. O'BRIEN: Did you hear any gunfire that evening or afternoon?

MS. NOLAN: No, I didn't. The wind was coming in the Arm about 100 kilometres an hour and I had the grandchildren there and nine or 10 of us in the house.

MS. O'BRIEN: Okay.

And I understand the statement that we looked at earlier, when we looked at your statement, the statement you gave to the RCMP, you gave it that evening around 7 o'clock that evening; does that sound right to you?

MS. NOLAN: Around 7 or 8 o'clock.

MS. O'BRIEN: Okay.

Did you ever know Donald Dunphy to have a gun?

MS. NOLAN: No.

MS. O'BRIEN: All right, those are my questions for you, Ms. Nolan. Other counsel may have some questions and the Commissioner, indeed, may have some questions for you. Okay?

MS. NOLAN: Okay.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Okay, who's going first?

MS. BREEN: We can go next, Mr. Commissioner. I'm going to be very brief with Ms. Nolan.

Ms. Nolan, yeah, Erin Breen for Meghan Dunphy.

Good morning.

MS. NOLAN: Good morning.

MS. BREEN: Ms. Nolan, have you – you say that you could see Mr. Dunphy’s yard I believe, was it? Or you could see him sometimes walking around his property?

MS. NOLAN: Well, I’d see him – I could see him walking on the opposite side of the road from my house.

MS. BREEN: Okay.

MS. NOLAN: But if I was walking up and down the road, I’d probably see him out around the yard.

MS. BREEN: Okay. And I also understand that you didn’t have much contact with him, obviously, since this incident happened about nine years ago. You would see him in the community, would you, at the store, in various places?

MS. NOLAN: Oh, yes.

MS. BREEN: Okay. And you would have a little chat with him or exchange pleasantries.

MS. NOLAN: And that continued even after the incident with the kittens.

MS. BREEN: Okay. And so you still got along, is that correct?

MS. NOLAN: Yes, I’m sure –

MS. BREEN: You weren’t afraid of Mr. Dunphy or –

MS. NOLAN: No.

MS. BREEN: Okay and you –

MS. NOLAN: Definitely not.

MS. BREEN: You had no negative experiences with him after that –

MS. NOLAN: No.

MS. BREEN: – happened in – nine years ago.

MS. NOLAN: No.

MS. BREEN: Can you tell the Commissioner what your observations were of how Mr. Dunphy moved, how he walked, how he was physically. What did you see about, you know, his physical condition?

MS. NOLAN: He looked to be in a lot of pain. So –

MS. BREEN: Okay. And how did –

MS. NOLAN: Well, like –

MS. BREEN: How did you – what did you see to lead you to that conclusion that he looked to be in pain?

THE COMMISSIONER: He looked – sorry, I didn't hear that. Looked a little what?

MS. BREEN: I believe she said he looked like he was in a lot of pain.

THE COMMISSIONER: Is that, is that your testimony?

MS. NOLAN: Yes.

THE COMMISSIONER: Okay. Thank you.

MS. BREEN: What did you see about him that led you to that conclusion, Ms. Nolan?

MS. NOLAN: He, he was kind of limping or crippled, whatever way you want to put it.

MS. BREEN: Okay. And did that – how recent, I guess, prior to his death did you make those observations of him? Like when was the last time you had seen Mr. Dunphy before April 5, do you know?

MS. NOLAN: Probably a week or so before at the store.

MS. BREEN: Okay.

Okay. And Ms. Nolan, the only other question I have for you; you remember, you've told Ms. O'Brien that you gave a statement to Constable Nippard, I believe it was, of the RCMP on the night that Mr. Dunphy was shot.

MS. NOLAN: Yes. I don't recall his name, but I gave a statement to the RCMP.

MS. BREEN: Okay. And at that time, Ms. Nolan, that the shooting had only occurred a few hours before, is that correct?

MS. NOLAN: Yes.

MS. BREEN: Okay.

Madam Clerk, if we could bring up Exhibit P-0387, page 11.

Thank you. Ms. Nolan, can you see the document there on your screen?

MS. NOLAN: Yes.

MS. BREEN: Okay. If I could ask you to go down, Ms. Nolan, this starts at line 233; do you see that there?

MS. NOLAN: Yes.

MS. BREEN: Constable Nippard is – you're talking about seeing the black vehicle that was parked across from your house that you've told us about on your questioning from Ms. O'Brien. And at line 233 Constable Nippard asks you around what time was that that you saw the vehicle. And you respond at that time that you had sat to dinner around quarter to 1, and you say that was around 20 after 1 I'm going to say, to be safe, say between 1 and 1:30.

Did you make note at the time? Like when, how did you know to give that information to Constable Nippard at that time?

MS. NOLAN: Because I actually said to my son, when he said about it looks like a cop vehicle, I said note the time, in case anything happened – making a joke out of it, never thinking that there was something really going to happen.

MS. BREEN: Okay, so you, you actually, consciously checked the time around – at that time when you saw the vehicle.

MS. NOLAN: I did.

MS. BREEN: Okay and the second question Constable Nippard asks you, he says how long was he parked down there. And your response at line 238 was five to seven minutes.

MS. NOLAN: I can – I sees it there but I can say for sure it was at least 15 minutes. I don't know why I would say five to seven minutes.

MS. BREEN: Okay. So you believe today it was 15 minutes.

MS. NOLAN: Roughly.

MS. BREEN: Okay. And do you recall again, Ms. Nolan, when you spoke to Commission counsel, and this was in your interview, do you remember coming in here for an interview on November 10 2016?

MS. NOLAN: Yes, I do.

MS. BREEN: Okay. And for the benefit of counsel, this is at page 31, lines 8 to 12, Ms. O'Brien asked you the same question – how long was the vehicle there? And you responded at that time – you don't have that in front of you, Ms. Nolan; I'm just reading this to you. You said at that time, Ms. O'Brien, I'd say a good seven, eight minutes. I said close to 10 but I'd definitely say seven to eight.

So on April 5, I presume you were trying to give Constable Nippard the best information you had on that date –

MS. NOLAN: Yes.

MS. BREEN: And you said five to seven minutes. And then again in November you spoke with Ms. O'Brien, I presume again you were trying to give her accurate information at that time?

MS. NOLAN: Yes.

MS. BREEN: And you said a good seven, eight minutes. Okay, but today you're here and you're saying 15 minutes.

MS. NOLAN: At least 15.

MS. BREEN: Is there any reason why you have changed what you have responded to in the past?

MS. NOLAN: 'Cause I passed comment to my son, of course, long before this came up and he said, Mom ,they were there for at least 15 minutes.

MS. BREEN: So your son is the one who told you that?

MS. NOLAN: Yep.

MS. BREEN: That's not what you saw though on April 5.

MS. NOLAN: Well, no – well, I'm going to say yes, but I don't know where the five and seven minutes came from.

MS. BREEN: Okay, but –

MS. NOLAN: I don't why I'd say five to seven minutes.

MS. BREEN: But that's what you told Constable Nippard on April 5.

MS. NOLAN: Yep.

MS. BREEN: Thank you.

MR. KENNEDY: Good morning, Ms. Nolan. My name is Jerome Kennedy; I'm counsel for Constable Joe Smyth.

MS. NOLAN: Good morning.

MR. KENNEDY: So Ms. Nolan, Ms. Breen has been taking you through (inaudible) and you've indicated that at one point you felt the vehicle was parked five to seven minutes.

MS. NOLAN: Uh-huh.

MR. KENNEDY: At another point you gave, you estimated that the vehicle was there I think for seven to eight, close to 10 minutes. Correct?

MS. NOLAN: Yes.

MR. KENNEDY: And today you say it was 15 minutes, plus or minus 10.

MS. NOLAN: Yes.

MR. KENNEDY: So is it safe to say, Ms. Nolan, that what you can testify to is that this vehicle was parked on the side of the road anywhere from seven to 15 minutes?

MS. NOLAN: Yes.

MR. KENNEDY: It's hard to remember times exactly.

MS. NOLAN: It is; I'm not a computer.

MR. KENNEDY: So basically what you know is that a vehicle was parked on the road. It was pretty clearly, at least to your son, a police vehicle, an unmarked police vehicle, correct?

MS. NOLAN: Yes.

MR. KENNEDY: Was it a big, black suburban-type, Yukon-type vehicle?

MS. NOLAN: Well yes. I didn't – like I said, I picked it as to be a pickup with a cab on the back, so that looks like the Yukon.

MR. KENNEDY: And how old was your son?

MS. NOLAN: He was 16 at the time.

MS. KENNEDY: Okay. So a 16-year-old could recognize this as an unmarked police vehicle?

MS. NOLAN: Yes.

MR. KENNEDY: Parked on the side of the road. Now in terms of when the vehicle was there, I also want to take you through that. You've indicated that you thought it was 1, I think 1:20, you said?

MS. NOLAN: Yes.

MR. KENNEDY: Okay.

Now, I'm going to point you to a couple of different exhibits where you've talked about this. If we could have P-0387 Commissioner, put on the screen, please. That was the one that was just referred to by Ms. Breen.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: Yes, it will be page 11, please.

Okay, so you see there on this particular day, if I could ask you to look at lines 234 to 236, you say that you were – the vehicle was parked there, safe to say, between 1 and 1:30.

MR. NOLAN: Yep.

MR. KENNEDY: Okay, so basically at that time with Constable Nippard on the night of the incident, you said between 1 and 1:30?

MS. NOLAN: Uh-huh.

MR. KENNEDY: Correct?

MS NOLAN: Yep.

ME. KENNEDY: In your interview with Commission counsel – and do you remember giving your interview with Commission counsel, the two lawyers sitting here in front?

MS. NOLAN: Yes.

MR. KENNEDY: I'm going to refer you now to – again, you don't have this in front of you. For the benefit of the counsel, it's Ms. Nolan's interview with the Commission counsel, at page 26, lines five on.

So the police officer, or Ms. O'Brien, excuse me, says: We'd like to go back to April 5, 2015. And Ms. Nolan, you mentioned that you saw a black vehicle she says to you. You say yes. So Ms. O'Brien says: So let's start with, what time of day was that? Ms. Nolan: That was around 1:30, 20 to 2 because we were just finishing up. I was starting to clean up from Easter dinner.

Correct? That's what you said then.

MS. NOLAN: Okay.

MR. KENNEDY: Now 1:30 to 20 to 2. So in your statement to the police you say it's between 1 and 1:30; in your interview with Commission Counsel, you say it's 1:30, 20 to 2. That's what you said?

MS. NOLAN: Yeah.

MR. KENNEDY: Okay, so which one is the more accurate?

MS. NOLAN: Twenty after 1.

MR. KENNEDY: Okay. Well, how do you come up with 20 after 1, Ms. Nolan, when you say it's between 1 and 1:30? Then in your interview with Commission counsel, which is only a month ago or a couple of months ago, you say it's –

MS. NOLAN: Yes.

MR. KENNEDY: – between 1:30 and 20 to 2.

MS. NOLAN: Because me and my son obviously were talking and he said, Mom, remember you said –

THE COMMISSIONER: Sorry, I can't hear you.

MS. NOLAN: Me and my son were talking and he said, Mom, remember you said watch the clock, it's 20 after 1; making a joke out of it, never thinking that anything was going to come of it.

MR. KENNEDY: Why didn't you tell that to Commission counsel? Why did you say it's between 1:30 and 20 to 2?

MS. NOLAN: I have no idea.

MR. KENNEDY: Well, Ms. Nolan, this is a serious matter. You testified before, or you've given an interview with Commission counsel. You were under oath and/or affirmation at the time. You were doing the best to tell the truth, correct?

MS. NOLAN: And same as I am now.

MR. KENNEDY: Yeah and I'm not disputing that, but what I'm trying to suggest to you that time is sometimes very difficult to estimate, isn't it?

MS. NOLAN: Yeah, it is.

MR. KENNEDY: So when you're there with Commission counsel you say that was around 1:30, 20 to 2, because we were just finishing up. You said that to Commission counsel. So is there a reason that you would say that to Commission counsel if you knew it was at 1:20?

MS. NOLAN: No, there's no reason.

MR. KENNEDY: Okay, so this is a very formal procedure when you are sitting with Commission counsel. You've affirmed to tell the truth and you're doing your best to tell the truth, correct?

MS. NOLAN: I am. That's what I could remember at the time.

MR. KENNEDY: Yeah so 1:30 to 20 to 2.

MS. NOLAN: Yes.

MR. KENNEDY: Okay, but today now you are saying it 20 after 1.

MS. NOLAN: I don't know what to say.

MR. KENNEDY: No, really, all I'm trying to, the point I'm trying to make, Ms. Nolan, is that the estimation of the times is very difficult and the best that you can say it's around 1:30, 20 to 2 on that date in question. Correct?

MS. NOLAN: Yes.

MR. KENNEDY: Okay.

Now, I want to now move to the issue of the vehicle. Had you seen vehicles like that in the Mount Carmel, Mitchells Brook area before, like unmarked police vehicles?

MS. NOLAN: Not like that, no.

MR. KENNEDY: Okay, but did you see unmarked police vehicles?

MS. NOLAN: Yes.

MR. KENNEDY: They're pretty obvious when there's an unmarked police vehicle in Mount Carmel, isn't there?

MS. NOLAN: Yes.

MR. KENNEDY: Or Mitchells Brook. Everyone knows, don't they?

MS. NOLAN: Yes.

MR. KENNEDY: Yeah.

So I want to deal with now your relationship with Mr. Dunphy. And you do know and you remember, Ms. Nolan, that the description you gave to the police on the night of the incident is a lot different than the one you've given today, isn't it?

MS. NOLAN: Obviously.

MR. KENNEDY: Now why is it obviously?

MS. NOLAN: Because I got the times screwed up.

MR. KENNEDY: No, no, but I want to talk about your relationship with Mr. Dunphy, the way you described him. I'm going to refer you to a couple of specific references here.

If I could ask the – if we could go with the same exhibit, if we could start with page 5 and go to page 6.

THE COMMISSIONER: What is that, the exhibit, again?

MR. KENNEDY: The exhibit is that statement given by Ms. Nolan to Constable Nippard on the night of the incident –

THE COMMISSIONER: Go ahead.

MR. KENNEDY: – Mr. Commissioner, at 7:23.

So you see at the top of this page you referred to the fact that Mr. Dunphy had gotten caught a number of years or 15 years or more growing illegal marijuana. So you knew that?

MS. NOLAN: Well, I said 15 years ago. I'm not sure exactly how long ago.

MR. KENNEDY: Oh, sure, yeah. That's fine.

And then there's the issue of the cat. Now, page, at the bottom of page 5 you say: Tyler, my youngest son, came home because Donnie was after going at him like a spider monkey. He came home crying to me and said: Mom, Donnie Dunphy went off his head at me because I was down over the bank trying to save one of the kittens because I thought they were going to go into the road.

First, what's a spider monkey when you say he's going at, he came at me like a spider money – what's that?

MS. NOLAN: He was very upset.

MR. KENNEDY: Okay. So then you say: Okay, CJ, Mom's going to go over and talk to Donnie.

So your husband, I think, was away at the time, you indicate in this statement.

MS. NOLAN: Yes.

MR. KENNEDY: Donnie came down on the road and met me, so I never even had to go up in his driveway and faced me, like face to face, and started going off his head and CJ came home screeching and bawling because I told him to go home because Donnie was furious. And after that there was no hard feeling, but at the time there were major issues. I had a major issue, like you don't come after a nine- or 10-year-old.

So I'm suggesting to you, Ms. Nolan, that the way the incident, as described to the police, was much more serious than the way you've described it today.

MS. NOLAN: Well, like I said, he was going after the kitten and Donnie thought a lot about his kittens, but I think a lot about my young ones and anybody coming after my young ones.

MR. KENNEDY: So you indicated, though, in your statement to the police that Donnie –

MS. NOLAN: He was furious.

MR. KENNEDY: – was furious.

MS. NOLAN: He was furious.

MR. KENNEDY: And coming after him like a spider monkey means in a rage or angry?

MS. NOLAN: He was angry.

MR. KENNEDY: Okay.

If we go to the bottom of this same page and to the next page, you're talking about the number of cats. You didn't like the fact that the cats were coming on your land, did you?

MS. NOLAN: No.

MR. KENNEDY: No. Did you ever discuss that with Mr. Dunphy or call the SPCA on him?

MS. NOLAN: I had called the SPCA at one point.

MR. KENNEDY: Yeah. And was this before or after the incident with your son?

MS. NOLAN: That was before.

MR. KENNEDY: Okay.

So then –

MS. NOLAN: The SPCA could do nothing about it obviously.

MR. KENNEDY: Okay.

MS. NOLAN: Because they had said there's nothing we can do unless you catch 'em and bring 'em in.

MR. KENNEDY: Okay, let's go a little bit further now, if we go to page 18 in this statement. The previous page you'd been asked if he had any close friends, on page 17.

Perhaps we could go to that, Commissioner, page 17. So Constable Nippard – stop right there, please. Thank you.

Constable Nippard is asking you do you know if Mr. Dunphy had any close friends. Page 378: Oh my God, I wouldn't be able to tell you. I haven't got a clue, have no idea.

Do you see what you said there?

MS. NOLAN: Yeah.

MR. KENNEDY: Okay. So today you refer to Colin Dinn. Why didn't you tell the police that night about Colin Dinn?

