

Page 1

1 MS. O'BRIEN:
 2 Q. Good morning. This is an interview in the
 3 course of the Inquiry respecting the death
 4 of Donald Dunphy. It is December 1, 2016,
 5 at 9:03 a.m., and the witness to be deposed
 6 today is Cpl. Steven Burke. This interview
 7 is taking place at the Commission's Offices
 8 in St. John's. Present is Cpl. Burke,
 9 counsel for the RCMP, Lori Rasmussen. Also
 10 present is co-counsel to the Inquiry, Sandy
 11 Chaytor, and me, Kate O'Brien. The
 12 interview is being recorded. Cpl. Burke,
 13 I'm going to ask you to affirm your
 14 evidence. Do you affirm that the
 15 information that you'll provide today will
 16 be the truth, the whole truth, and nothing
 17 but the truth?
 18 CPL. BURKE:
 19 A. Yes, I do.
 20 MS. O'BRIEN:
 21 Q. Thank you. Can you state your full name,
 22 address, and date of birth, please?
 23 CPL. BURKE:
 24 A. My name is Steven Danny Burke. My address
 25 is [REDACTED]. My date

Page 2

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 3

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 4

1 year and a half.
 2 MS. O'BRIEN:
 3 Q. Do you have any – I know you've done basic
 4 training as an RCMP officer, as all officer
 5 and members have. Have you had any
 6 specialized training?
 7 CPL. BURKE:
 8 A. Yes, in my field – like, training as a
 9 police officer in several different, maybe
 10 20, 30, 40, 50 courses.
 11 MS. O'BRIEN:
 12 Q. Is there any areas where you've received
 13 what you would consider specialized
 14 training?
 15 CPL. BURKE:
 16 A. Well, for my current job in the Major Crime
 17 Unit, I received several training, I guess--
 18 I had the Major Crime Investigative
 19 Techniques Course, Investigative
 20 Interviewing Course, and the Judicial
 21 Authorization Course, Search Warrant Course.
 22 I've also been trained in Wiretap Part 6
 23 drafting, surveillance, advanced disclosure.
 24 I think that's the major ones, anyway.
 25 MS. O'BRIEN:

Page 5

1 Q. Okay, have you had any further – outside of
2 training with the RCMP, have you had any
3 further education while you're an RCMP
4 officer?
5 CPL. BURKE:
6 A. No.
7 MS. O'BRIEN:
8 Q. Have you ever had any specialized training
9 in homicide investigations?
10 CPL. BURKE:
11 A. Yes.
12 MS. O'BRIEN:
13 Q. Can you tell me about that?
14 CPL. BURKE:
15 A. The Major Crime Investigative Techniques
16 course is the introductory training. It
17 explains about the major case management,
18 command triangle, and different techniques
19 in homicide investigations. I also
20 received, I guess, a supplement course to
21 that, which is the Team Commander course
22 which trains you, I guess, to supervise
23 major projects on a large scale, which
24 sometimes involves homicide, of course, and
25 other major investigations.

Page 6

1 MS. O'BRIEN:
2 Q. How long would the Major Crimes
3 Investigative Techniques course have been?
4 CPL. BURKE:
5 A. Two weeks.
6 MS. O'BRIEN:
7 Q. So that's two weeks full time?
8 CPL. BURKE:
9 A. Yes, Monday to Friday, yeah.
10 MS. O'BRIEN:
11 Q. And what about the Team Commander course?
12 CPL. BURKE:
13 A. Two weeks as well. I guess it might be
14 applicable here. I'm also trained as a VIP
15 bodyguard, ops plans, and driving for very
16 important persons, and, I guess, surrounding
17 this investigation.
18 MS. O'BRIEN:
19 Q. And how long is that?
20 CPL. BURKE:
21 A. That training is three weeks.
22 MS. O'BRIEN:
23 Q. Have you ever done any active duties as
24 doing VIP protection?
25 CPL. BURKE:

Page 7

1 A. Yes, I have, yes.
2 MS. O'BRIEN:
3 Q. Was that in Newfoundland?
4 CPL. BURKE:
5 A. Yes, and – yeah, in Newfoundland.
6 Basically, with the RCMP, the Prime Minister
7 would visit St. John's, or Corner Brook, or
8 Goose Bay. We would be responsible to plan
9 that visit and coordinate it.
10 MS. O'BRIEN:
11 Q. So are you on a special – we know out of
12 this file there's the Premier's Security
13 Unit. Is there something similar that
14 you've been on?
15 CPL. BURKE:
16 A. No, it's kind of – I'm trained in it, along
17 with members in the division, and when the
18 need arises, we'll go outside our regular
19 duties and do that for a week or two, and
20 then go back to our regular duties. There's
21 no – we're just trained.
22 MS. O'BRIEN:
23 Q. And is it just for the Prime Minister that
24 you do that work?
25 CPL. BURKE:

Page 8

1 A. Prime Minister, Governor General, any
2 royalty that may come. There's certain
3 levels for certain people. Like, the Prime
4 Minister is level 5, so that would entail
5 more people, I guess, but it's on an "as
6 needed basis", basically.
7 MS. O'BRIEN:
8 Q. So how often have you worked in that role?
9 CPL. BURKE:
10 A. The last couple of years, quite often. I
11 know obviously with the election and Prime
12 Minister Trudeau coming into office, he
13 spent more time in Newfoundland, and I was
14 involved maybe three or four times in the
15 last couple of years.
16 MS. O'BRIEN:
17 Q. And just to be clear, that is doing
18 bodyguard type work, I understand, when
19 they're here. The type of sort of – you
20 know, risk assessment type work that
21 Constable Smyth – that was involved in this
22 case, you know, like, getting information
23 and doing follow-up, you know, collecting
24 intelligence for the purposes of security,
25 do you do that kind of work as part of –