MS. NOLAN: I have no idea.

MR. KENNEDY: Okay.

On top of the next page you say, Ms. Nolan, when they're – you're still talking about your relationship with Mr. Dunphy, line 391: "Yeah around the house or doing work, doing whatever

he was doing over there, I would never even, if I walked by the house, I wouldn't even turn my head." Constable Nippard says: Yeah. Racheal – Rochelle Nolan: "I'd just keep on going."

What did you mean by that?

MS. NOLAN: I had no reason to look up there. If Donnie was down on the side of the road or on the opposite side of the road I'd talk, say hello, how are you. He'd ask how the young ones were, how my husband was doing. Other than that I wouldn't look up.

MR. KENNEDY: You wouldn't look up because you didn't want to have contact with him. Is that correct?

MS. NOLAN: No.

THE COMMISSIONER: Say it again?

MR. KENNEDY: I'm saying you wouldn't look up because you didn't want to have contact with him.

MS. NOLAN: No –

MR. KENNEDY: Okay.

MS. NOLAN: – I wouldn't say that.

MR. KENNEDY: Fine.

Page 19 and lines 424 to 430, you'd had a conversation with Debbie Dunphy and Debbie was blaming Mr. Dunphy for killing her flower garden. Correct?

MS. NOLAN: Yes.

MR. KENNEDY: So she'd had that conversation with you.

MS. NOLAN: At one point.

MS. KENNEDY: Do you know when that would have taken place, Ms. Nolan?

MS. NOLAN: No.

MS. KENNEDY: Okay.

Let's go to the next page. I'll just ask you to explain some of these comments. At page 20, line 443, and you're now again talking, when he come after my child about the kitten, "I think he was just basically paranoid."

And then you go on a little bit further. The police officer: What do you think he's paranoid about? "I think it was just too" – line 450 – "much drugs in the system."

So first when you're referring to him being paranoid, what do you mean by that? Could you explain to the Commissioner?

MS. NOLAN: Thinking that the young ones were over snooping around, I guess. I –

MS. KENNEDY: Okay. So what does paranoia mean to you in those circumstances, that he thinks things are happening that are not really happening.

MS. NOLAN: No, thinking that the children would probably find or see, or smell marijuana.

MS. KENNEDY: Okay, but that's not what you say. You say – page 450, line 450 to 452. “I think it was just too much drugs in the system ... That made him paranoid.” So do you relate paranoia with too much drugs in the system. Is that what you're saying there?

MS. NOLAN: I don't know how to explain it. Paranoid, meaning he didn't want the youngsters over there around finding stuff that they shouldn't have found.

MS. KENNEDY: How did you know he had stuff over there that shouldn't be found?

MS. NOLAN: Well, I assumed after being caught years ago, which is –

MS. KENNEDY: But why would you assume that? People can get caught and not continue to do something.

MS. NOLAN: It's a small town and people knew that he was allowed to grow marijuana.

MS. KENNEDY: But that was a little bit later, though –

MS. NOLAN: Medical marijuana.

MS. KENNEDY: – I think, was it?

MS. NOLAN: Pardon?

MS. KENNEDY: Do you know when he was allowed to grow marijuana?

MS. NOLAN: A while now, as far as I know.

MS. KENNEDY: Okay.

Well, let's go on to page 21, line 476. The police officer asks you – at line 476, Ms. Nolan: “Did you take him for somebody who could be violent?”

When he came over, I went over to speak with him about coming, scaring the crap out of my oldest son, when he came face to face with me – the next page, you say: Literally face to face, I'm thinking, I warned my children not to go handy because I'm thinking... Constable Nippard: Yeah.

T. Nolan, that's your son is it?

MS. NOLAN: Yes.

MS. KENNEDY: “He could lose it at any time.” That's what your son said.

MS. NOLAN: Yes.

MS. KENNEDY: And then you say –

THE COMMISSIONER: I'm sorry, what line is that?

MR. KENNEDY: Sorry, that's line 485, Commissioner.

THE COMMISSIONER: Just one second now. Again, we have – that's somebody else saying that.

MR. KENNEDY: Yeah. No, and she –

THE COMMISSIONER: That's not admissible.

MR. KENNEDY: On my – I'm not, what I'm looking at is not redacted, it's T. Nolan there. I'm saying to her that's her son said that.

THE COMMISSIONER: Her son. Yeah, okay.

MR. KENNEDY: Yeah.

MR. FLAHERTY: I just wanted to ask the Commissioner – these exhibits are redacted for a reason. Mr. Kennedy's already named a child; the name was redacted in the official exhibit. So are –

THE COMMISSIONER: Well, Mr. –

MR. FLAHERTY: Are we to respect the redactions?

THE COMMISSIONER: Just one second now. Sorry, what was the last? Are we what?

MR. FLAHERTY: Mr. Kennedy, during his cross-examination, has stated names –

THE COMMISSIONER: Yeah, what was your last – what was your last question there? Are we not –

MR. FLAHERTY: Are we, are we to respect the redactions in the exhibits?

THE COMMISSIONER: Yeah, okay. Now, you're getting into a little bit of –

MR. FLAHERTY: I just want to know going forward, Mr. Commissioner. I'm not trying to be difficult.

THE COMMISSIONER: Make your – no, make your – when you have an objection like that just make the objection without a connotation which you managed to get by, again, a turn of words. But I'm not going to push that right now.

Mr. Kennedy, I seem to recall Mrs. Nolan referring to CJ in the course of her testimony today, all right? Now, that was before – I don't think it was in response to – as a matter of fact, I don't think it was Mr. Kennedy who was cross – was examining at that time or cross-examining.

So the name, the name is out there. I'd ask that it not be published. That's about all I can do.

MR. KENNEDY: That's fine, Commissioner.

THE COMMISSIONER: The – I think it's significant and there's nothing wrong with identifying, for the record here, that it's her son who was speaking there rather than her. I'm not going to be, I'm not going to be relying upon hearsay. How –

MS. NOLAN: This would be my youngest –

THE COMMISSIONER: Just one second – sorry?

MS. NOLAN: This would be my youngest son.

THE COMMISSIONER: Okay, your youngest son. Okay, sorry, so it's not – his name is not out there, is it?

MR. FLAHERTY: No.

THE COMMISSIONER: Did you refer to the –

MR. KENNEDY: I used the term – what happened, Commissioner, the – I'm referring to: "He could lose it at any time."

THE COMMISSIONER: Right.

MR. KENNEDY: And then I used the term – I said that's T. Nolan. That's what I have in my transcript.

THE COMMISSIONER: All right. Okay, well, that's an error by you –

MR. KENNEDY: Oh, yes.

THE COMMISSIONER: – in that you should have – you should not have –

MR. KENNEDY: That's correct.

THE COMMISSIONER: Mr. Flaherty is correct; you shouldn't have used the initial if it was redacted, but unfortunate –

MR. KENNEDY: I apologize for that, Commissioner.

THE COMMISSIONER: Unfortunately, that's done now. We can't un-ring the bell, Mr. Flaherty, but it's a valid point that you make. And I didn't, frankly, hear the – I heard the CJ, I thought it was before. I didn't hear the reference to the –

MR. KENNEDY: I didn't know either, Commissioner. I thought it was the same. Yeah.

THE COMMISSIONER: – T. Nolan and I was taking note at that time. Now, again, I'd say for your benefit and the benefit of other counsel, the benefit of everybody, I'm not going to be relying upon hearsay in this type of situation. But I do get the impression from it, which can be corrected, that Ms. – our witness, Ms. Rochelle Nolan, seems to accept that when she goes on to say: "He's burnt."

MR. KENNEDY: "He's burnt." Yes.

THE COMMISSIONER: But –

MR. KENNEDY: That's the comment I wanted to get to.

THE COMMISSIONER: But go ahead.

MR. KENNEDY: Yeah. So –

THE COMMISSIONER: Anyhow, we have to try and – there are so many documents, so many redactions that have been required that it's inevitable that we're going to slip once in a while, but we'll try and observe the redactions when they're there.

And, yes, Mr. Flaherty, we are going to respect the redactions. Okay?

MR. KENNEDY: The comment I'm interested in, though, is when the comment is made: "He could lose it at any time." You interject and say: "He's burnt."

You see that?

MS. NOLAN: I do.

MR. KENNEDY: So what do you mean by: "He's burnt"?

MS. NOLAN: Again, it's just slang. It's –

MR. KENNEDY: Well, is it slang, Ms. Nolan, when you describe a situation that the way it's described in your interview with the police is much different than the way you've described it today. Correct? Much more serious the way you described it in your interview with the police, isn't it?

MS. NOLAN: When I say he's burnt, I mean like maybe he's after smoking too much marijuana.

MR. KENNEDY: Which could lead to violence, in your words, on that date in question.

MS. NOLAN: On the day of the kittens? Not that it would lead to violence because he smoked so much marijuana, it's just –

MR. KENNEDY: You described an incident in your statement to the police that scared you and your son. Correct?

MS. NOLAN: It did.

MR. KENNEDY: Yeah.

MS. NOLAN: And, again, maybe because he thought so much about his kittens.

MR. KENNEDY: Okay.

Now let's keep going, a couple of more –

MS. NOLAN: They were like children to him.

MR. KENNEDY: – a couple of more references. When you describe the incident to the – in the police, you were again trying to give the police officer a full explanation and the truth. Correct?

MS. NOLAN: Yes.

MR. KENNEDY: Okay. So at that point in time you were telling the truth to the police, weren't you?

MS. NOLAN: Yes.

MR. KENNEDY: Yeah.

Now there's been a lot happened since you gave that interview to the police, hasn't it?

MS. NOLAN: Yes.

MR. KENNEDY: Been a lot of discussion in the community, a lot of discussion in the media and a lot of discussion in the public.

MS. NOLAN: Yes.

MR. KENNEDY: So you really don't want to be coming in to the inquiry and describing Mr. Dunphy in very harsh terms, do you.

MS. NOLAN: I'm going to tell the truth.

MR. KENNEDY: Okay.

So your description in the statement to the police is accurate, is it?

MS. NOLAN: Yes. He got really upset the day of the kittens, but other than that I never had an issue with him.

MR. KENNEDY: Okay.

Now, Ms. Nolan, are you familiar with the community coalition for Donald Dunphy?

MS. NOLAN: I heard tell of it.

MR. KENNEDY: Are you a member of it?

MS. NOLAN: I don't know if you'd call me a member. I don't be around whatever they're doing for the most part. I've went to the meeting at the community hall –

MR. KENNEDY: Okay. And when was that meeting –

MS. NOLAN: – or the interview.

MR. KENNEDY: – at the community hall?

MS. NOLAN: That was when the Canadian Press, I believe.

MR. KENNEDY: Sorry?

MS. NOLAN: The lady from Canadian Press was there, I believe it is.

MR. KENNEDY: I don't know anything about a lady from the Canadian Press.

MS. NOLAN: Sue – I can't remember her, her name.

MR. KENNEDY: When was that? How close to the incident? Has it been recently or was it close to the incident?

MS. NOLAN: It was before the inquiry.

THE COMMISSIONER: Before what?

MS. NOLAN: I believe, before the inquiry started.

THE COMMISSIONER: Okay. Well, the inquiry was set up officially, I guess, the 23rd of September, I believe is the date. So it was before the 23rd of September?

MS. NOLAN: Okay, no, it was after that.

THE COMMISSIONER: After the 23rd of September?

MR. KENNEDY: Okay.

MS. NOLAN: It was after that. She came to the community for –

MR. KENNEDY: And how many people were at the meeting?

MS. NOLAN: Probably six or seven.

MR. KENNEDY: Okay. So who were the other people who were at the meeting with you? You were there, who else?

MS. NOLAN: There was myself, Tom Hearn, the mayor of Mount Carmel –

MR. KENNEDY: And what's –

MS. NOLAN: – David Sorensen.

MR. KENNEDY: Okay.

THE COMMISSIONER: Sorry, the mayor of Mount Carmel is –

MS. NOLAN: David Sorensen.

THE COMMISSIONER: Right.

MS. NOLAN: Kevin and Michelle McDonald.

THE COMMISSIONER: Kevin and Michelle –

MS. NOLAN: McDonald.

THE COMMISSIONER: – McDonald, right.

MS. NOLAN: Beth Wade.

THE COMMISSIONER: Last, last name?

MS. NOLAN: Beth Wade?

THE COMMISSIONER: Okay, just I can't hear as well this morning for some reason. Beth –

MS. NOLAN: Wade.

THE COMMISSIONER: Wade, W-a-d-e?

MS. NOLAN: Yes.

THE COMMISSIONER: Okay. Thank you.

MR. KENNEDY: Anyone else?

MS. NOLAN: There was a couple of more. I can't remember their names.

MR. KENNEDY: So is this when the community coalition for Donald Dunphy was formed?

MS. NOLAN: No, I think that was formed long ago, like when they had – if they had a vigil outside of his house?

MR. KENNEDY: Okay.

So the day –

MS. NOLAN: I was there.

MR. KENNEDY: – you met with Canadian Press, was that the, was that a meeting of the community coalition for Donald Dunphy?

MS. NOLAN: No, that was just a lady coming in for –

MR. KENNEDY: Okay.

MS. NOLAN: – just interviews.

MR. KENNEDY: So when I ask you whether or not you're a member of the community coalition you don't know, do you?

MS. NOLAN: Well, no.

MR. KENNEDY: Do you know who's in charge of the coalition, who leads the coalition?

MS. NOLAN: I believe it's Audrey Wade?

MR. KENNEDY: Audrey Wade. Have you ever signed any petitions on behalf of the coalition for –?

MS. NOLAN: No.

MR. KENNEDY: No? Have you – are you a member of any Facebook groups?

MS. NOLAN: I'm on Facebook.

MR. KENNEDY: No, but is there any group, the community coalition for Donald Dunphy, is there a Facebook group for that –

MS. NOLAN: No, not that I can recall.

MR. KENNEDY: In terms of the – prior to testifying, have you – I mean you’ve obviously met with Commission counsel and have you had any meetings with anyone else prior to testifying here today?

MS. NOLAN: No.

MR. KENNEDY: No. So it’s not like you, the community coalition had a meeting and all interested people were invited to the meeting to discuss the upcoming inquiry. Nothing like that took place.

MS. NOLAN: No.

MR. KENNEDY: Okay. Just one second, Commissioner.

Thank you. I think I’ve finished here, Sir

Okay. Thank you very much, Ms. Nolan.

THE COMMISSIONER: Mr. Freeman.

MR. FREEMAN: No questions, Mr. Commissioner. Thank you.

THE COMMISSIONER: Ms. Zdebiak?

MS. ZDEBIAK: No questions. Thank you.

THE COMMISSIONER: Thank you.

MR. FLAHERTY: Good day – good day, Ms. Nolan. Cletus Flaherty.

THE COMMISSIONER: Mr. Flaherty.

MR. FLAHERTY: I just got a couple of questions.

Do you recall at any point during your police statement saying that Don Dunphy is violent?

MS. NOLAN: No, I don’t.

MR. FLAHERTY: Did you say or tell the police: I could see him being shot by a police officer because he’s so violent?

MS. NOLAN: Most definitely not.

MR. FLAHERTY: Over the years and all the experiences you’ve had with Mr. Dunphy, does it seem believable that he would pull a rifle on a police officer in his house?

THE COMMISSIONER: One second now.

MR. KENNEDY: I have problems with that, that question.

THE COMMISSIONER: Yeah, I just don’t know – Mr. Flaherty, I don’t mean to be too restrictive, but you’re into right – the very crux of the matter that I’ve got to decide here. And I’m not sure that that is a question that the witness has been shown to be qualified to answer in

terms of understanding the personality of Mr. Dunphy sufficiently to be able to give you an answer on that.

Am I missing something here? Go ahead.

MR. FLAHERTY: Well, all it would say is that she has had numerous experiences with Mr. Dunphy over years.

THE COMMISSIONER: Who?

MR. FLAHERTY: She's a next-door neighbour.

THE COMMISSIONER: Who?

MR. FLAHERTY: Ms. Nolan.

THE COMMISSIONER: Well, that's not what she said.

MR. FLAHERTY: Okay.

THE COMMISSIONER: She's said she'd had numerous –

MR. FLAHERTY: Mr. –

THE COMMISSIONER: – numerous encounters with him in public places –

MR. FLAHERTY: Uh-huh.

THE COMMISSIONER: – on the road, in the store.

MR. FLAHERTY: Okay.

THE COMMISSIONER: That doesn't strike me as being a sufficiently intimate type of relationship to –

MR. FLAHERTY: Oh –

THE COMMISSIONER: Go ahead.

MR. FLAHERTY: – but I can ask her: Do you think you had a good handle –

THE COMMISSIONER: One second now, you're going to put the same question a different way now, are you?

MR. FLAHERTY: Oh, I don't think it's out of bounds to ask the witness at this point does she think she knew Don Dunphy, does she think that she would be able to provide an opinion as to his personality, character, reputation.

I can ask her: How many times have you ever talked to Don Dunphy in your lifetime? Could you –

MS. NOLAN: Too many to count.

MR. FLAHERTY: Over 100 times in your life?

MS. NOLAN: I would say.

MR. FLAHERTY: Okay.

MS. NOLAN: Definitely.

MR. FLAHERTY: And in those 100 times or more that you've talked to Don Dunphy, is there anything about any of those experiences which would make you think that he would pull a rifle on a police officer?