Page 9

1 CPL. BURKE:
 2 A. Not usually. It could be part of the visit
 3 leading up to that, but the last few times,
 4 I was the coordinator of the visit, so I was
 5 kind of – I would make – we have units like
 6 Criminal Intelligence Unit that would assess
 7 persons of interest for anyone that's
 8 expressing a concern, any threats or
 9 something towards government officials on a
 10 federal level, basically.
 11 MS. O'BRIEN:
 12 Q. So the Criminal Intelligence Unit would do
 13 that, not you?
 14 CPL. BURKE:
 15 A. Yes, exactly, yeah. It would be part of my
 16 Ops plan, basically, that I spoke with the
 17 Criminal Intelligence Unit, and they assess
 18 the level of risk at a certain level; low,
 19 medium, or high.
 20 MS. O'BRIEN:
 21 Q. Okay. Would there be specific training that
 22 they would do for that risk assessment
 23 piece, or do you know?
 24 CPL. BURKE:
 25 A. I would say – I don't know of the training,

Page 10

1 no.
 2 MS. O'BRIEN:
 3 Q. Okay. When did you – I know you said you did
 4 the – when did you go the Major Crimes
 5 Investigative Techniques course, how long
 6 ago?
 7 CPL. BURKE:
 8 A. The first one would have been in 2011 –
 9 sorry, no, 2010. I came in the unit in 2009
 10 and I got it after Christmas of that year.
 11 MS. O'BRIEN:
 12 Q. And did you do any refreshers with that
 13 course or did you just go on and do the Team
 14 Commander course?
 15 CPL. BURKE:
 16 A. When I did the Team Commander course,
 17 basically.
 18 MS. O'BRIEN:
 19 Q. And when did you do the Team Commander
 20 course?
 21 CPL. BURKE:
 22 A. In 2015.
 23 MS. O'BRIEN:
 24 Q. Okay, and no refresher since then?
 25 CPL. BURKE:

Page 11

1 A. No.
 2 MS. O'BRIEN:
 3 Q. Now you say you have specific training in
 4 interviewing/interrogation. Can you just
 5 tell me a bit about that?
 6 CPL. BURKE:
 7 A. Basically, it's an interview course that's
 8 held in Ottawa. The first part of the
 9 course, I guess, is more towards statement
 10 analysis and truth verification, I guess,
 11 and you learn some techniques in assessing a
 12 person's demeanour, some certain words they
 13 say, and how they relate their story or
 14 their evidence, and the second part, you
 15 know, you learn about non-accusatory
 16 statements and interrogations.
 17 MS. O'BRIEN:
 18 Q. What are non-accusatory – what's the
 19 difference between non-accusatory?
 20 CPL. BURKE:
 21 A. Basically, if you had a suspect that's non-
 22 arrestable, and you want to ask him about a
 23 certain situation, it may be non-accusatory
 24 and it may involve a caution, but not the
 25 rights to counsel, although it could. It's

Page 12

1 judgment.
 2 MS. O'BRIEN:
 3 Q. As to whether they're detained, I guess?
 4 CPL. BURKE:
 5 A. Well, exactly. There's some debate – if
 6 they're not detained, they don't need to
 7 speak to a lawyer, but I don't mind
 8 affording them that right if they choose to.
 9 It's not a right, I guess, it's an option
 10 that's there for them.
 11 MS. O'BRIEN:
 12 Q. So a non-accusatory statement is more done
 13 like in the investigative stage, you don't
 14 have reasonable and probable grounds to,
 15 you're not making an arrest at that point?
 16 CPL. BURKE:
 17 A. Exactly.
 18 MS. O'BRIEN:
 19 Q. And would that mean that an interrogation is
 20 then sort of after that point?
 21 CPL. BURKE:
 22 A. Well, either you arrest and interrogate or
 23 you do your non-accusatory, and you have
 24 evidence that you may arrest, then you go
 25 into interrogation.

Page 13

1 MS. O'BRIEN:
2 Q. So was this – were all these elements of the
3 interview/interrogation course covered in
4 one course?
5 CPL. BURKE:
6 A. Yeah, you know, it was – it's a two week
7 course. It's pretty broad. You kind of
8 hone your skills, I guess, in the field, but
9 you had the basis for how to conduct an
10 interview, basically.
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 14

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 15

1 Q. And where are you located?
2 CPL. [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 16

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]:

Page 21

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 MS. O'BRIEN:
 24 Q. Was that an internal, like, an RCMP member
 25 who had used force?

Page 22

1 CPL. BURKE:
 2 A. No, it was an RNC member.
 3 MS. O'BRIEN:
 4 Q. So you had been involved and you just did
 5 some tasking on it?
 6 CPL. BURKE:
 7 A. Right.
 8 MS. O'BRIEN:
 9 Q. Was anyone seriously hurt as a result of
 10 that one?
 11 CPL. BURKE:
 12 A. No. It was firearms related.
 13 CHAYTOR, Q.C.:
 14 Q. Sorry, did you say it was firearms related?
 15 CPL. BURKE:
 16 A. Yes, it was.
 17 MS. O'BRIEN:
 18 Q. What year was that?
 19 CPL. BURKE:
 20 A. I think that was maybe 2012, 2013.
 21 MS. O'BRIEN:
 22 Q. Were charges laid out of that one?
 23 CPL. BURKE:
 24 A. No, there was not.
 25 MS. O'BRIEN:

Page 23

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 24

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 25

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 26

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 27

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 MS. O'BRIEN:
 10 Q. I'm going to get back a little more to that.
 11 I just wanted to find out who appointed you
 12 as primary, so I got that there now. So
 13 that is Osmond who appointed you, okay.
 14 Prior to April 5th, 2015, did you know
 15 Constable Smyth at all?
 16 CPL. BURKE:
 17 A. Yes, I did.
 18 MS. O'BRIEN:
 19 Q. How did you know him?
 20 CPL. BURKE:
 21 A. From working with VIP, and I think I dealt
 22 with him one time – he was in the Criminal
 23 Intelligence Unit, and I had a file that
 24 involved a person in St. John's.
 25 MS. O'BRIEN:

Page 28

1 Q. Let's talk about when he was in CIU. So you
 2 had a file – you were general duties officer
 3 at the time?
 4 CPL. BURKE:
 5 A. Yes.
 6 MS. O'BRIEN:
 7 Q. So you have a file. Just give me a brief
 8 about what that interaction was?
 9 CPL. BURKE:
 10 A. He was involved in a break and enter and
 11 theft in the Whitbourne area. He was known
 12 to live in St. John's, and I was directed to
 13 CIU for more information on this guy,
 14 basically.
 15 MS. O'BRIEN:
 16 Q. Like what –
 17 CPL. BURKE:
 18 A. And when I went there, Joe Smyth happened to
 19 be the first one in CIU.
 20 MS. O'BRIEN:
 21 Q. How long were you dealing with him? Was
 22 this, like, you were on this project
 23 together for three weeks, or you just said
 24 to him, and he handed you over information
 25 in 20 minutes? I'm trying to get a sense of

Page 29

1 what your interaction was with him?
 2 CPL. BURKE:
 3 A. I would say 20 minutes, yeah.
 4 MS. O'BRIEN:
 5 Q. And what about your dealings with him when
 6 you were both working VIP?
 7 CPL. BURKE:
 8 A. Might have been one or two visits. At the
 9 time, I think he was the VIP liaison for the
 10 RNC, so when we do visits in St. John's, we
 11 always have one or two RNC members that kind
 12 of coordinate with us to do the visit. I
 13 was a spare limo driver at the time, and I
 14 had nothing to do with coordinating the
 15 visit, and I know he was there. I don't
 16 know if we had any interaction or not.
 17 MS. O'BRIEN:
 18 Q. So what years were these visits?
 19 CPL. BURKE:
 20 A. I'd say 2008/2009 maybe. I was in
 21 Whitbourne at the time.
 22 MS. O'BRIEN:
 23 Q. Okay. Did you have a discussion – was there
 24 any discussion between you and Sgt. Osmond
 25 prior to being appointed lead investigator

Page 30

1 about your knowledge of Cst. Smyth?
 2 CPL. BURKE:
 3 A. Yes.
 4 MS. O'BRIEN:
 5 Q. Can you tell me about that?
 6 CPL. BURKE:
 7 A. He asked me if there was any conflict with
 8 investigating this member of the RNC. I
 9 told him that I knew of him and dealt with
 10 him, not a whole lot of dealings with him,
 11 but I knew who he was, basically, and Sgt.
 12 Osmond asked me if there would be any
 13 conflict, and I said, no, not at all.
 14 MS. O'BRIEN:
 15 Q. Would this be recorded somewhere in the RCMP
 16 file? I could possibly have missed it. You
 17 did send a lot of documents, but what you're
 18 telling me here, I don't see any record of
 19 it.
 20 CPL. BURKE:
 21 A. Unless Sgt. Osmond put it in his notes when
 22 he asked me would there be any conflict in
 23 having me investigate Joe Smyth, I don't
 24 know.
 25 MS. O'BRIEN:

Page 31

1 Q. Okay, and when did this conversation take
 2 place?
 3 CPL. BURKE:
 4 A. That would have happened on the 5th of April
 5 in Holyrood.
 6 MS. O'BRIEN:
 7 Q. Was there anyone else there at the time of
 8 the conversation?
 9 CPL. BURKE:
 10 A. Cpl. Henstridge, maybe.
 11 MS. O'BRIEN:
 12 Q. And was this the three of you meeting in
 13 person in St. John's?
 14 CPL. BURKE:
 15 A. Yeah.
 16 CHAYTOR, Q.C.:
 17 Q. St. John's, or you just said Holyrood?
 18 CPL. BURKE:
 19 A. Yeah, I know we met in St. John's, and it
 20 might have happened in St. John's, but then
 21 we travelled to Holyrood.
 22 MS. O'BRIEN:
 23 Q. Did you initially meet in St. John's?
 24 CPL. BURKE:
 25 A. Yes.

Page 32

1 MS. O'BRIEN:
 2 Q. Okay.
 3 CPL. BURKE:
 4 A. St. John's, and the conversation would have
 5 happened in St. John's because I was advised
 6 by Sgt. Osmond about the file, basically.
 7 MS. O'BRIEN:
 8 Q. Okay, you're just looking at your notes
 9 there from your logbook?
 10 CPL. BURKE:
 11 A. Yeah.
 12 MS. O'BRIEN:
 13 Q. Okay. Were you present when a similar
 14 question was put to Henstridge?
 15 CPL. BURKE:
 16 A. No. I don't remember, anyway.
 17 MS. O'BRIEN:
 18 Q. Do you know if Henstridge had any prior
 19 knowledge of Cst. Smyth?
 20 CPL. BURKE:
 21 A. To my knowledge, he didn't.
 22 MS. O'BRIEN:
 23 Q. Did you ever ask him about it, when you're
 24 saying, "to your knowledge he didn't"?
 25 CPL. BURKE:

Page 33

1 A. Yeah, I think we spoke about it, and I
2 asked me who he was, basically.
3 MS. O'BRIEN:
4 Q. Okay. Have you told me about all of your
5 knowledge of Cst. Smyth?
6 CPL. BURKE:
7 A. Yes.
8 MS. O'BRIEN:
9 Q. So you had no personal relationship?
10 CPL. BURKE:
11 A. No.
12 MS. O'BRIEN:
13 Q. What about to members of his family?
14 CPL. BURKE:
15 A. No.
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 34