MR. KENNEDY: Again, I object to that question, Commissioner.

THE COMMISSIONER: It's the same, the same question.

MR. FLAHERTY: She – I mean –

THE COMMISSIONER: Just one second now.

MR. FLAHERTY: Okay.

THE COMMISSIONER: I'm thinking – I'm going to allow the question, Mr. Kennedy, but I'm not – I'm reserving whether I'm going to, whether it's something that I would consider in arriving at my decision. In other words, I'm – sorry, go head. You want to say something first?

MR. KENNEDY: And so the same will be allowed then when police officers testify. I'll be able to put it to them: Is there anything in Constable Smyth's background that would lead you to believe that he would shot Donald Dunphy?

THE COMMISSIONER: Well, we're getting into character, which to some extent is already there now. We've got the – there's already been questions with respect to the personality of Mr. Dunphy. I think the difference here is in the, we'll say, specificity of the question. It's more specific, but I'm not sure if it's been put to a police officer yet who's been called, but I've seen, I believe, indications that there are going to be those questions. Those questions have been put, if I recall, in statements that have been made or Commission interviews in terms of how they have found Mr. Smyth as a police officer.

I think I'm correct there, am I not that there have been, and I think other witness will probably have the same question put. And I think I referred to it previously myself in terms of – on at least one occasion where I believe I saw in the – I'm not sure which statements and even which witnesses, but where the questions has been put to officers who've worked with Mr. Smyth as to whether his personality – well, in effect, it's whether they've ever seen him being other than a good police officer, so it's a similar type of question.

So I'm going to allow the question, Mr. Flaherty, but I'm going to reserve whether it will be going in as evidence. In other words, I'll postpone my ruling on it, but I'll allow the witness to hear the question and answer it.

MR. FLAHERTY: I understand your concern, Mr. Commissioner.

THE COMMISSIONER: Go ahead.

But you should understand I'm going to be the one that is going to be ultimately deciding that question and not Ms. Nolan.

MR. FLAHERTY: No, I understand, Mr. Commissioner.

THE COMMISSIONER: Go ahead.

MR. FLAHERTY: So I've asked the question a couple of times now, Ms. Nolan. Is there anything about Mr. Dunphy, his personality, what you observed in the 100-plus times you met, saw or talked to him that would suggest that it's believable that he would take a rifle and point it at a police officer?

MS. NOLAN: Definitely not.

MR. FLAHERTY: Did he ever tell you I hate police officers?

MS. NOLAN: No.

MR. FLAHERTY: Did he ever tell you I'm going to shoot someone?

MS. NOLAN: No.

MR. FLAHERTY: Now, we see in your statement to Constable Nippard that you said Don Dunphy was burnt. Correct?

MS. NOLAN: Yep.

MR. FLAHERTY: When you're saying burnt, do you mean paranoid? Do you mean someone whose mind has been altered by marijuana use?

MS. NOLAN: No, not really. Just probably after having too many draws that day.

MR. FLAHERTY: Okay.

And paranoia is a symptom that you associate with that?

MS. NOLAN: It's just slang.

MR. FLAHERTY: No, no fair enough.

But I just wanted to make sure 'cause I believe from your evidence you said he was paranoid, but he'd be paranoid with respect to kids running around his property and what they may see?

MS. NOLAN: Well, frightened, yes.

MR. FLAHERTY: Okay.

And when you were saying paranoid, were you describing him as an individual who thought he was subject to police or governmental scrutiny, or conspiracy or anything like that?

MS. NOLAN: No.

MR. FLAHERTY: Okay.

Those are all my questions, thank you.

THE COMMISSIONER: Thank you, Mr. Flaherty. Nobody else? Any re-examination of ...?

MS. O'BRIEN: Nothing arising. Thank you, Commissioner.

THE COMMISSIONER: Okay, thank you, Ms. Nolan; that's all the questions we have.

MS. NOLAN: Thank you.

THE COMMISSIONER: Who is the next witness?

MS. O'BRIEN: Thank you, Commissioner.

Our next witness will be joining us by telephone and that connection is being made, and it's Corporal Lee Lush of the RCMP.

Oh, Corporal Lush?

CPL LUSH: Hi there.

MS. O'BRIEN: Hi. It's Kate O'Brien speaking, co-counsel for the Commission of Inquiry.

Before we begin your questioning, Corporal Lush, I'm going to ask Madam Clerk to get you to affirm your evidence.

CPL LUSH: Absolutely.

Okay. Thank you.

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

CPL LUSH: I do.

MS. SHEEHAN: Please state your full name.

CPL LUSH: Michael Lee Lush.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

Commissioner, before I begin my questioning I'd ask that the following exhibits be entered: P-0282 and P-0202 – or sorry, and P-302.

THE COMMISSIONER: So ordered.

MS. O'BRIEN: Thank you.

Corporal Lush, how long have you been a member of the RCMP?

CPL LUSH: I've been a member of the RCMP for almost 14 years.

MS. O'BRIEN: Okay. And what's your – your current rank is corporal, is it?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: Okay. And where are you currently stationed?

CPL LUSH: I'm stationed in Pugwash, Nova Scotia.

MS. O'BRIEN: Now, I understand that between the period of time from June 2011 to April 2014 you were stationed at the Holyrood detachment of the RCMP here in Newfoundland. Is that right?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: Okay. And I understand while you were there at Holyrood detachment, you spent some period of time in the GIS, or the General Investigation Section, and you also did some general duties work. Is that right?

CPL LUSH: Yes. Yeah.

MS. O'BRIEN: Okay.

All right, have you – during that period of time, did you have any dealings with Donald Dunphy?

CPL LUSH: Yes, I did actually. Well, Don – Mr. Dunphy himself, I met in person one time as far as an investigation and that would have been – sorry, that would have been 2012 on March 20 – or sorry, March 30.

MS. O'BRIEN: Okay. Before we get to the March 30 incident I understand that you had some – you visited his property, at least, earlier than that in perhaps late January 2012.

CPL LUSH: Yes, that's correct. Actually, I was trying to follow up on an investigation for which neither Mr. Dunphy or his daughter were under investigation. I needed to speak to Meghan because she was a potential witness.

MS. O'BRIEN: Okay.

CPL LUSH: So I actually went to – I tried calling the residence, Mr. Donald Dunphy's residence, on January 12 of 2012, and there was no answer, and at the time there was no voicemail option. So that was the time I went to that residence.

MS. O'BRIEN: Sorry –

MR. SIMMONDS: Mr. Commissioner, it's really to hear some of the officer's comments – and I don't know if that's just –

THE COMMISSIONER: Okay. Corporal, Leo Barry here, the Commissioner in this inquiry, we're going to see if we can improve our – maybe if you could speak up more loudly, it might help Mr. Simmonds, but I had a little bit of difficulty as well hearing you. So I'm not sure if there's anything else we can do, Mr. Simmonds.

MR. SIMMONDS: No, there's –

THE COMMISSIONER: Do the best we can here, and if –

MR. SIMMONDS: Yeah.

THE COMMISSIONER: – if you need something repeated, you could raise it –

MR. SIMMONDS: Thank you.

THE COMMISSIONER: – with Corporal Lush.

Okay, let's try again.

MS. O'BRIEN: Thank you. Corporal Lush, I'll ask you to speak up –

CPL LUSH: Sure, okay.

MS. O'BRIEN: – as you're giving the answers. And just to confirm, you're not on a speakerphone or hands-free are you?

CPL LUSH: No, I'm not, actually.

MS. O'BRIEN: Okay, great.

CPL LUSH: Yeah.

MS. O'BRIEN: All right. So I understand in late January 2012 that you wanted to speak to Meghan Dunphy because she was a possible witness in a completely unrelated matter, nothing to do with Ms. Dunphy herself. She wasn't under investigation and Mr. Dunphy was not under investigation.

CPL LUSH: Yeah, that's correct.

MS. O'BRIEN: Okay, and you said you tried to call Mr. Dunphy's residence and –

CPL LUSH: Yes.

MS. O'BRIEN: – there was no answer.

CPL LUSH: Yes.

MS. O'BRIEN: And no answering machine.

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: Okay, and so what did you do then?

CPL LUSH: So of course at that time there were no other numbers known that I had by which I could reach Meghan. So then of course other calls are happening of higher priority at the time. On January 26, 2012 I made several calls to that, that – sorry, Mr. Dunphy's address again. So following that, I travelled down to Mount Carmel. I confirmed the location of Meghan's residence through neighbourhood inquiries, and I knocked on the door. I knocked several times. There was no answer. In addition, the car that was described by one of the neighbours as belonging to Meghan was not there.

MS. O'BRIEN: Okay.

CPL LUSH: So I also learned at that time that Meghan actually was enrolled in a post-secondary school in St. John's. And so I, I got a cellphone number from the neighbour and I actually, when I got closer to the Trans-Canada Highway I tried calling the cellphone, but I received no answer.

MS. O'BRIEN: Okay. So ultimately, though, you made contact with Meghan Dunphy and you did not have any direct communication with Mr. Dunphy at that time, but had visited the house and knocked on the door?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: All right. So that's really all I wanted with respect to that incident. So can you take us forward then to the time you did have contact with Mr. Dunphy in March of 2012.

CPL LUSH: Sure. Okay, it was March 29 originally I was contacted by Holyrood detachment. I was out of the office. There was basically – some information came in with respect to an investigation that was started where Mr. Dunphy was the subject of investigation.

MS. O'BRIEN: Okay.

CPL LUSH: So just following up on that I drove down to where his residence was and do those things, and try to do as much follow-up as I could. Over the course of the remainder of that evening, and then the next day, it came to a point where a culmination of the investigational steps taken where I actually dealt with Mr. Dunphy. Originally it was to – you know, I wasn't alone at that time. My Corporal was with me and also we had the assistance of "B" Division traffic services member, and we initiated a stop of Mr. Dunphy's vehicle.

MS. O'BRIEN: Okay. All right, I'm just going to go over that again, because you're – you are a little hard to hear, but I understood. So you had, you had some information came to the police that regarding Mr. Dunphy and I understand it had to do with marijuana, right? The information you had?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: So you decided to initiate a – you decided to initiate an investigation?

CPL LUSH: Yes.

MS. O'BRIEN: Okay. Did you do any CPIC queries with respect to Mr. Dunphy at that time?

CPL LUSH: Actually I did yes, for sure. As a first step, I – you know, you do a CPIC and follow up on those things.

MS. O'BRIEN: Okay. And I'm going to bring you to that shortly, but I understand that you doing the CPIC query you learned about, there was a 2001 conviction for cultivation and production of marijuana; is that right?

CPL LUSH: That is correct.

MS. O'BRIEN: Okay. And you would have also done as part of your investigation a motor vehicle registration search, so you got information about Mr. Dunphy's vehicle?

CPL LUSH: Yes, I did.

MS. O'BRIEN: Okay. So you said you visited his place, you visited his house on that date just to – were you just trying to get the layout of the house? Is that what you were doing at that time?

CPL LUSH: Well, you're trying to of course, as you know, follow up on investigation, you go down, find the location to make sure that the person identified in the tip, that you can narrow it down. I mean obviously quite common names in Newfoundland as well.

MS. O'BRIEN: Okay. All right, so then at some point, was it on March 30 that you saw Mr. Dunphy's vehicle?

CPL LUSH: Yes. That's correct. Actually while heading back towards Mount Carmel, in that area, after trying to follow up on some more investigational avenues, to try to of course ascertain the validity of the information we'd received and corroborate as much as we could. We were actually around 10 a.m., I was heading down, what you call, Salmonier Line, towards Mount Carmel when I observed Mr. Dunphy's car, headed northbound on the same road in the opposing lane.

MS. O'BRIEN: Okay. So at that time it's 10 a.m. on March 30 and you're heading towards Mount Carmel. And I understand, I think you said earlier, though – it was hard to hear – you had a corporal in the vehicle with you at that time?

CPL LUSH: Well, actually on that date, we were in separate unmarked vehicles.

MS. O'BRIEN: Okay.

CPL LUSH: Yeah –

MS. O'BRIEN: So you were alone in your vehicle but the corporal was also driving with you in his unmarked vehicle. Is that right?

CPL LUSH: That's correct.

MS. O'BRIEN: Okay. And do you recall the corporal's name?

CPL LUSH: Yes, Corporal Phonse Foley.

MS. O'BRIEN: Okay. So Corporal Phonse Foley was there too. Okay. So at that time you decided to initiate a traffic stop. Is that –

CPL LUSH: At that time of course we pursued the vehicle – or, I guess, not pursued. There was no pursuit or lights on at that point, but we notified – because our vehicles at the time weren't equipped with the greatest emergency equipment as such, like with lights that's highly visible. You know, it'd be hard for anybody travelling if they're to really notice it in their rear view mirror, I'd say. So we'd made contact with a traffic member and advised him what we were going to do, just actually initiate a traffic stop just for, purely at that point, for detention of Mr. Dunphy.

MS. O'BRIEN: Okay. So you're going to do an investigative-type detention?

CPL LUSH: Yes, that was correct.

MS. O'BRIEN: Okay.

CPL LUSH: Yeah.

MS. O'BRIEN: Okay. So you were able to contact an officer who was in a marked vehicle, I take it?

CPL LUSH: Yes.

MS. O'BRIEN: While you were driving, but would you have used just a police radio to do that?

CPL LUSH: Yes, we would have.

MS. O'BRIEN: Okay. And so then, now you have the three police officers and three vehicles. Did you successfully pull over Mr. Dunphy?

CPL LUSH: Yes, actually we did. The stop was initiated. And actually, for the record, I know – I'm just querying my notes there. I'm just looking over it, I made at the time.

While following Mr. Dunphy there was no – he followed all the, obeyed all the traffic laws and was not seen to swerve in the lane or anything like that. So, of course, as soon as we pulled the vehicle – the stop was initiated actually on the ramp leading to Pitts Memorial from the Trans-Canada Highway Eastbound. So that would take you, of course, down towards downtown St. John's. But it was right at the end of that ramp as one would merge onto the Pitts Memorial. That's where the stop was conducted.

MS. O'BRIEN: Okay.

MR. COMMISSIONER: I seem to recall seeing some document where it described the stop more than the – I have a document here which is –

MS. O'BRIEN: Yup.

THE COMMISSIONER: – tab 3.

MS. O'BRIEN: Yes –

THE COMMISSIONER: That doesn't seem to describe much about the incidents. Is there another tab we should –?

MS. O'BRIEN: I think, your document at tab 3, Commissioner, may be on the second page if you went to page two.

THE COMMISSIONER: Yeah, I have the second page there –

MS. O'BRIEN: Okay.

THE COMMISSIONER: – that 14 and 56 hours and so forth, Corporal Foley. Does it say anywhere there where they stopped the vehicle?

MS. O'BRIEN: That's the only other document I have, Commissioner. You may have reviewed the, Corporal Lush's interview transcript.

THE COMMISSIONER: Okay, that might have been where – okay, go ahead.

MS. O'BRIEN: Okay, thank you.

All right. So you initiated the stop, and did you do the approach to the vehicle?

CPL LUSH: Yes, I did actually.

MS. O'BRIEN: Okay. And what did you observe on approaching the vehicle?

CPL LUSH: I – actually, upon arriving at the driver's side I noted Mr. Dunphy had his window down and I was struck by an odour of marijuana. The mix of burnt marijuana and unburnt, where we commonly refer to green marijuana. So immediately, then, I advised Mr. Dunphy of the odour of marijuana. And at that time I placed him under arrest and asked that he exit the vehicle, which he did, and he stated that he had a permit for medicinal marijuana; but, of course, the obligation that I ensure that he's aware of his rights to counsel and the police warning. I advised him that I wanted to provide that to him immediately before we discussed it.

So, of course –

MR. SIMMONDS: I didn't catch that last comment, I'm sorry.

MS. O'BRIEN: Okay. So just to – I'm just going to review your testimony, Corporal Lush.

THE COMMISSIONER: Just repeat the last statement that you made, Corporal.

CPL LUSH: Sure, sure, okay. I apologize, I know I have to – it's actually an echo on my end here as well and it seems like I'm hearing voices when I'm speaking.

THE COMMISSIONER: Right.

CPL LUSH: So, actually, when I – sorry, Your Honour, when I recount this testimony, how far back do you want me to go, when I approached the driver's side vehicle or –?

MS. O'BRIEN: Sorry, I think you gave him rights to counsel and police caution.

CPL LUSH: Yes, okay.

MS. O'BRIEN: And –

CPL LUSH: So I wanted to make Mr. Dunphy aware of his rights to counsel and police caution. I read it to him verbatim from our prepared cards, so that he understood saying before we discussed it, right? Because he did, he did say that he had a permit for medicinal marijuana, so.

MS. O'BRIEN: Okay.

CPL LUSH: Of course, then you'd conduct an officer safety pat-down search just to make sure there's no weapons while you're seating somebody in your vehicle. So when I was doing that, Mr. Dunphy stated that he had a little bit of weed on him. And he took it out, out of his front, right-side jacket pocket and in it – at that time he also handed his permit over to me.

MS. O'BRIEN: Okay. So he gave you his permit.

CPL LUSH: Yeah.

MS. O'BRIEN: And were you able to verify that permit during the course of the traffic stop with Health Canada to confirm that it was a valid permit?

CPL LUSH: I did indeed, actually, after providing him his rights to counsel and caution. And he stated that he – I asked him if he wished to speak to counsel. He said, no, b'y, there's no need and replied he understood his police caution. So then I actually looked at the permit, got all the particulars. At 1105 I contacted Health Canada. There was no answer at the call but there was

voicemail and I left a message asking that they return my call. So actually at 1122 hours, that's when they called back.

MS. O'BRIEN: Okay. And you were able to speak with them at 1122 and you learned that it was a valid permit.

CPL LUSH: That it was a valid permit still in effect. So –

MS. O'BRIEN: Oh, okay. And so then –

CPL LUSH: (Inaudible.)

MS. O'BRIEN: – did you release, release Mr. Dunphy at that time?

CPL LUSH: Absolutely.

MS. O'BRIEN: Okay. And would that, would that have been the conclusion of your file?

CPL LUSH: Yes, it was actually.

MS. O'BRIEN: Okay. So you would have essentially opened and closed – or, you know, closed the file that very day.

CPL LUSH: Yes.

MS. O'BRIEN: Okay.

CPL LUSH: Well, it's open the day before and assigned to me by somebody at the office. And then, of course, it was concluded that day.

MS. O'BRIEN: Okay, opened on March 29, concluded on March 30 of 2012.

CPL LUSH: Yes.

MS. O'BRIEN: How would you describe Mr. Dunphy's demeanour that day?

CPL LUSH: With my exchange with him, you know, he was – of course, you be as professional as you can in the circumstance. His demeanour, if memory serves me correct, there was – yeah, no incidents. He was very matter of fact and advising me right away that there's – that he had a permit. He wasn't argumentative or anything at that point.

MS. O'BRIEN: So you're saying he was not argumentative.

CPL LUSH: No.

MS. O'BRIEN: Was he co-operative?

CPL LUSH: Oh, yeah. Yeah, he came back without issue to the vehicle. And, actually, the vehicle we placed him in at the time was an unmarked that doesn't have that protective divider from the rear seat to the front.

MS. O'BRIEN: Okay.

Did you give Mr. Dunphy your business card on that day?

CPL LUSH: That's where I don't have a note of anything. I have discussed previously; having gone to his residence quite frequently, I do what I'm sure a lot of members do when you're following up. If you knock on somebody's door and they aren't there, you'd leave a card, you know, affixed to the door or window, somewhere in a conspicuous place where hopefully they would see it and return your call.

However, having dealt with Mr. Dunphy and I commonly – like dealing with anybody, you know, based on those circumstance, I mean police pull you over and all that, that's a bit surprising and overwhelming at times. So I frequently give out my card then as well, just so that they know who they dealt with. If they got any questions later on or actually at times, like anybody, you'd say if there are problems in your community and you want to speak to the police directly, the business number is noted on the card and to also advise anybody of Crime Stoppers as well.

MS. O'BRIEN: Okay. I'm going to ask, Madam Clerk, just to bring up Exhibit P-0282.

Corporal Lush, you're now aware that on Mr. Dunphy's death that his business card – that your business card was found in his wallet.

CPL LUSH: I am.

MS. O'BRIEN: Okay. And so what I understand you're saying, you're not sure whether you gave it to him on March 30 when you met with him personally, you pulled him over. But that would not be unusual as part of your regular police practice.

CPL LUSH: No, you're correct. Absolutely –

MS. O'BRIEN: Okay. And that it's also possible that when you visited his home back in January that year that having knocked on the door and found no one, it wouldn't have been unusual for you to leave a business card at that time?

CPL LUSH: Not at all.

MS. O'BRIEN: Okay. All right.

And now I know at pre-hearing interview I brought it to your attention that Mr. – that your business card, which we're seeing now as an exhibit, just go to the first page of it here – that your business card was found in his wallet. Had you – did you have that information prior to Ms. Chaytor and I bringing it to your attention at that time?

CPL LUSH: Actually, I don't even know the date because it was around the time that, I'm assuming, the investigation being conducted by the Major Crime Unit was underway. I spoke to Constable Steven Burke, who's now Corporal Burke, and he mentioned that my business card was found on Mr. Dunphy's person or in his wallet which, well, actually was quite surprising for me for three years after I met the man that it was still there. But that he said he may need to speak to me regarding it and that's all I knew. But I thought, well, obviously once they query PROS, any police officer would know how many cards you hand out at any given posting and that they would see that I had – I did have a contact with the man.

MS. O'BRIEN: Okay. So you had some contact with him. So you're saying that at some point after Mr. Dunphy was killed, that during the course of the investigation, Corporal Steve Burke –

CPL LUSH: Yeah.

MS. O'BRIEN: – you met him somewhere, did you?

CPL LUSH: Yes. Actually, I was working – at that time, I had – I transferred from Holyrood early April 2014. I went to RCMP federal operations east, the headquarters East White Hills in St. John's.

MS. O'BRIEN: Okay. So you met him at headquarters there in St. John's and he told you that your card had been found in Mr. Dunphy's wallet –

CPL LUSH: Yeah.

MS. O'BRIEN: – and that he may need to speak to you.

CPL LUSH: Yes.

MS. O'BRIEN: Okay. Did you ever get any further follow-up from any of the investigative team to speak to you about it? I mean did anyone ever interview you about it?

CPL LUSH: No. No.

MS. O'BRIEN: Okay. All right.

Did you have any other interaction with Mr. Dunphy?

CPL LUSH: Actually, I know when we spoke last I was pretty sure at one point I did speak with him on the telephone. And it wasn't until I went over the notes, my reports on that original file when speaking with Meghan – for which neither Mr. Dunphy or Meghan were under investigation, as I told you – while trying to speak to Meghan as another follow-up part of the investigation or avenue at the time.

On April 12, I called for Meghan. There was no answer.

MS. O'BRIEN: April 12 of 2012?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: Okay.

CPL LUSH: So I received no answer and I left a message. And following that I actually called her father's residence but I also received no answer at that time either. But later in the evening while off duty, I received a call from Mr. Dunphy who told me that his daughter had gotten my message. And I just asked Mr. Dunphy to tell Meghan to call me.

MS. O'BRIEN: Sorry, you just asked Mr. Dunphy what?

CPL LUSH: To ask his daughter, Meghan, to call me back.

MS. O'BRIEN: Okay.

Okay. So you know you spoke to him briefly on that date. Did you – I think when we talked we – when you gave your interview –

CPL LUSH: Yes.

MS. O'BRIEN: – your pre-inquiry hearing interview –

CPL LUSH: Sure.

MS. O'BRIEN: – I understand you had thought at that time that you might have had further communications with him to see if he might be interested in becoming a police source.

CPL LUSH: I said it would be common for me to do that. And I knew I had spoken to him but I wasn't sure what context it was in. And of course, as you know, there are privacy issues with respect to source protection and all those things.

MS. O'BRIEN: All right. So you don't think that's accurate now. And I know you weren't certain at the time.

CPL LUSH: Yeah. And I know I can't leave it hanging like that, I mean for the sake of the inquiry and all that. To do, to do that, that would require some follow-up and like I said, I've only ever met Mr. Dunphy that one time.

MS. O'BRIEN: Okay. All right.

Now, I'm just going to take you to a couple of exhibits. I assume when you did your ex – your, when you did your investigation – when you did your investigation, your brief investigation in 2012, would you have recorded that in PROS?

CPL LUSH: Yes, that's correct.

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

CPL LUSH: Okay, yeah. Yeah.

MS. O'BRIEN: Okay. Do you have – this is a general report document from PROS. Corporal Lush, do you have that before you there?

CPL LUSH: Actually, I do not. I've got the P-0141; I've got P-0282.

MS. O'BRIEN: Okay, you don't have P-0302. I'll just tell you what it is that we're looking at.

CPL LUSH: Sure. Okay.

MS. O'BRIEN: It's a General Report from PROS; the Occurrence number is 2012352151 Production.

CPL LUSH: Yeah.

MS. O'BRIEN: Schedule II: Cannabis Marijuana 7(1) CDSA. And then it says: FIP @2012/03/29.

CPL LUSH: Sure.

MS. O'BRIEN: So March 29 at 1425.

CPL LUSH: Okay.

MS. O'BRIEN: And it says it's authored by and it has a number and then it says: Lush, M. So that would be you, would it?

CPL LUSH: Yes, it would be.

MS. O'BRIEN: And you're also there for entered by.

CPL LUSH: Yeah.

MS. O'BRIEN: And the, the – okay.

So I'm just wondering – what we might do, what we might do, Corporal Lush, rather than me go through it so that it will help you to have the document, maybe we'll take a break now.

CPL LUSH: Sure.

MS. O'BRIEN: We could have our morning break now, Commissioner, so that Corporal Lush can have that document and we won't be long after that.

THE COMMISSIONER: Okay.

CPL LUSH: Okay and I'm sorry, sorry to interrupt there. There was also a follow-up document dated for 03/30 for the next day as well. I'm not sure if you guys have that one?

MS. O'BRIEN: When we go on our break, Corporal Lush, if you could stay on the line, I'll speak to you directly and we'll work out the exhibits.

CPL LUSH: Okay.

MS. O'BRIEN: Thank you.

CPL LUSH: Okay, great.

THE COMMISSIONER: Okay, we'll recess now for 15 minutes, or longer if needed.

MS. SHEEHAN: All rise.

The inquiry is (inaudible).

Recess

MS. SHEEHAN: All rise.

I declare this Commission of Inquiry in session.

Please be seated.

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

MS. O'BRIEN: Thank you, Commissioner.

I'd ask Madam Clerk to bring up Exhibit P-0302.

Corporal Lush, I understand your 2012 investigation you would have recorded that in a general report in the RCMP PROS system; is that right?

CPL LUSH: That is correct.

MS. O'BRIEN: Okay.

And now I understand that you got some, what started this investigation, was some information that you received from someone. That information was never confirmed by you, was it?

CPL LUSH: I'm sorry –

MS. O'BRIEN: So I understand you got some information about a grow operation. There was some discussion there in the report about high school kids were talking about the subject. I understand you never did confirm that information; is that right?

CPL LUSH: No, just the investigative steps that we took.

MS. O'BRIEN: Okay, so that was just rumour, that kind of types of information that you received.

CPL LUSH: Yes.

MS. O'BRIEN: Okay.

All right, so I'm looking here at, I believe what you should have before you now, what we have, is P-0302, is your general report that you created in PROS; is that right?

CPL LUSH: Yes, that's correct.

MS. O'BRIEN: Okay.

And I'm interested here, I know the document is there, but looking at the part there probably halfway down the page where you say: "As a result of receiving this information I conducted a CPIC query of Donald DUNPHY which confirmed the following:" – and then we have some blue type, Corporal Lush –

CPL LUSH: Yes.

MS. O'BRIEN: – that contains some information. Is that information that you received from the CPIC system?

CPL LUSH: Yes, that was information contained on that repository when I queried it that day.

MS. O'BRIEN: Okay.

And would that been what we refer to as CNI information from CPIC?

CPL LUSH: Yes, with respect to – the CNI would have come about after – there's two portions to that; the first portion it says filed opened descriptors. This is not a criminal record and if you scroll down, then you see a PS number and that would have been CNI with the conviction for 2001.

MS. O'BRIEN: Okay.

So the first information that we see here that starts with FPS, and there's a number 437394E, and then it goes on and gives some information we've heard relates to fingerprints, then we see Caution, V; CR Query Recommended. File Open and then it goes on. So that first section of the blue type –

CPL LUSH: Yes.

MS. O'BRIEN: So your evidence is that came from where in CPIC?

CPL LUSH: It came from a general CPIC query.

MS. O'BRIEN: Okay, a general CPIC query brought that up to you?

CPL LUSH: Yeah.

MS. O'BRIEN: Okay.

And so you just cut and pasted directly into the PROS report?

CPL LUSH: I did.

MS. O'BRIEN: Okay.

And so that included a Caution V, and I understand that V is for violence.

CPL LUSH: That is correct.

MS. O'BRIEN: Okay.

And it says: File Opened – towards the bottom of that blue type it says: Filed Opened 2001-05-23; Last Entry 2005-01 of: violence, and then drugs.

CPL LUSH: Yes.

MS. O'BRIEN: Okay.

And then you said there's some – on the next page there, at the top of the second page of the exhibit, again we see the FPS number, Dunphy, Donald James, and then it says: Criminal Convictions Conditional and Absolute Discharges and Related Information.

CPL LUSH: Yeah.

MS. O'BRIEN: So that information that follows from that, is that what you're saying is the CNI information?

CPL LUSH: Yeah, or the criminal record, you know, contained on that repository as provided with an update via fingerprints upon sentencing, or conviction, or subsequently – as you see at the bottom – it says the discharges as well, that matter from 2005, obviously that was discharged without conviction.

MS. O'BRIEN: So the matter from 2005 was discharged without conviction, that's the uttering threats matter, is what you're saying.

CPL LUSH: That is correct.

MS. O'BRIEN: Okay.

And that was resolved by way of a peace bond.

CPL LUSH: That's what it appears to be to me, yeah, for sure.

MS. O'BRIEN: Okay.

So why did you decide to take that information out of CPIC and put it directly in your PROS report?

CPL LUSH: Well, at the time it was just to, I guess, document the steps that were taken to verify. I guess the onus on me as a police officer, somebody who provides information in confidence by way of this, as you know –

THE COMMISSIONER: Could you speak up a little bit, please?

MS. O'BRIEN: Corporal Lush, we're having trouble understanding you. Could you just repeat what you just said and speak a little louder, please, as loud as you can.

CPL LUSH: Sure. Okay.

I guess I was just trying to catalogue the steps that were taken to corroborate the information.

MS. O'BRIEN: Okay, so you're taking steps to corroborate the information you had and so you were just recording in your PROS report the steps you were taking which included doing a CIPC search.

CPL LUSH: That's correct.

MS. O'BRIEN: Okay.

And you're recording in here information that includes that Mr. Dunphy was flagged for violence.

CPL LUSH: Yes.

MS. O'BRIEN: Okay.

And would that information would not otherwise have been in PROS; is that right?

CPL LUSH: Yeah, in my experience, I can't say I've seen that documented anywhere besides CPIC.

MS. O'BRIEN: Okay.

CPL LUSH: Unless somebody quoted it in their general report or something like that.

MS. O'BRIEN: Okay.

All right, so is part of what you're doing – I know you said you're recording your investigative steps – is part of what you're doing or were doing here was making sure that any other RCMP officer who looked at your PROS report would get that information about Mr. Dunphy and

things like the violence flag, the uttering threats charge and the other information that you cut and paste in?

CPL LUSH: With respect to – I was just documenting the grounds or the steps I were taking so that people, anybody can review it. Should the matter proceed of where I was able to corroborate that there were some trafficking, which I did not. If I had, I mean obviously that would show the steps I undertook to do so.

The only thing that I added to, with respect to Mr. Dunphy, into PROS with respect to his name and stuff on there would have been actually a document that the details of his medicinal marijuana permit so that way if officers looked at it and they looked at his profile on there, they would see that immediately.

MS. O'BRIEN: Okay so that, when you're talking about in terms of information you wanted to get to other officers down the road, you thought the most important information to get to them was that he had a medical marijuana permit.

CPL LUSH: At that time, yes.

MS. O'BRIEN: Okay.

When you had seen this information yourself, prior to initiating your traffic stop on Mr. Dunphy, did you have any concerns for your safety when you initiated that traffic stop?

CPL LUSH: At that time no. We were – well, obviously three officers. He was observed driving alone in his own car, you know, within compliance of the traffic laws and all that stuff. So I didn't – conducting of course a risk assessment that anybody conducts, I mean things can change in a hurry and risk assessments have to be conducted continuously. At that time, it just went smoothly I guess you can say.

MS. O'BRIEN: Okay, so despite the fact that he had been flagged for violence, you conducted your risk assessment, considered that. You were doing a traffic stop, you had three officers and so you didn't have any, other than the fact you were being ever vigilant, you didn't have any particular safety concerns. Have I summarized that correctly?

CPL LUSH: That is correct, for sure.

MS. O'BRIEN: Okay, thank you.

Did you have any other involvement with Mr. Dunphy that we did not hear about yet this morning?

CPL LUSH: You know – like no. I met him that time and a subsequent phone call in April of 2012.

MS. O'BRIEN: Okay. Thank you.

And I understand you had no involvement with the investigation in the matter of Mr. Dunphy's shooting death.

CPL LUSH: No, I did not.

MS. O'BRIEN: All right. Thank you.

Those are my questions, Corporal Lush. Other, other lawyers may have questions –

CPL LUSH: Okay.

MS. O'BRIEN: – and the Commissioner himself may have some questions.

Thank you.

CPL LUSH: Okay. Thank you.

You're welcome.

THE COMMISSIONER: Okay, who's going first?

Mr. Simmonds, is it?

MR. SIMMONDS: Mr. Commissioner, would it be acceptable if I stay seated because I can hear a little bit (inaudible).

THE COMMISSIONER: Oh that's fine, yeah.

MR. SIMMONDS: Okay.

THE COMMISSIONER: Sure.

MR. SIMMONDS: Thank you.

Officer Lush, it's Bob Simmonds here. I am counsel for Meghan Dunphy and family.

CPL LUSH: Sure.

Okay, Mr. Simmonds.

MR. SIMMONDS: If I – I did not have this before as you did in P-0302 by – just an error.