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 35

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 36

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 237

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 238

1 CPL. BURKE:
 2 A. No, I don't.
 3 MS. O'BRIEN:
 4 Q. Okay. For the best practices for
 5 interviewing generally, you know, when
 6 should be – when should witnesses be
 7 interviewed in relation to the happening of
 8 the event that they're being interviewed
 9 about?
 10 CPL. BURKE:
 11 A. I don't have any expertise in this, but they
 12 say like not right away, but maybe 24 hours
 13 after they had time to decompress and
 14 collect their thoughts, I guess.
 15 MS. O'BRIEN:
 16 Q. Okay. But now you told me you've done, you
 17 know, a two-week course on interviewing and
 18 interrogation, so doesn't that give you some
 19 expertise on the matter of interviewing?
 20 CPL. BURKE:
 21 A. Not the mental side of it, I guess. You
 22 know, how you're best going to recollect an
 23 event.
 24 MS. O'BRIEN:
 25 Q. Well, when do they teach you as an

Page 239

1 investigator that you should try to take
 2 statements?
 3 CPL. BURKE:
 4 A. I don't know. They don't really – there's
 5 not really a timeline I guess of when you
 6 should take statements.
 7 MS. O'BRIEN:
 8 Q. So you've never – okay, so you don't – I've
 9 read that the best evidence is the freshest
 10 evidence, so you're trying to get
 11 information as soon as possible from
 12 witnesses. Have you heard that too?
 13 CPL. BURKE:
 14 A. Yes.
 15 MS. O'BRIEN:
 16 Q. Okay. And do you agree with that or
 17 disagree with that?
 18 CPL. BURKE:
 19 A. I agree with that.
 20 MS. O'BRIEN:
 21 Q. Okay. So the best evidence is the freshest,
 22 as soon as possible?
 23 CPL. BURKE:
 24 A. In certain circumstances.
 25 MS. O'BRIEN:

Page 240

1 Q. Okay. In this case, when you brought
 2 Constable Smyth back to the detachment in
 3 Holyrood, when he was brought back by
 4 Constable [REDACTED], was the intention at that
 5 time that you were going to interview him
 6 that evening?
 7 CPL. BURKE:
 8 A. Yes.
 9 MS. O'BRIEN:
 10 Q. Okay. So why didn't you?
 11 CPL. BURKE:
 12 A. We discussed it. He didn't want to be
 13 interviewed. He obviously wasn't prepared
 14 to be interviewed. He was – he consulted
 15 with other RNC members about the best time
 16 to do an interview and it was concluded
 17 that, you know, we'd wait until the next day
 18 to conduct the interview.
 19 MS. O'BRIEN:
 20 Q. Okay. Why?
 21 CPL. BURKE:
 22 A. That was – the reasoning was that he would –
 23 that would be the best time for him to give
 24 an accurate account of what happened.
 25 MS. O'BRIEN:

Page 241

1 Q. Whose reasoning was that?
 2 CPL. BURKE:
 3 A. One of the RNC members that was there,
 4 Sullivan I think.
 5 MS. O'BRIEN:
 6 Q. Okay. So that was his -
 7 CPL. BURKE:
 8 A. Well, it was something that he proposed.
 9 MS. O'BRIEN:
 10 Q. Okay. So this is - Sullivan was Constable
 11 Smyth's RNC Association representative?
 12 CPL. BURKE:
 13 A. Yes.
 14 MS. O'BRIEN:
 15 Q. So his Association representative proposed
 16 that Constable Smyth not be interviewed that
 17 night?
 18 CPL. BURKE:
 19 A. Or and it was discussed with Smyth as well
 20 and we didn't have any objection to it.
 21 MS. O'BRIEN:
 22 Q. Why didn't you have any objection to it?
 23 CPL. BURKE:
 24 A. There was - you know, we were of the same
 25 mindset that yeah, it just happened so for

Page 242

1 him to, I guess, you know, step away from
 2 the incident and collect what just happened
 3 and give him a timeframe to do that or a
 4 time lapse to do that.
 5 MS. O'BRIEN:
 6 Q. So that was based on what?
 7 CPL. BURKE:
 8 A. Just our conversations with, you know, the
 9 triangle -
 10 MS. O'BRIEN:
 11 Q. From the Association?
 12 CPL. BURKE:
 13 A. -and the Association and Constable Smyth.
 14 MS. O'BRIEN:
 15 Q. Had you ever read any research to support
 16 that?
 17 CPL. BURKE:
 18 A. No.
 19 MS. O'BRIEN:
 20 Q. Prior to that, had you - had everything you
 21 read been along the lines of the best
 22 evidence is the freshest evidence?
 23 CPL. BURKE:
 24 A. I haven't read that either, but you know,
 25 that's part of what I believe to be, yes.

Page 243

1 MS. O'BRIEN:
 2 Q. You never heard that as part of like any of
 3 the courses that you took or the training
 4 that you had?
 5 CPL. BURKE:
 6 A. I may have. I can't remember.
 7 MS. O'BRIEN:
 8 Q. Okay. I mean, are you - had you ever, in
 9 the course of your training, ever been told
 10 to allow witnesses to have a period of time
 11 after a traumatic event before you interview
 12 them?
 13 CPL. BURKE:
 14 A. No.
 15 MS. O'BRIEN:
 16 Q. Okay. So you've never had that before?
 17 CPL. BURKE:
 18 A. No.
 19 MS. O'BRIEN:
 20 Q. Have you ever given previously the subject
 21 of a major criminal investigation time prior
 22 to requesting an interview?
 23 CPL. BURKE:
 24 A. Not that I recall, but you know, we - his
 25 statement was voluntary.