CPL LUSH: Sure. Okay.

MR. SIMMONDS: If I understand that, that's pretty consistent with what you told counsel in your actual interview which took place back in December, I believe.

CPL LUSH: Yes, that's correct.

MR. SIMMONDS: Okay.

And if I understand correctly, you received a Crime Stoppers tip –

CPL LUSH: Yes.

MR. SIMMONDS: – that children or kids in the community, teenagers, were talking about Mr. Dunphy's got a grow op and it's going to be ready for sale very shortly –

CPL LUSH: Yeah.

MR. SIMMONDS: – something of that nature?

CPL LUSH: Yeah.

THE COMMISSIONER: Sir, are we supposed to confirm whether it's Crime Stoppers or not, Mr. Simmonds, but it's that – just a minor thing. Go ahead.

MR. SIMMONDS: Oh, I apologize.

So you then instituted an investigation. Correct?

CPL LUSH: Yes, that's correct. I had a file assigned to me for follow up.

MR. SIMMONDS: Okay.

CPL LUSH: Yeah.

MR. SIMMONDS: And you did the CPIC check. Are you – you're not the officer that assigned the V to this category, V for violence?

CPL LUSH: No, I'm not. No, no.

MR. SIMMONDS: And when I look through it – and I'm sure this was just a choice of words –

CPL LUSH: Yeah.

MR. SIMMONDS: – but you said the charge of uttering threats was discharged. The charge of uttering threats was withdrawn.

CPL LUSH: Yes, that's correct. I –

MR. SIMMONDS: So the Crown actually withdrew that charge because for whatever reasons, likely because they had no likelihood of conviction.

CPL LUSH: Yeah.

MR. SIMMONDS: And it appears that some type of resolution was reached between the parties which the Crown accepted in a peace bond – a section 810 peace bond was signed.

CPL LUSH: Yes, that's correct. And that looks to be, by the file number, also quoted in brackets there. That was from a matter in 2004.

MR. SIMMONDS: Okay. And the only other indication on his record is the possession charge in 2001.

CPL LUSH: That's correct.

MR. SIMMONDS: So there's really nothing when you review this that would give any officer being prudent and appropriate concern that this man was violent or in any way acts out or anything of that nature. Would you agree?

CPL LUSH: Yes, I would agree.

MR. SIMMONDS: Okay, thank you.

Now, you got this tip. You determined it was appropriate to check it out. And if I might go through this, parts of it fairly quickly, you went down, you took some pictures of the house, then you continued your investigation the next day.

CPL LUSH: Yes.

MR. SIMMONDS: There was another officer with you in another unmarked car.

CPL LUSH: Yes.

MR. SIMMONDS: And as you were driving down to see him, Mr. Dunphy comes up the road.

CPL LUSH: Yes, that is correct, headed northbound.

MR. SIMMONDS: So he's heading up Salmonier Line and you're going down. You then call Officer Hand, who's with the traffic division at Holyrood –

CPL LUSH: Yes.

MR. SIMMONDS: And ye coordinated a stop which ends up being just outside of St. John's on the ramp coming off the Trans-Canada.

CPL LUSH: Yes, that's correct.

MR. SIMMONDS: During that – so you went up to the car, Mr. Dunphy readily identified himself, you said you could smell marijuana, and you immediately placed him under arrest and gave him his rights and caution.

CPL LUSH: Yes.

MR. SIMMONDS: That's – that's correct, Officer?

CPL LUSH: Yes, that's correct.

MR. SIMMONDS: At any time during that full exchange – and I understand he, in fact, came back to the police car with you –

CPL LUSH: Yes, he did.

MR. SIMMONDS: Was there ever any indication of anger, resentment, violence – and before you answer that, it's, you know one of the issues that the Commissioner is grappling with here is going to be the makeup and demeanor of Mr. Dunphy, particular when it comes to interactions with police forces.

CPL LUSH: Sure.

MR. SIMMONDS: Did you see anything – and I've read both what we just recently got as well as your interview. Did you, did you see anything that day in your interaction with him which would give any indication of concern in that area?

CPL LUSH: Mr. Simmonds of course my dealing with him was three years prior, but no, I did not. My dealing with Mr. Dunphy was pretty –

THE COMMISSIONER: You're fading a bit again now.

CPL LUSH: Oh, I apologize, Your Honour. I know it was three years prior to the incident on Easter Sunday 2015 but no, I did not have any concerns for my safety. He wasn't aggressive towards me or anything like that.

MR. SIMMONDS: Okay. Did – and we've heard a great deal of detail but you may not be able to comment on this, that he had a tremendous passion for animals, that he was an animal lover. Were you – are you able to contact in any way – able to comment, pardon me, in any way with respect to that, Officer Lush?

CPL LUSH: The only thing, Mr. Simmonds, that I can comment there would be that on the date that I actually originally went to his residence, with respect to speaking to his daughter for a matter which neither were under investigation, I can remember seeing – and you have to forgive me the lapse of time. I can't even picture the layout of the external perimeter of the house too much, but I can remember seeing cats in the window.

MR. SIMMONDS: Okay, okay.

CPL LUSH: Yeah.

MR. SIMMONDS: You went through this, this traffic stop –

CPL LUSH: Yes.

MR. SIMMONDS: – he advised you he had a medical permit –

CPL LUSH: Yes.

MR. SIMMONDS: – you checked the credentials of this medical permit, it checked out and you released him and he was on his way, and that was the end of the interaction that day?

CPL LUSH: That was the end of it, yeah, for sure.

MR. SIMMONDS: Okay. Now, I realize when you gave your original interview to Commission counsel you thought that maybe you had had interaction with him as trying to cultivate him as a source, but I understand you now to say that that's not likely what happened?

CPL LUSH: No, actually, what I did is asked – I said, what – I'm sorry, Mr. – what I meant to say at that time, and I think I was saying was that quite commonly – I couldn't recall giving Mr. Dunphy my card – but quite commonly this was my practice –

MR. SIMMONDS: Uh-huh.

CPL LUSH: – you, you deal with people, you meet 'em, you give 'em a card. If they want to speak to an officer, they got a number to contact you. But also in addition I said, you know, it's quite overwhelming for an individual, I would imagine that if the police pull up, initiate a stop and there's three officers, so he might forget our names. So I wanted to ensure that he knew who he got dealt with that day as well.

MR. SIMMONDS: Okay.

CPL LUSH: But you're correct. As you know, I can't comment too much on privacy issues –

MR. SIMMONDS: No, no, I understand.

CPL LUSH: – (inaudible) but, we do have policies internally that have to be followed with respect if I were going to cultivate somebody and that was my one and only time dealing with (inaudible).

MR. SIMMONDS: Okay. And he obviously, this was 2014 or thereabouts, he obviously kept your card –

CPL LUSH: Yes.

MR. SIMMONDS: – up to the date of the incident.

You did –

CPL LUSH: And actually, if I – sorry, Mr. Simmonds, not to cut you off. Actually and those numbers from on that card, once I left 2014, I couldn't be reached by those numbers.

MR. SIMMONDS: Okay.

CPL LUSH: Even the cellphone had changed.

MR. SIMMONDS: Okay.

Officer, you did have one further contact in that I understood you to say this morning that you called the home on an unrelated matter –

CPL LUSH: That's correct.

MR. SIMMONDS: – and left a message either on a cellphone or something of that nature, or on a machine?

CPL LUSH: I, that's – I do have my note that I called for sure. I don't have it noted that I left a message, but I did receive a call back. And so that's – I do know that my cellphone at the time and the work cell would show up as a blocked number. So I'm assuming I just, I guess, by deduction that somehow I must have left a message for him to give me a call back.

MR. SIMMONDS: So you as a police officer called down, you somehow left a message, and Mr. Dunphy was – he called back, he gave you the information that you wished, or –

CPL LUSH: Yes.

MR. SIMMONDS: – indicated he – again, did you get any sign of resentment or aggression in relation to authority and the police force?

CPL LUSH: I did not, no.

MR. SIMMONDS: Officer Lush, thank you very much. That's the – if I might have just one moment.

CPL LUSH: Sure, okay.

MR. SIMMONDS: Officer Lush, one last question.

CPL LUSH: Sure.

MR. SIMMONDS: Do you – and I don't want to get into how the anonymous tip came in because it is an anonymous tip.

CPL LUSH: Yes.

MR. SIMMONDS: Could that have been – and I've raised this issue many times before in court. Could it have been that someone was doing this because of other differences with him, just pure mean spiritedness to try and cause a problem to someone else?

CPL LUSH: You know as an officer, you got to remain objective, as you know. You follow on the information you got. You corroborate what you can't – what you can, but I had no way to – I can't verify that 'cause that tipster I never ever spoke with because the person wasn't identified to me.

MR. SIMMONDS: And nothing that, none of the information that was on this tip was turned out to be valid information?

CPL LUSH: No. Only with respect to the layout of his house and that he was busted years ago for a grow op and that was years ago. You're looking at 10, 11 years prior. That I couldn't substantiate that he was selling to kids.

MR. SIMMONDS: Okay. Thank you very much, Officer.

CPL LUSH: You're welcome.

THE COMMISSIONER: Mr. Kennedy?

MR. KENNEDY: I don't have any questions, Commissioner. Thank you.

THE COMMISSIONER: Thank you. Ms. Zdebiak?

MS. ZDEBIAK: No questions. Thank you.

THE COMMISSIONER: Mr. Freeman?

MR. FREEMAN: No redirect, Mr. Commissioner. Thank you.

THE COMMISSIONER: I think that's all we have there. Thank you, Corporal. Thank you for your testimony.

CPL LUSH: Thank you, Your Honor.

THE COMMISSIONER: Okay, you're excused.

CPL LUSH: Okay, thank you.

THE COMMISSIONER: So we're finished for the morning are we –

MS. O'BRIEN: No, we have another witness.

THE COMMISSIONER: Oh, we have another witness. Oh, that's right. I'm sorry, I forgot.

MS. O'BRIEN: Thank you.

I'd ask Rita Farrell to please come to the stand.

THE COMMISSIONER: Sorry, go ahead when you are ready.

MS. O'BRIEN: Thank you. Madam Clerk, can you please ask the witness be affirmed?

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

MS. FARRELL: Yes, I do.

MS. SHEEHAN: Please state your full name.

MS. FARRELL: Rita Mary Farrell.

MS. SHEEHAN: Thank you.

MS. O'BRIEN: Thank you.

I have no new exhibits to enter at this time, Commissioner.

Ms. Farrell, what community do you live in?

MS. FARRELL: I live in the Town of Flatrock.

MS. O'BRIEN: Okay. And are you married?

MS. FARRELL: Yes, I am.

MS. O'BRIEN: Okay, and what's your husband's name?

MS. FARRELL: Dominic.

MS. O'BRIEN: Okay. Now do you and Dominic have a second, a cabin or a seasonal home?

MS. FARRELL: Yes, we do.

MS. O'BRIEN: Okay, and where is that?

MS. FARRELL: It's in Mitchells Brook.

MS. O'BRIEN: Okay.

Now, I understand that that cabin that you have used to be the family home of Mr. Donald Dunphy's parents; is that right?

MS. FARRELL: Yes, that's right.

MS. O'BRIEN: Okay, so how did you – I know you knew Mr. Dunphy, Donald Dunphy –

MS. FARRELL: Yes, I did.

MS. O'BRIEN: And how did you first meet him?

MS. FARRELL: I met Mr. Dunphy in I think it was July 2004 after seeing a listing for the property in the *Buy and Sell* by Michael Halliday, real estate officer.

So we decided to take a ride to just view the property and when we got to Mitchells Brook, we found the property, we were – I was at least interested in, even more so than my husband I think at the time. So I was wondering well, maybe if we could find out a bit more information. So we left the property and we turned left as if we were coming home and the next property, which would have been bounded by this property, there was a lady in her garden. It happened to be Mrs. Wade, so we drove up her driveway and we asked her if she knew who owned the property so she directed us to Mr. Dunphy's house, which was two doors from that property which was for sale.

MS. O'BRIEN: Okay.

MS. FARRELL: So we went to Mr. Dunphy's driveway and he must have seen us coming because when we got up his driveway, just in front of his house, he came out to his deck and we told him who we were and that we were interested in the property.

MS. O'BRIEN: Okay.

And eventually you bought the property?

MS. FARRELL: Yes, we did.

MS. O'BRIEN: Okay, and it was shortly after that time I understand.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

Did you start using that as a – I don't know, do you refer to it as a cabin or how do you refer to it?

MS. FARRELL: Well, it's like a seasonal home to us. We go there on weekends all throughout the year and more so in the summertime.

MS. O'BRIEN: Okay, but you're visiting year round.

Okay, so did you start using it as a seasonal home right away?

MS. FARRELL: Yes, sort of. We had a camper that we used to park on the property until we had the water reconnected and the electricity reconnected.

MS. O'BRIEN: Okay, so you started doing some work on the property.

MS. FARRELL: Yes.

MS. O'BRIEN: And so how often would you go there? Would be like every weekend or how many times a month say?

MS. FARRELL: We'd go there every weekend. For the first probably nine years when we were working on the property, it was every weekend for sure and then after, there was more work for my husband that came up at home so it was probably like once a month or sometimes more than that.

MS. O'BRIEN: Okay.

So did you get to know Mr. Donald Dunphy?

MS. FARRELL: Yes, we did.

MS. O'BRIEN: Okay, so tell us about that; how did your relationship with Mr. Dunphy develop?

MS. FARRELL: Well, when we bought the property, we kind of communicated with him in the buying process and then after we went there, we just kind of told him he could come by whenever he wanted to, like it was his family home. We knew because of financial reasons that he sold it but he didn't really want to sell it. So he used to come to visit and then he invited us to go to his house, so we became friends. And before we had our water connected, he would bring us a jug of water, at least drinking water that we can use until we had the water connected.

MS. O'BRIEN: Okay.

MS. FARRELL: And we just became friends. He kind of looked after the property when we weren't there and we gave him a key to the property. So any time we went out, sometimes in the beginning if he was able, he would light the stove and he'd have the fire lit before we got out there. So he helped in a lot of ways like that.

MS. O'BRIEN: Okay. And when – did you know Meghan Dunphy as well?

MS. FARRELL: Yes, I did.

MS. O'BRIEN: Okay. Was she still living with her dad when you bought, bought the home?

MS. FARRELL: Yes, she was. She was in high school at the time.

MS. O'BRIEN: Okay.

All right, so, you know, you're going out to – for at least those years, going out to Mitchells Brook every weekend. So, you know, would you see Mr. Dunphy every time you went or how often would you actually see him?

MS. FARRELL: Well, we would go visit him every time we went. Sometimes we would go there while our house heated up. His house always seemed to be really warm. So we'd go there every weekend to visit and we'd go to visit before we came home.

And if I cooked a meal, I'd always have enough so that I could have some for him and Meghan. It wasn't because he didn't have it, I knew he had lots of groceries in the house, but I thought, well, maybe it was a break, like everybody doesn't want to cook every day so – and I'd bring it over if we had it and he'd say, okay, I'll have that for supper or I'll have it the next day or whatever so –

MS. O'BRIEN: Okay.

So you'd bring him – and now this visiting him regularly, so you're talking about, you know, visiting him even a couple of times every weekend when you're out there. Would that have continued up right until his death? I mean were you still visiting him regularly when you went to Mitchells Brook right up until the time of his passing?

MS. FARRELL: Yes, it was. And any time he was in the hospital, we visited him there and we talked on the phone. Like if anything was on the news about Mitchells Brook, I would call. If there was an accident or whatever we heard on the radio, I would call to find out who it was or what was going on.

MS. O'BRIEN: Okay.

Now, so you said you brought him over dinner. So you – he had a key to your house, did he?

MS. FARRELL: Yes, he did.

MS. O'BRIEN: Okay.

When you would visit with him, like how long would a visit be? I mean would you just sort of pop in by the door, would you go in and sit? How long would a visit last?

MS. FARRELL: No, we'd go in and sit, probably half an hour.

MS. O'BRIEN: Okay.

So when you were going in to visit or sit with him, what room in the house would you normally go to?

MS. FARRELL: In the living room.

MS. O'BRIEN: And would he visit your home as well?

MS. FARRELL: Yes, he did.

MS. O'BRIEN: And when you were going to visit Mr. Dunphy, would you call him first or would you just pop by? How would that normally (inaudible) –

MS. FARRELL: No, I'd normally call to see if he was home. And sometimes I felt like maybe he was lying down or he wasn't feeling well to see – you know, just if he wasn't up to visitors, he'd tell you anyway.

MS. O'BRIEN: Okay.

MS. FARRELL: And when I'd go there, even if I had called, I'd always make a little knock on the door. He may be standing in the kitchen by the stove, or he'd usually see you coming if he was in his chair in the living room, and he'd probably come to the door. He'd usually call out and say come on in because he was expecting us anyway. And, you know, he'd say why do you knock, or –

MS. O'BRIEN: Okay.

Now, your house that you bought – and you said there was one – was there one house in between Mr. Dunphy's house and your house?

MS. FARRELL: Yes, there was.

MS. O'BRIEN: Okay. And would that have been Dick and Debbie Dunphy's house?

MS. FARRELL: Yes, it was.

MS. O'BRIEN: Now, did you have any relationship, were you friends with Dick and Debbie Dunphy?

MS. FARRELL: They were acquaintances also. We saw them in passing. If I walked down the road and Debbie was in her garden I'd speak to her. And sometimes if they were going by they'd stop and speak to us. And my husband spoke to Dick a lot more.

MS. O'BRIEN: Okay. So in terms of your relationship with them, it was a friendly relationship was it?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. And – but am I understanding correctly that your relationship was closer with Mr. Donald Dunphy?

MS. FARRELL: Yes, it was.

MS. O'BRIEN: Okay.

What kind of person was Donald Dunphy?

MS. FARRELL: He was a very kind-hearted person. He was a good father. He was an animal lover for sure, especially cats. He was a fairly knowledgeable person. He knew all current affairs. He always read the papers, the TVs. He could bring up any situation that was on the go anywhere in the world and tell you about it. He was dependable for sure. If you asked him to do something and he could possibly do it he'd do it. He was the kind of a guy who would help you in any way that he could.

He liked to voice his opinion. He was always on *Open Line* sometimes talking about Workers' Compensation and his issues with them.

MS. O'BRIEN: Okay. So would you hear him on *Open Line*?

MS. FARRELL: Yes, I did.

MS. O'BRIEN: And did he ever – when he was chatting with you or talking with you, did he ever talk about his, the issues that he had with Workers' Compensation?

MS. FARRELL: Yes, he did.

MS. O'BRIEN: And was that a fairly regular topic of conversation?

MS. FARRELL: Yes. Normally he'd always say like where he was because it seemed like he was always writing letters to somebody in government or to somebody at Workers' Compensation. And sometimes he would feel that they were telling him that he was getting a little closer to a solution I guess, and then maybe time would go by and he never did get that solution. So it would all start all over again.

MS. O'BRIEN: Okay.

And was your husband's relationship with Mr. Donald Dunphy similar to yours or was there any difference between how your husband related to Mr. Dunphy and how you did?

MS. FARRELL: No, it was the same.

MS. O'BRIEN: Okay. Did you ever have any disagreement or disputes with Mr. Dunphy?

MS. FARRELL: Never.

MS. O'BRIEN: So you knew he had frustrations with Workers' Compensation, so did you understand that he'd had a workplace injury?

MS. FARRELL: Yes, I did.

MS. O'BRIEN: Could you see the effects of his injury? Like when you were watching him, did he appear to have any disability or, or, you know, inability to function?

MS. FARRELL: Yes, he did. He always had a limp. He had a problem with at least one of his legs. That was pretty noticeable.

MS. O'BRIEN: And do you mean noticeable when he walked?

MS. FARRELL: Yes.

MS. O'BRIEN: What about when he was sitting down, would you be able to tell then?

MS. FARRELL: I couldn't tell, no, not when he sat.

MS. O'BRIEN: Were you aware whether or not he ever suffered pain? I mean was that –

MS. FARRELL: Oh yes, definitely.

MS. O'BRIEN: And would that have been a regular thing or an occasional thing?

MS. FARRELL: Yes, sometimes he was worse than others.

MS. O'BRIEN: Did you follow his Twitter account at all?

MS. FARRELL: No, I didn't have a Twitter account.

MS. O'BRIEN: Did you ever witness Mr. Dunphy lose his temper?

MS. FARRELL: No, never.

MR. KENNEDY: Sorry, I missed that question.

MS. O'BRIEN: I asked did she ever witness him lose his temper.

And what about get in an argument with anyone, did you ever see, you know, witness him getting in an argument with someone else?

MS. FARRELL: Never.

MS. O'BRIEN: Did you ever hear him threaten anyone?

MS. FARRELL: Never.

MS. O'BRIEN: Okay. And did you ever see him act violently or threaten violence?

MS. FARRELL: No, never.

MS. O'BRIEN: Okay.

What was the state or condition of his house?

MS. FARRELL: His house was in need of repair, it was badly in need of repair. Structurally there was, there was problems. Like, you could see that there was problems with the siding or whatever, and it definitely needed to be repaired. And the inside, his step was the same, inside his house was the same. Inside his house was definitely not tidy, but I guess he couldn't do it himself anyway.

MS. O'BRIEN: And why did you, why – why do you say he couldn't do it himself anyway?

MS. FARRELL: Because he was a disabled, he was a disabled injured worker, and you could tell by times and how he spoke and told you about where he had pain or whatever that there were days that he just couldn't do a lot of work.

MS. O'BRIEN: Okay. Did he have cats?

MS. FARRELL: Yes, he did.

MS. O'BRIEN: How many cats?

MS. FARRELL: He had three, probably four cats that were his pets that were there all the time.

MS. O'BRIEN: And when you say there all the time, you mean in the house?

MS. FARRELL: In the living room.

MS. O'BRIEN: And what about outside the house?

MS. FARRELL: Yes, there was a lot of wild cats that were outside the house that came and he fed them, provided them shelter and always had food there for them.

MS. O'BRIEN: Okay. Did you ever see more than three to four cats inside the house?

MS. FARRELL: No, I didn't.

MS. O'BRIEN: Now, when you went in to visit him and you were in the living room, where would you normally sit?

MS. FARRELL: I would sit on the chesterfield.

MS. O'BRIEN: Okay.

MS. FARRELL: On the sofa.

MS. O'BRIEN: And would your –

THE COMMISSIONER: What was the question?

MS. O'BRIEN: I asked when she visited him in the living room, where would she normally sit. And she would sit normally on the sofa.

What about your husband?

MS. FARRELL: He would sit on the sofa also.

MS. O'BRIEN: Okay. Did you ever, did you ever eat there with Mr. Dunphy?

MS. FARRELL: No, I didn't.

MS. O'BRIEN: So you'd just drop him off food –

MS. FARRELL: Yes.

MS. O'BRIEN: – would be your normal routine.

MS. FARRELL: I often had ginger ale. He always had ginger ale. So he'd offer you ginger ale when you were there. I often had that.

MS. O'BRIEN: So you'd have a glass of ginger ale with him.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. Did he ever speak to you about plans to fix up his house?

MS. FARRELL: Yes, he did.

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

MS. FARRELL: He sort of was a person, I guess, who lived for today and had great hope for tomorrow; that tomorrow will be better. He had plans that, I think when he was probably 60, that whatever changed in his financial situation, in the income that he was getting, he would be getting some other kind of income whereby he would be – I understood it – away from Workers' Compensation and he'd have more income to do some upgrading on his house. He planned to do the roof and he planned to do windows, and upgrade the whole house basically.

MS. O'BRIEN: Did you have plans to give him any assistance with that?

MS. FARRELL: Yes, my husband did. My husband always offered him any help that he could give him. And if there was anything that we had when we were at our house and we had left over, we always gave it to him.

MS. O'BRIEN: And when you say what we had left over, do you mean in terms of, like, building supplies?

MS. FARRELL: Yes, yup.

MS. O'BRIEN: Okay. Did you pick up some wooden windows for him at one point?

MS. FARRELL: Yes, we did.

MS. O'BRIEN: Okay. And had those been installed yet at the time of his death?

MS. FARRELL: No, they weren't. No.

MS. O'BRIEN: Okay.

Now, when was the last time you saw him?

MS. FARRELL: It was three weeks before he passed.

MS. O'BRIEN: Okay. And can you just tell us about that visit?

MS. FARRELL: Well, we went to visit, to check on our place one Sunday afternoon and we also went over to visit him.

MS. O'BRIEN: Okay. How long did you visit him for?

MS. FARRELL: We stayed probably 20 minutes, half hour.

MS. O'BRIEN: Okay. Do you remember anything particular about that visit?

MS. FARRELL: Yes, I do. He had had a leak in his roof at some point in time and the ceiling in his bathroom was starting to cave down. So he was showing us that, which was some extra work that he would have had to have repaired.

MS. O'BRIEN: Okay. Do you know when he planned to do the work to repair the roof?

MS. FARRELL: I'm not sure.

MS. O'BRIEN: Okay. Do you recall anything unusual about his behaviour that day?

MS. FARRELL: No, nothing.

MS. O'BRIEN: Okay. He didn't seem down or out of sorts in any way?

MS. FARRELL: No.

MS. O'BRIEN: So the last time you saw him, you said, would have been three weeks before he passed away. Just give us an idea, like before that visit, what would have been your next – your second-to-last visit?

MS. FARRELL: It was probably about maybe a month before that. We saw him at the end of January, I know, when he was in hospital.

MS. O'BRIEN: So you visited him in hospital?

MS. FARRELL: Yes.

MS. O'BRIEN: And then between the time you saw him in hospital and your last visit with him at his house –

MS. FARRELL: It was probably –

MS. O'BRIEN: – did you have any other visits in his home?

MS. FARRELL: Yes, probably twice.

MS. O'BRIEN: So probably after you visited him in hospital, three other visits you had with Mr. Dunphy?

MS. FARRELL: Yes.

MS. O'BRIEN: And would there have been anything, you know, different in those visits other than what you've described here, you know, go in, sit down, have a chat with him?

MS. FARRELL: Yes, basically it was the same.

MS. O'BRIEN: The same? Okay.

Now, we've had people who've given testimony here at the inquiry and who I expect to give testimony again – and these people were in the house after the shooting – who describe the house as being, you know, very dirty. I mean we've had, you know, police officers say in terms – it was the worst house they've ever been in.

I understand you have been here in the hearing room for some of the testimony, right?

MS. FARRELL: Yes.

MS. O'BRIEN: And have you heard any of the witnesses give that kind of testimony about the house?

MS. FARRELL: Yes.

MS. O'BRIEN: All right. So, you know, you were in the house pretty regularly. Did you find the house like that?

MS. FARRELL: The house was messy; there was no doubt about that. There was newspapers. There was probably letters that he was writing. There was probably a Ginger Ale bottle. It was always on the coffee table, like a mess of papers always on the coffee table. There was dishes in the sink, that kind of regular, regular daily household stuff that wouldn't be finished.

MS. O'BRIEN: Okay.

Do you recall any particular smell from the house? Because as you might have heard, you know, we've had some very, you know, some fairly, you know, definite evidence about a very strong smell of cat urine, cat feces. Did you find the house smelled?

MS. FARRELL: No, I never did get that. I know Mr. Dunphy had litter boxes and he had cleaning supplies. And he always had supplies to keep his cats that were his pets clean.

MS. O'BRIEN: Did you ever see cat droppings or cat urine anywhere around the house?

MS. FARRELL: Never.

MS. O'BRIEN: And I know you said you primarily visited in the living room. Had you ever gone throughout the rest of the house?

MS. FARRELL: When we met him first, yes, we saw all his house because he showed it to us at the time.

MS. O'BRIEN: Okay, and then after that?

MS. FARRELL: No, not regularly, just the kitchen and living room area.

MS. O'BRIEN: Kitchen and living room is where you primarily visited? And after Meghan moved out and we know, you know, when you first met her you said she was still a teenager, but after that she moved out. Did you ever – did she ever visit her dad while you were there?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. So you'd sometimes see her that way.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

And what about calling her dad, were you ever there when her father had a call or took a call from her or placed a call to her?

MS. FARRELL: Yes, I was.

MS. O'BRIEN: Okay.

MS. FARRELL: And I was often there when he would say Meghan is coming home at a certain time or he was expecting her.

MS. O'BRIEN: Okay.

Did you know if he had other friends who visited him regularly?

MS. FARRELL: Friends that I've heard of, yes.

MS. O'BRIEN: Okay.

Did you know Colin Dinn, for example?

MR. FARRELL: No, I didn't.

MS. O'BRIEN: Did you know his name as being a friend of Mr. Dunphy's?

MS. FARRELL: I've heard it. Like recently I don't know where I've heard it and I probably heard it from Don at some point in time, but just paid no attention because I didn't know the man. I'd never seen the man.

MS. O'BRIEN: Okay.

All right, so Mr. Dinn was never there visiting while you were there visiting?

MS. FARRELL: No.

MS. O'BRIEN: Okay.

I'm going to show you, Ms. Farrell, some photographs of Mr. Dunphy's home. I want to get your comment on them and whether you think that they are representative as you would have seen the home. I'm going to tell you in the last photograph you'll see, it is a public exhibit, you're just going to see a little bit of a pajama pant leg, okay.

MS. FARRELL: Okay.

MS. O'BRIEN: I'm going to ask Madam Clerk to please bring up first P-0010, Photo 041.

THE COMMISSIONER: What was the number?

MS. O'BRIEN: Photo 041.

Okay, in this – so do you recognize the scene here in this photograph?

MS. FARRELL: Yes, I do.

MS. O'BRIEN: All right. So what are we seeing here? What room is it?

MS. FARRELL: This would be the living room.

MS. O'BRIEN: All right.

So what we're seeing here, we're seeing a lot of garbage and papers around. We're seeing some damage there. It looks like the windows are kind of you know – I do not know, I'm not sure if it's caulking or what's there around the windows. A lot of papers on the floor and garbage here. Would that be representative of how you would see his house on a regular basis?

MS. FARRELL: Yes, petty much so.

MS. O'BRIEN: Okay.

I ask to bring up the next exhibit, Photo 042. Do you also recognize this as from Mr. Dunphy's living room?

MS. FARRELL: Yes, I do.

MS. O'BRIEN: Okay, and so is this the couch that you would sit in?

MS. FARRELL: Yes, it is.

MS. O'BRIEN: All right, and so here we're seeing again, we're seeing it looks like some kind of a food bag here and broom on the floor and, you know, some blankets and sheets in a bit of disarray on the couch. Another blanket over here on the floor and a cardboard box. Again, does that look representative as how you would have seen the house on a regular basis?

MS. FARRELL: Yes, he usually had a cover on the couch to keep – if the cats got up on the couch, like he had the cover there to try to keep the couch clean. And when we'd go to visit, he'd just move it back so you could sit on the couch.

MS. O'BRIEN: Okay, so this blue coloured sheet you're saying was there to cover the couch to keep the cat hair off the couch?

MS. FARRELL: Yes.

MS. O'BRIEN: And so you're saying that would be removed when you were there and then you'd sit down on the couch without the cover on it.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

All right I'd ask – the next photograph is Photo 051. The next two photographs, I think, are Mr. Dunphy's kitchen. Do you recognize that as Mr. Dunphy's kitchen?

MS. FARRELL: Yes, I do.

MS. O'BRIEN: All right.

So again, you know, I see a Ginger Ale bottle, which I've heard you mention; we have some garbage bags, another Ginger Ale bottle on the floor there, you know, I don't know what that is, paper, something left out on the stove and pots out. Again, is this – does this look, you know, familiar to you; is this the kind of state that you would have typically seen in kitchen in?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

P 052, please.

All right then, so again we have another photograph of a slightly different view of the kitchen and we see, you know, bottles and food out on the table here, it looks like some clothes there, garbage bags over in the corner. Again, does this look to you a usual state for Mr. Dunphy's kitchen?

MS. FARRELL: Yes.

MS. O'BRIEN: All right.

Photo 068, please, and I just have two more photographs, Commissioner, to bring. Now, do you recognize this scene here?

MS. FARRELL: It looks like the bathroom.

MS. O'BRIEN: Okay.

And you said earlier that on your last visit there he had some damage to his bathroom ceiling.

MS. FARRELL: Yes.

MS. O'BRIEN: When you saw the bathroom ceiling at that day did it look like this, did it look worse than this or better than this?

MS. FARRELL: It looked like that. The Gyproc was kind of sagging.

MS. O'BRIEN: Okay.

So that's the damage that you saw that day, that he reported to you, your last visit?

MS. FARRELL: It looks like that, yes.

MS. O'BRIEN: Okay. And in that area.

All right. And did you understand at that time it had been fairly recent damage to his bathroom?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

All right. The final photograph I'll just bring you to is P 104.

Madam Clerk, can you make that smaller there so we can see the full photograph? Okay, can it go a little smaller, even just so we can – yeah, there we go.

All right. So here we're seeing again, we're seeing a lot of garbage – this is next to Mr. Dunphy's chair, and I won't keep you on this one long, but I'm seeing a lot of, see – there's a lot of garbage here, okay, so we can see, you know a lot of BOOST bottles and water bottles, ginger ale bottles. Would it be typical to see that much garbage on the floor?

MS. FARRELL: No. That's – I've never seen that. It almost looks like the garbage was in the garbage can and it almost looks like it was dumped out because somebody was looking for something or some reason. Like, there's broken paper cups there, I've never seen anything like that.

MS. O'BRIEN: Okay. So of all the other photos you saw you thought were representative but this one you don't. That's more –

MS. FARRELL: In the living room, I haven't seen that in the living room.

MS. O'BRIEN: Okay. All right.

Thank you, I'm done with that exhibit.

Did you ever see any weapons in Mr. Dunphy's home?

MS. FARRELL: The only thing I saw in Mr. Dunphy's home that would be classed as a weapon, I guess, was a stick that looked like a baseball stick. It was a long stick with some tape on the end of it.

MS. O'BRIEN: Okay, and –

THE COMMISSIONER: When you say like a baseball stick, like a baseball bat, you mean?

MS. FARRELL: Like a bat, yes, Sir.

MS. O'BRIEN: Okay. And where would you have seen that?

MS. FARRELL: That was on the right, always on the right-hand side of the chair where he sat, on his right-hand side.

MS. O'BRIEN: All right. Did you, did you ever have any conversation with him about it, like why he had it?