Page 244

1 MS. O'BRIEN:
 2 Q. Right.
 3 CPL. BURKE:
 4 A. So you know, he said "I want to wait" and we
 5 can't compel him to give a statement.
 6 MS. O'BRIEN:
 7 Q. No, but couldn't you have said "we'd really
 8 appreciate it if you gave the statement
 9 tonight"?
 10 CPL. BURKE:
 11 A. I guess we could have, but you know, that's
 12 not something we were - felt strongly about,
 13 I guess.
 14 MS. O'BRIEN:
 15 Q. If you wanted to get the freshest evidence,
 16 wouldn't that have been the thing to ask?
 17 CPL. BURKE:
 18 A. The freshest evidence or the best evidence,
 19 you know, could be two different things,
 20 right.
 21 MS. O'BRIEN:
 22 Q. Okay. Would you agree with me that there
 23 was no effort put in to persuading Constable
 24 Smyth to give a statement that night?
 25 CPL. BURKE:

Page 245

1 A. Yes, I agree with that.

2 MS. O'BRIEN:

3 Q. Okay. Did you see any risk with not taking

4 the statement that night, with allowing him

5 more time?

6 CPL. BURKE:

7 A. I guess the risk is that he wouldn't have

8 gave a statement.

9 MS. O'BRIEN:

10 Q. Say it again.

11 CPL. BURKE:

12 A. The risk is that he wouldn't have given a

13 statement at all.

14 MS. O'BRIEN:

15 Q. That would have been one risk. What about

16 would you have concern about his evidence

17 becoming tainted over the period of time

18 between the incident and when you actually

19 interview him because of him speaking to

20 other people, getting other pieces of

21 information? Would you have any concerns of

22 his memory being tainted?

23 CPL. BURKE:

24 A. It didn't come up.

25 MS. O'BRIEN:

Page 246

1 Q. But wouldn't that be a concern for the

2 passage of time between event and recording

3 a statement?

4 CPL. BURKE:

5 A. Which was discussed around the traumatic

6 event scenario. I didn't – it was brought

7 to my attention. It was discussed with me.

8 I didn't have a whole lot of expertise in

9 that. We discussed it in a triangle, we

10 discussed it with Joe Smyth and we discussed

11 with the members of the RNC. It was a

12 collective decision to say we'll wait and

13 you know, it would be better to obtain a

14 statement from him once some time has passed

15 and I couldn't disagree with that. I didn't

16 disagree with that, so that's where it

17 stood.

18 MS. O'BRIEN:

19 Q. At that time was it appropriate for you to

20 be making collective decisions with members

21 of the RNC?

22 CPL. BURKE:

23 A. It was suggested by them. They weren't in

24 the room when we made a decision and Joe

25 Smyth said he'd like to wait. We couldn't

Page 247

1 compel him to give a statement, so in the

2 triangle, we said okay, it's probably best

3 to wait anyway, so that's what we decided to

4 do.

5 MS. O'BRIEN:

6 Q. Okay. But you just used the words "it was a

7 collective decision between us and RNC".

8 Was that appropriate to make that kind of a

9 collective decision?

10 CPL. BURKE:

11 A. A collective decision in that we took all

12 the information into account.

13 MS. O'BRIEN:

14 Q. Did the Forensic science – the Forensic

15 Investigation section have the benefit of

16 Constable Joe Smyth's statement when they

17 made decisions with respect to processing

18 the scene?

19 CPL. BURKE:

20 A. Say that again, sorry.

21 MS. O'BRIEN:

22 Q. So the Forensic – as, you know, Constable

23 Smyth's back at the detachment. Forensic

24 Investigation section is on the scene

25 processing the scene.

Page 248

1 CPL. BURKE:

2 A. Um-hm.

3 MS. O'BRIEN:

4 Q. Constable Smyth's not interviewed that

5 evening.

6 CPL. BURKE:

7 A. Um-hm.

8 MS. O'BRIEN:

9 Q. He's not interviewed until late the next

10 afternoon.

11 CPL. BURKE:

12 A. Um-hm.

13 MS. O'BRIEN:

14 Q. Okay. So, the Forensic Investigation

15 section, they're there processing the scene.

16 CPL. BURKE:

17 A. Yes.

18 MS. O'BRIEN:

19 Q. Did they get any information from Constable

20 Smyth's statement that they could have used

21 in assessing the scene?

22 CPL. BURKE:

23 A. No. They were assessing the scene during

24 Constable Smyth's statement as well. Their

25 initial assessment was done before the

Page 249

1 statement, but you know, Constable Smyth did
 2 make some utterance to police officers that
 3 I had knowledge of.
 4 MS. O'BRIEN:
 5 Q. But if there had – you know, had Constable
 6 Smyth given his statement, you know, that
 7 evening, do you see that there would be any
 8 benefit that you could have gotten
 9 information from him that you could have
 10 then fed back to the people processing the
 11 scene to say “look, this might be important”
 12 or “that might be important”?
 13 CPL. BURKE:
 14 A. There is, but there's another side to that
 15 too, is that if we process the scene with
 16 having limited information on what happened
 17 and definitely not the information of Joe
 18 Smyth, then that scene is assessed without
 19 bias basically. If they go in with the full
 20 statement of Joe Smyth, with that knowledge,
 21 then they're going to probably narrow their
 22 focus of what they assess at the scene.
 23 MS. O'BRIEN:
 24 Q. Okay.
 25 CPL. BURKE:

Page 250

1 A. So I see that as a benefit really of
 2 assessing the scene before we get Joe
 3 Smyth's statement.
 4 MS. O'BRIEN:
 5 Q. Okay. But couldn't you do an initial
 6 assessment at the scene, as was going on,
 7 and then before concluding the scene, if you
 8 had the statement, say “by the way, now can
 9 you please look specifically at these
 10 things”?
 11 CPL. BURKE:
 12 A. Yes.
 13 MS. O'BRIEN:
 14 Q. Right. For example, in this case, Constable
 15 Smyth says in his statement that he had a
 16 pen. Was the pen ever located?
 17 CPL. BURKE:
 18 A. I don't think so, no.
 19 MS. O'BRIEN:
 20 Q. Did anyone ever look for a pen?
 21 CPL. BURKE:
 22 A. Not specifically, no.
 23 MS. O'BRIEN:
 24 Q. No. And would that be because the people
 25 investigating the scene had no idea that

Page 251

1 Constable Smyth had talked about a pen?
 2 CPL. BURKE:
 3 A. Probably, yes.
 4 MS. O'BRIEN:
 5 Q. Okay. And would not have been a piece of
 6 evidence that could have possibly
 7 corroborated or been inconsistent with
 8 Constable Smyth's statement?
 9 CPL. BURKE:
 10 A. Sure.
 11 MS. O'BRIEN:
 12 Q. Okay. The autopsy, was that not delayed
 13 because of waking to get Constable Smyth's
 14 statement?
 15 CPL. BURKE:
 16 A. Yes, yeah, I believe so.
 17 MS. O'BRIEN:
 18 Q. Okay. So in that case, the investigation of
 19 that particular piece of evidence or part of
 20 the scene, however you want to refer to Mr.
 21 Dunphy's body, in that case the chief
 22 medical examiner would not proceed without
 23 this statement, correct?
 24 CPL. BURKE:
 25 A. Right, exactly.

Page 252

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 285

1 MS. O'BRIEN:
 2 Q. What about talking?
 3 CPL. BURKE:
 4 A. That's basically who we're aware of, you
 5 know. I don't know if there was anyone
 6 else.
 7 MS. O'BRIEN:
 8 Q. Did you ask him when he came in to the
 9 interview whether he'd spoken about the
 10 incident with anybody else?
 11 CPL. BURKE:
 12 A. No, I didn't.
 13 MS. O'BRIEN:
 14 Q. Okay. Would that not have been a good
 15 question to ask him?
 16 CPL. BURKE:
 17 A. Yes.
 18 MS. O'BRIEN:
 19 Q. Okay. Do you know whether he was speaking
 20 with, for example, Paul Davis?
 21 CPL. BURKE:
 22 A. No, I think Paul Davis reached out to him at
 23 some point. Not sure when that was.
 24 MS. O'BRIEN:
 25 Q. Okay. So you knew he'd been – at some point

Page 286

1 was speaking to Paul Davis?
 2 CPL. BURKE:
 3 A. Yes.
 4 MS. O'BRIEN:
 5 Q. What about Joe Browne?
 6 CPL. BURKE:
 7 A. I don't know if he was speaking to him or
 8 not.
 9 MS. O'BRIEN:
 10 Q. And do you know if his conversation with
 11 Paul Davis was before or after his interview
 12 with you?
 13 CPL. BURKE:
 14 A. I can't remember.
 15 MS. O'BRIEN:
 16 Q. Okay. Do you know what type of debriefing
 17 process that Constable Smyth went through
 18 with the RNC?
 19 CPL. BURKE:
 20 A. No, I don't.
 21 MS. O'BRIEN:
 22 Q. Prior to taking the interview, conducting
 23 the interview with Constable Smyth on April
 24 6th, did you and Corporal Henstridge do any
 25 preparation for the interview?

Page 287

1 CPL. BURKE:
 2 A. Yes.
 3 MS. O'BRIEN:
 4 Q. Okay. What did you do?
 5 CPL. BURKE:
 6 A. We established, you know, what the purpose
 7 of the interview was for, whether he'd be
 8 warned or not, and you know, we wanted to
 9 get a version of the events basically.
 10 MS. O'BRIEN:
 11 Q. Okay. So was that the – what was the
 12 strategy then or what did you -
 13 CPL. BURKE:
 14 A. To obtain information from Joe Smyth
 15 regarding the shooting.
 16 MS. O'BRIEN:
 17 Q. Okay, so as simple as that?
 18 CPL. BURKE:
 19 A. Basically, yeah.
 20 MS. O'BRIEN:
 21 Q. So you didn't talk – you didn't put in a
 22 more – any more detail on what the areas you
 23 were going to question him on?
 24 CPL. BURKE:
 25 A. Well, it wasn't really – we weren't going to

Page 288

1 question him on, you know, a whole lot. We
 2 wanted him to tell us what happened.
 3 MS. O'BRIEN:
 4 Q. That seems narrow. Why wouldn't you have,
 5 you know, asked him – you know, why would
 6 you have just limited it to just having him
 7 tell you what happened?
 8 CPL. BURKE:
 9 A. We didn't want to give him any influence.
 10 We wanted him to tell us his version of the
 11 events, pure version basically.
 12 MS. O'BRIEN:
 13 Q. Okay. So did you – are you telling me you
 14 made a decision not to ask him any
 15 questions?
 16 CPL. BURKE:
 17 A. No, but we wanted to get a pure version
 18 statement from him.
 19 MS. O'BRIEN:
 20 Q. Okay. What's – maybe that's a technical
 21 term. What does a "pure version" mean?
 22 CPL. BURKE:
 23 A. You go in and you say "tell me about what
 24 happened", no timeframes, no nothing, just
 25 "tell me about what happened" and they could