MS. FARRELL: No, I didn't. I just assumed because he had a medical marijuana licence and he kind of told about that on *Open Line* so I always thought there was a danger that somebody would kind of break into his house for the marijuana. So I guess I just assumed he had it there for protection.

MS. O'BRIEN: Okay. So you assumed that, but you never spoke to him about it?

MS. FARRELL: No, I didn't think it was my business to ask him why he had it. But I had no fear of that stick, and I just thought it was there for his protection because of the marijuana.

MS. O'BRIEN: Okay. And when you said it was on the right-hand side of the chair, would it typically have been on the floor, would it have been, you know, propped up against the wall? How would you usually see it?

MS. FARRELL: It usually stood up against his chair, or against the arm, against the wall by his chair.

MS. O'BRIEN: Okay. And do you recall when –

THE COMMISSIONER: Sorry. Where did you say again it was? Usually against his chair, you say?

MS. FARRELL: Yes.

THE COMMISSIONER: Which part of his chair?

MS. FARRELL: The right-hand side. If he was sitting in the chair, it was on the right-hand side.

THE COMMISSIONER: Thank you.

MS. O'BRIEN: Did you, did you know that, you knew – said you knew he had a medical marijuana licence.

MS. FARRELL: Yes.

MS. O'BRIEN: Did he ever smoke marijuana while you were around?

MS. FARRELL: Sometimes we went there and he had smoked. He never smoked when we were there, but sometimes we went there and you could tell that he had smoked, like –

MS. O'BRIEN: Because you could smell it, is that what you're saying?

MS. FARRELL: There was kind of like a smoke or something in the air, and you could tell that he had smoked.

MS. O'BRIEN: Okay.

THE COMMISSIONER: Did you refer to Exhibit P-0119? Has that gone in or you just got –?

MS. O'BRIEN: No, I will, I will –

THE COMMISSIONER: Okay. Yeah.

MS. O'BRIEN: I will be asking. I will put that question to her in just one moment.

Okay. And did you ever – sorry, Commissioner. Okay, so he – so he wouldn't smoke around you but you knew it was there and you knew he grew it.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. Did you know, ever know Mr. Dunphy to have a gun?

MS. FARRELL: Never.

MS. O'BRIEN: Okay. Did you ever – did he ever speak to you about a gun?

MS. FARRELL: Never.

MS. O'BRIEN: Okay.

I'm now going to show you an exhibit of what – of a stick that was found in his house and I'm going to ask if you can identify it.

If you could please bring up Exhibit – Photo 119, P-0010, 119.

Okay, Ms. Farrell, can you see that? Do you recognize the stick here?

MS. FARRELL: Yes, I do.

MS. O'BRIEN: And is that the one that you were just talking about?

MS. FARRELL: Yes, it is.

MS. O'BRIEN: And you said it was on the right-hand side of the chair and it was usually propped up against the wall, I think you said –

MS. FARRELL: Yes.

MS. O'BRIEN: – or against the chair by the –

MS. FARRELL: By the side of the chair.

MS. O'BRIEN: – or the side of the chair propped up. In this case this was photographed, kind of, on the – this is the entranceway going into the living room, okay?

MS. FARRELL: Yes.

MS. O'BRIEN: So what you're seeing here in this corner is the back corner of Mr. Dunphy's armchair.

MS. FARRELL: Okay.

MS. O'BRIEN: Did you ever see this stick in that location?

MS. FARRELL: Never.

MS. O'BRIEN: Did you ever see it anywhere else in the living room other than where you described it on the right – on the right side of the chair?

MS. FARRELL: No, I didn't.

MS. O'BRIEN: Okay.

How did you – I'm going to take you now – just a few questions with respect to April 5 of 2015. And that's fine, Madam Clerk, you can take down that exhibit. How did you find out about Mr. Dunphy's shooting?

MS. FARRELL: I was at home alone, actually, just looking at the computer and it came on VOXM radio that there had been a shooting in Mitchells Brook. And –

MS. O'BRIEN: So when you say you were at home, were you at your home in Flatrock, were you?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay.

MS. FARRELL: Yes.

MS. O'BRIEN: And so you heard it on the radio on VOXM.

MS. FARRELL: Yes. Yes, I did.

MS. O'BRIEN: Okay. And what did you do when you heard it?

MS. FARRELL: Well, I called the cell number that I had for Mr. Dunphy to see what was on the go but there was no answer.

MS. O'BRIEN: So you called Don Dunphy's cell number?

MS. FARRELL: Yes, I did.

MS. O'BRIEN: Okay, and no answer. So what did you do then?

MS. FARRELL: I actually ended up – I called twice.

MS. O'BRIEN: Okay.

MS. FARRELL: And I left a message.

MS. O'BRIEN: Okay.

MS. FARRELL: And then I just listened – I was invited that evening to my son's for supper because my husband was out of town that weekend – or that week, actually. And when I went to my son's, he had also met Don from using our property there, so he was wondering what was on the go too. So he suggested that I call somebody. So it ended up that I called Dick and Debbie's house.

MS. O'BRIEN: Okay. And who did you speak to at Dick and Debbie's house?

MS. FARRELL: Debbie.

MS. O'BRIEN: All right. And can you just tell, tell me about your conversation with Debbie that night.

MS. FARRELL: Yes. I told her that I had heard there was something on the go in Mitchells Brook and I asked her if she knew about it. She said yes, there had been a shooting.

MS. O'BRIEN: How are you doing? I'll just give you a moment. Would you like – we don't have very much longer to go, would you like to take a little break, though, before we finish?

MS. FARRELL: That's fine.

MS. O'BRIEN: You want to keep going, okay.

All right. Just what else of that conversation, Ms. Farrell, do you recall? She said they'd been a shooting. Did she tell you who'd been shot?

MS. FARRELL: Yeah, she said Don Dunphy was dead. Sorry.

MS. O'BRIEN: That's okay.

MS. FARRELL: So I asked her what happened and she said we don't know if Don killed himself or what happened. But she did say, she said that Janet Adams said it was too bad because he was a good cop. He did a lot of community work. She said an officer had come to her door looking for Don and she had said that he was probably at his daughter's. So she said she didn't think that Don had a reason to do all the complaining that he did. She said she thought he was looking for attention.

MS. O'BRIEN: Okay. So I'm just going to take you through that a bit slowly. So at that time she didn't know whether or not – she said she didn't know whether Mr. Dunphy has killed himself or not.

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. And she'd you that a police officer had come to her door?

MS. FARRELL: Yes, she did.

MS. O'BRIEN: Did you understand that to be prior to the shooting or after the shooting?

MS. FARRELL: He had come to her door, that was prior to the shooting and he was asking – he had been at Don's property and he was asking if Mr. Dunphy was home, or I guess if she knew where he was. So she said he was probably at his daughter's. And she said the officer mentioned the condition of the property and said that if this was in St. John's it wouldn't happen, it wouldn't be allowed to go on. So she said that she did say she didn't know the condition of the property because she hadn't been there in quite a while.

MS. O'BRIEN: Okay. All right. And just – I want to understand, she said that there was no need of someone complaining. There was no need of who?

MS. FARRELL: There was no need of Don; she didn't think there was any need of Don complaining as much as he did. She just thought that he was looking for attention.

MS. O'BRIEN: Okay. And did you have any response to that?

MS. FARRELL: Yes, I did. I said I didn't think he was looking for attention. I truly think that he truly believed he was fighting for what he really thought was his right to have some way of a better life, a better quality of life that he was used to when he was able to work.

MS. O'BRIEN: All right. Now you mentioned the name Janet Adams, was that a name that Debbie Dunphy gave to you when you were talking to her on the phone?

MS. FARRELL: Yes, it was.

MS. O'BRIEN: Okay. Did you know who Janet Adams was?

MS. FARRELL: Yes, I knew who she was.

MS. O'BRIEN: Okay. Who's Janet Adams?

MS. FARRELL: She was the wife of a Sergeant Mike Adams.

MS. O'BRIEN: And Mike Adams, is he a sergeant with the Royal Newfoundland Constabulary?

MS. FARRELL: Yes, he was.

MS. O'BRIEN: All right. Did you know Janet Adams personally?

MS. FARRELL: No, I didn't know her personally. I knew her; that she was originally from where I lived in Flatrock.

MS. O'BRIEN: Okay. And did you know whether she had a home in the area of Mitchells Brook or –?

MS. FARRELL: Yes, I understood that they had a cabin up on the end of Salmonier Line and the entrance to Mount Carmel.

MS. O'BRIEN: Okay. And so just, can you just go over again a bit slowly. What was Debbie Dunphy telling you that Janet Adams had said to her?

MR. FARRELL: That she had made the comment that it was too bad because this cop was a good cop and he had done – or he was doing a lot of community work.

MS. O'BRIEN: Okay. At that time did you understand that a police officer, a cop – you know, did you understand what cop she was referring to? Did you understand a police officer had been involved in the incident?

MS. FARRELL: Well, I guess I did when I thought about it after. And then I thought, well – first I thought she was making a mistake because when she mentioned that she didn't know if Don killed himself, I said well – I was thinking, well, she must have mistaken somewhere because, you know, I didn't think that that was possible to happen that he would kill himself. Then I thought, well, there must be a police officer there when she said an officer had come to the door looking for Don.

MS. O'BRIEN: Okay. And so is that – the officer that came to the door is that who you understood that Janet Adams had said he was a good cop who did community work?

MS. FARRELL: Yes. But she never did mention to me the name of the cop.

MS. O'BRIEN: Okay, she –

MS. FARRELL: So I did wonder why somebody already knew the name of the cop.

MS. O'BRIEN: Okay. Is that all you recall about your interaction with, your conversation with Debbie Dunphy that night?

MS. FARRELL: Yes.

MS. O'BRIEN: And do you know approximately what time that was?

MS. FARRELL: I would say that was probably anywhere between 3:30, 4 o'clock maybe. I think supper was probably at 4, so I probably had been to my son's, like, in time for that.

MS. O'BRIEN: Okay. So around – somewhere between 3:30, 4 o'clock is your best estimate?

MS. FARRELL: Yes.

MS. O'BRIEN: Okay. All right.

Okay, those are the questions I have for you, Ms. Farrell. Other lawyers may have questions and the Commissioner may have questions himself.

MS. FARRELL: Okay.

MS. O'BRIEN: Thank you.

THE COMMISSIONER: Ms. Breen?

MS. BREEN: Yes, thank you, Mr. Commissioner.

Ms. Farrell, my name is Erin Breen, I represent Meghan Dunphy. I have a few questions for you.

Ms. Farrell, you have described basically an 11-year relationship that you had with Donald Dunphy. Is that correct?

MS. FARRELL: Yes.

MS. BREEN: And that you saw him frequently throughout that 11-year period.

MS. FARRELL: Yes, I did.

MS. BREEN: You've also described going to his house and being a guest in his house seated in his living room at times when you knew he had smoked marijuana.

MS. FARRELL: Yes.

MS. BREEN: Because you say you had smelled it or saw smoke or something of that nature?

MS. FARRELL: Yes.

MS. BREEN: Okay. In your many conversations with Mr. Dunphy over the years, did you ever find him to be paranoid?

MS. FARRELL: No, I didn't.

MS. BREEN: Did you ever find him to be delusional or not making sense?

MS. FARRELL: Never.

MS. BREEN: Did you see him ever express or look to be depressed or express any kind of suicidal thoughts or ideation?

MS. FARRELL: Never.

MS. BREEN: Okay. And I believe you said to Ms. O'Brien, you felt that he was a hopeful person. Is that correct?

MS. FARRELL: Yes, I did.

MS. BREEN: You've also described the fact that you had given him a key to your summer place. Is that correct?

MS. FARRELL: Yes, it is.

MS. BREEN: And so you trusted Mr. Dunphy, is that right?

MS. FARRELL: Yes, I did.

MS. BREEN: You asked him to do things for you and he did those.

MS. FARRELL: Yes.

MS. BREEN: Okay. And you also mentioned about his house. You said it was always warm. Can you just tell us a little bit about that?

MS. FARRELL: He had a heater. It was like a round electric heater and he always had it in the living room. And it just gave out a tremendous amount of heat.

MS. BREEN: Okay.

MS. FARRELL: So whenever you went there, the house was really, really warm. Especially in the wintertime, as soon as you went in through the door, you could feel the heat. It would kind of strike your face and it was just totally warm.

MS. BREEN: Okay.

Did you find his behaviour to be rational?

MS. FARRELL: What do you mean by rational?

MS. BREEN: Well, did you ever have an issue where you questioned, you thought he was being – his behaviour was erratic or was, was that inappropriate?

MS. FARRELL: No, never.

MS. BREEN: Now, I just have two specific questions about areas that Ms. O'Brien has already covered; one is with respect to your conversation with Debbie Dunphy on April 5, my understanding is that you placed a call to Mr. Dunphy. Is that right?

MS. FARRELL: Yes, I did.

MS. BREEN: And that would have been as soon as you heard the news that there was a shooting in Mitchells Brook?

MS. FARRELL: Yes.

MS. BREEN: And I don't want, Mr. Commissioner, to expose Ms. Farrell's phone number in any way. I understand that in the interview she may have identified the call and when it was made. Is that correct –

MS. FARRELL: Yes.

MS. BREEN: – Ms. O'Brien?

MS. O'BRIEN: She provided –

THE COMMISSIONER: You identified to the police, you mean?

MS. BREEN: To – no, Ms. Farrell was never identified to police.

THE COMMISSIONER: Oh, okay.

MS. BREEN: She was never interviewed.

MS. O'BRIEN: She did provide me with her cellphone number during that time and it can be compared –

MS. BREEN: And that's been confirmed.

MS. O'BRIEN: It can be compared to his phone records, yes

THE COMMISSIONER: Yeah, okay.

Thank you.

MS. BREEN: And that was within about, I believe, Ms. Farrell, about an hour, within an hour that the shooting had occurred. Is that your recollection?

MS. FARRELL: Yes.

MS. BREEN: Okay. And you have described that sometime after that you placed the call to Debbie Dunphy and had the conversation with her that you have testified about?

MS. FARRELL: Yes.

MS. BREEN: And I believe what you told Commission counsel in your interview that that had occurred very quickly after you placed the call to Mr. Dunphy. Is that right?

MS. FARRELL: Well, I called – I figured I'd call Mr. Dunphy between 2:15, 2:30, maybe around that time, then, I went to my son's. So it was probably 3:30 to 4 when I actually called Debbie Dunphy.

MS. BREEN: Okay.

Now, Ms. Farrell, finally I want to ask you a question: Do you recall about Mr. Dunphy wearing eyeglasses? Did you ever see him wear eyeglasses?

MS. FARRELL: Very scattered time. It seemed like if he was reading he used eyeglasses.

MS. BREEN: Okay. So it wasn't something he wore all the time to your knowledge?

MS. FARRELL: No.

MS. BREEN: But you did see him wear those glasses?

MS. FARRELL: Yes.

MS. BREEN: And what kind of glasses do you recall him wearing? Do you – can you describe them?

MS. FARRELL: I can't really remember enough to describe the glasses.

MS. BREEN: Okay. Fair enough.

Was he wearing them, to the best of your recollection, in recent times in – say, since the three visits I believe you said you had with him before his death, which would have been back, I think, to around January, February of 2015. Did he have the glasses around that time, do you know?

MS. FARRELL: I don't think so.

MS. BREEN: Okay.

I believe those are all my questions for you, Ms. Farrell. Thank you very much.

MS. FARRELL: Thank you.

THE COMMISSIONER: Next.

MR. KENNEDY: Yes, thank you, Commissioner.

Good morning, Ms. Farrell. My name is Jerome Kennedy. I am counsel for Constable Joseph Smyth. I have a couple of questions for you.

MS. FARRELL: Good morning.

MR. KENNEDY: Now, Commission Counsel had indicated, excuse me, Ms. Farrell, that you had sat through some of the inquiry. Is that correct?

MS. FARRELL: Yes, I did.

MR. KENNEDY: Okay. So did you sit through any of the evidence where you would have heard the police officers describe to you what they said was an overpowering smell of cat urine and other things when he went into the house?

MS. FARRELL: Yes, I did.

MR. KENNEDY: Okay. And you're saying that you didn't get that smell.

MS. FARRELL: No, I didn't.

MR. KENNEDY: So you'd been in the house three weeks previous and that smell wasn't there?

MS. FARRELL: No, definitely not.

MR. KENNEDY: Okay.

Now, did you also sit through the testimony of Meghan Dunphy and Colin Dinn?

MS. FARRELL: I wasn't here for Meghan's. No, I wasn't here for Colin Dinn.

MR. KENNEDY: Okay.

Now, I want to ask you a couple of questions and refer you to a couple of photographs. And the difficulty – if I could ask first for Photo 030 – that would be P-0010, Photo 030. I think it's Photo 033 is the one I identified, is it, Madam Clerk?

Okay, do you see that photograph, Ms. Farrell?

MS. FARRELL: Yes, I do.

MR. KENNEDY: Is that the entrance to Mr. Dunphy's home?

MS. FARRELL: Yes, it is.

MR. KENNEDY: Is that the entrance that you always went in through?

MS. FARRELL: Yes, it is.

MR. KENNEDY: Did you ever see Mr. Dunphy get over that, climb that stairs or get over that step?

MS. FARRELL: No, I didn't.

MR. KENNEDY: Okay. So were those tires there when you had been there three weeks before?

MS. FARRELL: Yes, they would have been.

MR. KENNEDY: And so those – that would have been the same set-up that you would have seen three weeks before?

MS. FARRELL: Yes.

MR. KENNEDY: Okay.

Now, if I understand correctly then, you had visited Mr. Dunphy in the hospital in the end of January?

MS. FARRELL: Yes, I did.

MR. KENNEDY: And you probably had one more visit in between.

MS. FARRELL: Yes.

MR. KENNEDY: Okay.

MS. FARRELL: No, I had, I had two –

MR. KENNEDY: Okay, so when would they –

MS. FARRELL: At least two or three.

MR. KENNEDY: When would they have been, Ms. Farrell?

MS. FARRELL: Well, probably once a month –

MR. KENNEDY: Okay.

MS. FARRELL: – after January, February or March. And then three weeks was the last visit before he passed away.

MR. KENNEDY: Okay.

So the smell of, that overpowering smell that's been described by the officers, did you get that at any of the other visits?

MS. FARRELL: No, I didn't.

MR. KENNEDY: Okay.

I'm now going to – we've heard discussion –

THE COMMISSIONER: What exhibit was that last, the photo of?

MR. KENNEDY: That exhibit was Photo – it'd be the book of exhibits – book of photos, excuse me, Commissioner, Scene 033.

THE COMMISSIONER: Thank you.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Hmm.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

THE COMMISSIONER: Something 33.

UNIDENTIFIED FEMALE SPEAKER: P-0010.

THE COMMISSIONER: Yeah.

UNIDENTIFIED FEMALE SPEAKER: Scene 033.

THE COMMISSIONER: Scene 033. Okay, sorry, I couldn't hear that one.

MR. KENNEDY: Okay, if I could next have Scene 100, please.

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: Okay, I'm sorry. Scene 100 has come up in the – is that difficult to access, Madam Clerk?

UNIDENTIFIED FEMALE SPEAKER: (Inaudible.)

MR. KENNEDY: No, Scene 100 is a picture of the table.

THE COMMISSIONER: Is a what?

MR. KENNEDY: Picture of the table in front of Mr. Dunphy's chair.

Okay, this is to orientate – help you orientate yourself, Ms. Farrell. This is the table that's in front of Mr. Dunphy's chair and you'll see there's a number of things on that table. Have you, had you seen that table like that before?

MS. FARRELL: Yes, I did.

MR. KENNEDY: And did you ever see a blowtorch on the table?

MS. FARRELL: Yes, I did.

MR. KENNEDY: The bottle that you see there that appears to be a smoky bottle, had you seen that before?

MS. FARRELL: Yes, I did.

MR. KENNEDY: There's a pair of glasses there, had you seen those before?

MS. FARRELL: Probably on the table but I wouldn't have paid much attention to them.

MR. KENNEDY: No, there's a pair of glasses. Had you seen those glasses before?

MS. FARRELL: Yes, he wore glasses –

MR. KENNEDY: Okay.

MS. FARRELL: – when he was reading.

MR. KENNEDY: There you'll see there's a couple of knives there that are burnt on the tips. Have you seen those before?

MS. FARRELL: Yes.

MR. KENNEDY: Okay. So you've seen all of that before, that table there.

MS. FARRELL: Yes.

MR. KENNEDY: Okay.

If I could now ask please and unfortunately, Commissioner, there's not a good – I'm trying to find a picture to show around the chair. And there's not like a full picture around the chair and there's not a good picture. And what I was going to propose is that if I take a yellow sticker and put it completely over photograph 045, then that would cover –

THE COMMISSIONER: Right. What about –

MR. KENNEDY: Just perhaps if I show it to you in advance.

THE COMMISSIONER: – 044, if you could show it to me, please.

MR. KENNEDY: Show it to you in advance, Commissioner, so – and counsel.

THE COMMISSIONER: Right. Thank you.

MR. KENNEDY: (Inaudible) Commissioner.

THE COMMISSIONER: Show 045 –

MR. KENNEDY: Yeah, but to put the, put that over the –

THE COMMISSIONER: Yeah, but the number you're looking for is 045 –

MR. KENNEDY: It would be 045.

THE COMMISSIONER: – not 044?

Okay, 045, that will be fine. Yeah.

MR. KENNEDY: Mr. Simmonds and Ms. Breen (inaudible).

UNIDENTIFIED MALE SPEAKER: That's fine. Which one is it –

MR. KENNEDY: It would be Scene 045 –

UNIDENTIFIED MALE SPEAKER: – 044 or 045?

UNIDENTIFIED MALE SPEAKER: (Inaudible.)

MR. KENNEDY: I'm going to show you a photograph.

Perhaps if we not bring it on the – or I don't know if we need to bring it on the screen. I just wanted to show it to Ms. Farrell, Commissioner. It's up to you, I don't (inaudible).

THE COMMISSIONER: I don't think there's a problem with it.

MS. O'BRIEN: No, this is one of the exhibits, as I understand, that has been previously made public. So it is a public exhibit, I think, Mr. Kennedy, it's just being sensitive to Ms. Farrell. So what we could do is turn off her monitor and you can show her the (inaudible).

THE COMMISSIONER: Was 045 made public or was it –

MS. BREEN: That was one of the ones you (inaudible).

THE COMMISSIONER: Okay.

MS. O'BRIEN: Okay.

So I'll just –

THE COMMISSIONER: All right. Go ahead.

MR. KENNEDY: I'm going to show you photo now, Ms. Farrell. This is a picture around the chair. Okay. Do you see that?

MS. FARRELL: Yes, I do.

MR. KENNEDY: Okay. That's a larger picture of the one that had been shown by Ms. O'Brien.

MS. FARRELL: Uh-huh.

MR. KENNEDY: Had you ever seen the house like that before?

MS. FARRELL: I've seen the table like that. I've never seen this here.

MR. KENNEDY: Okay, so you've never seen it.

MS. FARRELL: I've never seen that much clutter from a garbage can.

MR. KENNEDY: So in the previous – when you had been there three weeks previous, it wasn't like that?

MS. FARRELL: No. I've never, ever, at any time seen something – I have always seen the table. There was always papers, magazines, letters he was writing, that kind of thing, whatever else he had on his table, but never something that looked like a pile of garbage that was just dumped in broken pieces.

MR. KENNEDY: So you never smelled the overpowering smell, you'd never seen the garbage in your previous visits to Mr. Dunphy's home?

MS. FARRELL: I've seen – I didn't say I didn't see garbage; I didn't see the garbage in the way that garbage was by that garbage can.

MR. KENNEDY: Okay.

MS. FARRELL: There was garbage, newspapers, yes, you call that garbage but not broken up garbage.

MR. KENNEDY: Okay.

So when you visited Mr. Dunphy in the previous month he was in – was he talking about fixing his house up then?

MS. FARRELL: Yes.

It was always in the conversation that he was always hoping and his hopes were built up at one point in time, I think it was in the fall of 2014 when there was one member in government who –

MR. KENNEDY: Okay.

MS. FARRELL: – he thought that was going to give some help.

MR. KENNEDY: Was that Steve Kent? Does that ring a bell with you?

MS. FARRELL: Yes, it was.

MR. KENNEDY: Okay.

So that didn't happen and so he had to start again.

MS. FARRELL: Yes.

MR. KENNEDY: Okay.

MS. FARRELL: And that was a continuous –

MR. KENNEDY: Yeah. Sorry, that was ...?

MS. FARRELL: That was the continuous way that it just – it was working.

MR. KENNEDY: Did he specifically complain about Steve Kent or Paul Davis, or anyone like that?

MS. FARRELL: No, he didn't. He didn't. It was just the usual that they tried, they couldn't help and he was back to square one kind of all the time.

MR. KENNEDY: When you said he was going to fix up his house, he wasn't going to do this himself was he?

MS. FARRELL: Oh no, no.

MR. KENNEDY: Okay.

And your husband offered to help?

MS. FARRELL: Yes.

MR. KENNEDY: Okay.

Now in terms of the couch you sat on, you said that you didn't see a lot of cat hairs on that couch?

MS. FARRELL: No.

The sheet covered the couch. He'd always take the sheet off when you went in. I never did go back to my place with cats' hairs on me.

MR. KENNEDY: In terms of the bat that you saw, do you remember being asked about that by one of these two lawyers sitting here in front, Commission counsel, in your interview with them?

MS. FARRELL: Yes.

MR. KENNEDY: Do you remember what you said to them?

MS. FARRELL: Well, I'd have to know the question.

MR. KENNEDY: You were asked – okay – you were asked about did you ever see any weapons in Donald Dunphy's house? Do you remember what your answer was?

MS. FARRELL: It was the bat that I seen.

MR. KENNEDY: Okay. And you were then asked did you ever – did you, did he ever speak to you about why he had it by his chair?

MS. FARRELL: No, he didn't.

MR. KENNEDY: No. So did you say you assume because there was marijuana growing there, that he would have had it by his chair, for protection?

MS. FARRELL: Yes.

MR. KENNEDY: Okay. Now did you tell these counsel on that day where you saw the bat?

MS. FARRELL: Yes, I did.

MR. KENNEDY: And where did you tell them you saw the bat?

MS. FARRELL: On the right-hand side of his chair.

MR. KENNEDY: And you're sure you said that on the interview with Commission counsel on November – December 12, 2016?

MS. FARRELL: Yes, I did.

MR. KENNEDY: Now, unless Commission counsel can help me, I don't see that there.

THE COMMISSIONER: You don't what, see it –

MR. KENNEDY: Said that it by the right-hand side of the chair.

THE COMMISSIONER: You don't see the reference to where it was, or –

MR. KENNEDY: In the interview with Commission counsel, by the chair – but I don't see any reference to the right-hand side of the chair. Do you know if I'm incorrect in that?

MS. O'BRIEN: I, you know, I would have the same access to the same transcript that you do, Mr. Kennedy, but I have no memory of her being inconsistent on that point, but

THE COMMISSIONER: Right. So it may not have been raised in terms of which side it was on, but Ms. Farrell's recollection as far as I understand it is that she said it was on the right-hand side of the chair.

MR. KENNEDY: She said, I thought, Commissioner, she said she told Commission counsel it was on the right-hand side of the chair. That's your recollection, is it?

MS. FARRELL: Yes.

MR. KENNEDY: Okay. I'm going to read you a – it's at the page –

MS. BREEN: Excuse me, Mr. Kennedy, I just wanted the record to reflect as well that when Ms. Farrell was just giving that testimony she showed, she showed, she moved her arm to the right-hand side. What we have here is a transcript of what she said audio, but as she was just replying to Mr. Kennedy she used her right hand, to her right side.

THE COMMISSIONER: Yeah, I don't think Mr. Kennedy is questioning that, are you, that she's indicating –

MR. KENNEDY: No, what I'm saying is that she didn't tell Commission counsel, on the date in question, that the stick was to the right-hand side of the chair.

THE COMMISSIONER: 'Cause it might not have been raised, but

MR. KENNEDY: Well, I'm going to read her the question –

THE COMMISSIONER: All right, sure, okay. Is that all right as far as what –

MS. BREEN: Well, I understood when Ms. Farrell was replying about what she told Commission counsel, she did use the word right, but she was also gesturing, and I don't know if she gestured to Commission counsel on that date, we don't have a record of that because she wasn't asked specifically to follow up on it.

THE COMMISSIONER: Anyhow – okay, go ahead.

MR. KENNEDY: So let me read you the question, Ms. – Ms. O'Brien said to Ms. Farrell: Did you ever see any weapons in Donald Dunphy's house? Ms. Farrell: I never did and I never heard of any weapons, and Don never ever talked about any weapons or any hunting. The only thing that I ever remember seeing, it was there every day, it was like a baseball stick and it had tape on the end and he always had that by his chair.

Ms. O'Brien: Did he ever speak to you about why he had that by his chair? No, I guess he had no reason to because I never asked, I just assumed that where he had the medical marijuana or whatever he had it there for protection in case somebody or some younger people broke into his house thinking that he had drugs there, that kind of thing. So I just assumed it was for protection.

Now, did you – do you remember giving that testimony to Commission counsel?

MS. FARRELL: Yes, I do.

MR. KENNEDY: Okay. I don't see a reference there to you saying it was by the right-hand side of the chair.

MS. FARRELL: It was always by the right-hand side of the chair. Maybe I wasn't asked (inaudible).

MR. KENNEDY: Well, you were asked about the weapon and you referred to the bat. You said it was by his chair.

MS. FARRELL: Yes.

MR. KENNEDY: Is there any reason that you didn't tell them where it was that day?

MS. FARRELL: There was no reason. It was always by the right-hand side of the chair.

MR. KENNEDY: Okay. So why did you say – when it was by his chair, why didn't you tell them that day it was by the right-hand side of his chair?

MS. FARRELL: Maybe it didn't come to me to be that specific because I wasn't asked.

MR. KENNEDY: So have you sat in this inquiry when there's been discussion as to where the stick was located?

MS. FARRELL: I've been here a few days, it probably did come up.

MR. KENNEDY: Okay. Did that help your memory as to where the stick was located?

MS. FARRELL: No, definitely not. From day one I knew it was always, for 11 years, by the right-hand side of his chair.

MR. KENNEDY: So he had that stick, you're saying, for 11 years by the right-hand side of his chair.

MS. FARRELL: Every time I went there on the weekends or in the summertime, that's where I saw that stick.

MR. KENNEDY: So when you were asked a question, is there a reason you didn't say by the right-hand side of his chair?

MS. FARRELL: No, there's no reason.

MR. KENNEDY: Now, I understand that you weren't interviewed by the police.

MS. FARRELL: No, I wasn't.

MR. KENNEDY: Okay. Did you, do you know if the police ever came to your –

MS. FARRELL: No, they didn't.

MR. KENNEDY: There's some reference to a discussion with your son?

MS. FARRELL: Possibly so.

MR. KENNEDY: Well, did the police go to your door in Mitchells Brook and speak to your son?

MS. FARRELL: My son went out that evening after supper to see if he could find out what was going on and he went to my house in Mitchells Brook, and my understanding was that some police officer, he didn't know if it was RNC or RCMP, did come to the door and asked him about Mr. Dunphy but they never interviewed him or followed up later on.

MR. KENNEDY: Okay. So, what you're saying is that the RCMP went to the door and your son, Scott, was there that day.

MS. FARRELL: Yes, he was.

MR. KENNEDY: Okay. That, you don't know what questions were asked by the police?

MS. FARRELL: No, I don't.

MR. KENNEDY: Okay. Did it occur to you to go to the police, or to offer any –?

MS. FARRELL: No, it didn't.

MR. KENNEDY: Okay. So you were going to wait for them. I'm not saying you should have. So you were going to wait for them to come to you.

MS. FARRELL: Well, I assumed that because I was in the neighbourhood, that if they needed me they would find the ownership from the town council there and they would contact me.

MR. KENNEDY: Did it occur to you, Ms. Farrell, that some of the information that you had in your relationship with Mr. Dunphy would be relevant?

MS. FARRELL: Possibly so. I didn't know at the time that it would be or it wouldn't, but I understood that, with the police department, if they needed me they certainly would have contacted me.

MR. KENNEDY: Okay. So they didn't contact you other than going to the door that night and you didn't see fit to contact them.

MS. FARRELL: No, I wasn't there that afternoon. I wasn't there when the shooting occurred. So I didn't think that I was a part of the investigation.

MR. KENNEDY: Okay. Now, how did you – when Commission counsel interviewed you, how did, do you know how they came to get in contact with you or how anyone come to get in contact with you?

MS. FARRELL: Somebody came to the door one day, I think, or – I can't remember if somebody called to see if I would do an interview. I know I came in here and did an interview with Ms. O'Brien.

MR. KENNEDY: No, no. All I'm wondering is how did you, how did people know that you were – do you know how people knew you were there, involved in this or you had information to offer?

MS. FARRELL: Well, Meghan was my friend. So she knew –

MR. KENNEDY: Okay.

MS. FARRELL: – that I lived there.

MR. KENNEDY: Okay. So that's –

MS. FARRELL: So I guess she knew that we were the owners of that other property which was two doors from Mr. Dunphy.

MR. KENNEDY: Okay. So someone – that's quite likely or is likely or possible that someone simply said that –

MS. FARRELL: Yes.

MR. KENNEDY: – that you and your husband were regularly out in Mitchells Brook –

MS. FARRELL: Yes.

MR. KENNEDY: – and you owned the property. Okay.

I'd just like to have one last question for you now. No, I think that's fine.

Thank you very much, Ms. Farrell.

MS. FARRELL: Okay, thank you.

THE COMMISSIONER: Ms. Zdebiak.

MS. ZDEBIAK: Thank you, Mr. Commissioner.

No questions, thank you.

THE COMMISSIONER: Mr. Freeman.

MR. FREEMAN: No questions, Commissioner.

Thank you.

MR. COMMISSIONER: Nothing from Commissioner counsel?

Okay.

MS. O'BRIEN: (Inaudible) Ms. Farrell.

THE COMMISSIONER: All right.

Thank you, Ms. Farrell, for your testimony.

MS. FARRELL: Thank you.

THE COMMISSIONER: Okay. So we're going to adjourn now until 9:30 is it, Monday morning?

MS. O'BRIEN: That's correct.

THE COMMISSIONER: Okay.

Thank you.

MS. SHEEHAN: All rise.

The Commission of Inquiry is now closed.