Page 289

1 tell you about anything, but we would
 2 suspect they would tell us about the major
 3 event that just happened. So, and you let
 4 them talk and you don't interrupt, and
 5 that's their pure version.
 6 MS. O'BRIEN:
 7 Q. Okay.
 8 CPL. BURKE:
 9 A. And then you establish questions from what –
 10 you know, you may have some questions, but
 11 you'd establish questions from his pure
 12 version statement.
 13 MS. O'BRIEN:
 14 Q. Okay. And so -
 15 CPL. BURKE:
 16 A. Clarifying questions or things you want more
 17 information on.
 18 MS. O'BRIEN:
 19 Q. Okay. So would normally that be done then
 20 as part of the same interview? You'd get
 21 someone to give your pure version and -
 22 CPL. BURKE:
 23 A. Yes, yes.
 24 MS. O'BRIEN:
 25 Q. - then from that, you'd go back and say

Page 290

1 "okay, I'd like a little more detail here"
 2 or "what about this?"
 3 CPL. BURKE:
 4 A. Yes, question and answer.
 5 MS. O'BRIEN:
 6 Q. Okay. So I understand what you're saying.
 7 So a pure version and then you go back and
 8 fill in the details. Did you and Corporal
 9 Henstridge have any plan about what kind of
 10 details you would ultimately like to have
 11 filled in?
 12 CPL. BURKE:
 13 A. No, not nothing specific. I can't remember
 14 it now, but you know, we wanted to know what
 15 his version of the events were and to
 16 qualify anything that he would have said.
 17 You know, to go in with preconceived
 18 questions that – you know, we didn't know
 19 what he was going to tell us. We had the
 20 scene. We had some initial interviews, but
 21 we wanted – but there was no one else at the
 22 house, so he would be, you know, a good
 23 source of information from the scene itself,
 24 right.
 25 MS. O'BRIEN:

Page 291

1 Q. Okay.
 2 CPL. BURKE:
 3 A. So you know, to have some questions that we
 4 wanted to ask him, I can't think of any that
 5 we specifically wanted to ask him about.
 6 MS. O'BRIEN:
 7 Q. Okay. At that time was the plan just to do
 8 one interview?
 9 CPL. BURKE:
 10 A. Yes, at that time. You know, a re-enactment
 11 came up early, you know.
 12 MS. O'BRIEN:
 13 Q. But at the re-enactment, no questions were
 14 asked? I mean, he just -
 15 CPL. BURKE:
 16 A. That's right, no.
 17 MS. O'BRIEN:
 18 Q. Yeah, so -
 19 CPL. BURKE:
 20 A. But I mean, that's – you know, that would
 21 have been a second statement basically,
 22 right.
 23 MS. O'BRIEN:
 24 Q. Yes, understood, okay. But in terms of when
 25 you did the first interview, the plan was –

Page 292

1 at that time was just to have this to be,
 2 you know, this is the interview?
 3 CPL. BURKE:
 4 A. Yeah. You know, I'm the primary and
 5 Corporal Henstridge was tasked with that
 6 statement and you know, we talked about what
 7 we were – you know, what the plan was, but I
 8 left it to him to develop, you know, the
 9 strategies he was going to use and things
 10 like that.
 11 MS. O'BRIEN:
 12 Q. Okay. So did he discuss those strategies
 13 with you? I mean, other than you've said to
 14 me, you know, "our strategy was to obtain
 15 information from Smyth about" -
 16 CPL. BURKE:
 17 A. Yeah.
 18 MS. O'BRIEN:
 19 Q. But did you discuss with him in more detail
 20 what the strategy would be?
 21 CPL. BURKE:
 22 A. That's basically the strategy. I didn't
 23 have any other information on what – you
 24 know, if there was any other strategies.
 25 Basically it was let him tell us what he

Page 293

1 wanted to tell us.
 2 MS. O'BRIEN:
 3 Q. Okay. Did you consult with anyone else, you
 4 know, prior to this, anyone who may have had
 5 experience interviewing police officers in
 6 use of force incidents? Did you consult
 7 with anyone prior to the interview who might
 8 have had experience in this type of
 9 interviewing?
 10 CPL. BURKE:
 11 A. Well, Sergeant Osmond did several
 12 investigations prior to this one involving
 13 police officers.
 14 MS. O'BRIEN:
 15 Q. Okay. So did you consult with him about the
 16 interview?
 17 CPL. BURKE:
 18 A. Yes.
 19 MS. O'BRIEN:
 20 Q. So tell me about that consultation.
 21 CPL. BURKE:
 22 A. You know, the purpose of the interview was
 23 to get his version of the events. We
 24 discussed the caution and not to caution.
 25 It was debated back and forth whether he

Page 294

1 should be provided with a caution and
 2 Sergeant Osmond, you know, he said that he
 3 doesn't have to give us a statement and
 4 police officers in the same situations
 5 probably won't give a statement. So, we
 6 were debating that, you know, if – how we –
 7 you know, we wanted his information.
 8 Whether, you know – we wanted a version of
 9 the events that we could either confirm or
 10 basically deny and so, our strategy was to
 11 obtain his information, his statement, his
 12 pure version of the events that happened.
 13 MS. O'BRIEN:
 14 Q. Okay. So did you decide to caution him or
 15 not?
 16 CPL. BURKE:
 17 A. Decided not to caution him.
 18 MS. O'BRIEN:
 19 Q. Okay. It's three – just almost quarter past
 20 three. I'm wondering if we could just take
 21 a short break for just five minutes. And so
 22 we'll go off the record.
 23 (OFF RECORD)
 24 MS. O'BRIEN:
 25 Q. Thank you. We're back on the record. We

Page 295

1 were talking about your interview of
 2 Constable Smyth. I take it you had
 3 interviewed suspects in homicides before?
 4 CPL. BURKE:
 5 A. Yes.
 6 MS. O'BRIEN:
 7 Q. Okay. The interview with Constable Smyth
 8 took just over an hour and a half. How does
 9 that compare with other interviews, you
 10 know, for people for sort of serious
 11 incidents? Do you have any -
 12 CPL. BURKE:
 13 A. I couldn't make a determination or an
 14 estimation.
 15 MS. O'BRIEN:
 16 Q. Okay. All right. In your view, were all
 17 bases covered in the interview?
 18 CPL. BURKE:
 19 A. From what we had at that time and like I
 20 said, we wanted to get a – establish some
 21 sort of sequence of events, his version
 22 basically. I can't say all bases were
 23 covered at that time. We didn't know what
 24 we had to cover basically.
 25 MS. O'BRIEN:

Page 296

1 Q. Did you consider it to be a thorough
 2 interview?
 3 CPL. BURKE:
 4 A. A thorough interview in the fact that he
 5 gave us a pure version statement.
 6 MS. O'BRIEN:
 7 Q. Okay. But at that time you were – you know,
 8 at that time in your mind, you were only
 9 getting the one statement. So did you feel
 10 it was thorough enough for what you needed?
 11 CPL. BURKE:
 12 A. I guess we couldn't – yes, it was thorough
 13 enough for what we needed and based on our
 14 limited knowledge of the events up to that
 15 point.
 16 MS. O'BRIEN:
 17 Q. Okay. You know, now obviously earlier I
 18 brought to your attention this issue of him
 19 having called Donald Dunphy's phone prior to
 20 attending at the house, and he didn't tell
 21 you that information. Knowing that now, do
 22 you have any concerns that Constable Smyth
 23 might not have been forthcoming about other
 24 aspects of his interview?
 25 CPL. BURKE:

Page 297

1 A. Yeah, I don't know why he wouldn't tell us
2 that or he called Colin Dinn too, right.
3 MS. O'BRIEN:
4 Q. I don't know that he called Colin Dinn. I
5 just see him calling Donald Dunphy.
6 CPL. BURKE:
7 A. Yeah. No, I agree. Like I – if I was in
8 his situation and if I had called the person
9 who is now deceased, you know, it would have
10 been something that I would have brought up,
11 I would assume.
12 MS. O'BRIEN:
13 Q. Okay. So does that give you some concern
14 now about the rest of his interview?
15 CPL. BURKE:
16 A. It's a factor that, you know -
17 MS. O'BRIEN:
18 Q. Okay. Did you consider it to be an
19 impartial interview?
20 CPL. BURKE:
21 A. Yes.
22 MS. O'BRIEN:
23 Q. Okay. Do you think you were affected by the
24 fact at all that you were interviewing a
25 fellow officer?

Page 298

1 CPL. BURKE:
2 A. I felt some portions of it was – you know, I
3 wasn't affected too much by it, but some
4 things came up in the interview that kind of
5 – and I wasn't leading the interview, so I
6 couldn't – but I felt it was impartial. It
7 may have been a little different because it
8 was a police officer interviewing a police
9 officer, but I don't think it tainted the
10 interview.
11 MS. O'BRIEN:
12 Q. Okay. But you're saying – I'd like you to
13 expand on those ideas that you were just
14 articulating. So some things came up in the
15 interview. Explain to me what you're
16 talking about.
17 CPL. BURKE:
18 A. No, some of the conversation between
19 Corporal Henstridge and Joe Smyth, you know,
20 I didn't – you know, it's not something that
21 we planned. I don't know. It's just, I
22 guess, in the spur of the moment type thing,
23 right.
24 MS. O'BRIEN:
25 Q. Okay. So you felt some of the conversation

Page 299

1 between Corporal Henstridge and Constable
2 Smyth was not appropriate for the interview?
3 Is that what you're trying to say?
4 CPL. BURKE:
5 A. I don't know not appropriate, but maybe not
6 as – you know, like because they're both
7 police officers, I guess, they could – like
8 you could put yourself in his shoes
9 basically because you're trained the same
10 way and things like that.
11 MS. O'BRIEN:
12 Q. So you think it affected the interview?
13 CPL. BURKE:
14 A. I don't think it affected the interview, no.
15 MS. O'BRIEN:
16 Q. Okay. But you think looking at the
17 interview, you can – I don't – I'm trying –
18 you're sort of telling me things but you're
19 not kind of completing your thought, so I'm
20 not trying to put new thoughts in your head
21 but I need you to be forthright with me,
22 Corporal Burke, and tell me what your
23 concerns were.
24 CPL. BURKE:
25 A. Yeah. When we did the interview, it was

Page 300

1 completed. We had a conversation with
2 Sergeant Osmond after in review and he
3 advised that we may have been too friendly
4 with Joe Smyth.
5 MS. O'BRIEN:
6 Q. So was he observing the interview?
7 CPL. BURKE:
8 A. Yes.
9 MS. O'BRIEN:
10 Q. Okay. And what – in particular, what
11 concerns did Sergeant Osmond raise with you?
12 CPL. BURKE:
13 A. Just that, you know, maybe it was a bit too
14 informal or laughing or anything like that
15 was not appropriate.
16 MS. O'BRIEN:
17 Q. Okay. So Osmond, Sergeant Osmond told you
18 that immediately following the interview?
19 CPL. BURKE:
20 A. Yes.
21 MS. O'BRIEN:
22 Q. Okay. So, too friendly, laughing. Had you
23 discussed prior to the interview what
24 information you would share with Constable
25 Smyth?

Page 301

1 CPL. BURKE:
2 A. No.
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 302

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 303

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 304

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 305

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 306

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 307

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 MS. O'BRIEN:
 21 Q. Okay. Do you recall any other investigation
 22 where you gave the subject of the
 23 investigation critical information at such
 24 an early stage of the investigation?
 25 CPL. BURKE:

Page 308

1 A. No.
 2 MS. O'BRIEN:
 3 Q. Okay. Do you think you would have done that
 4 for Constable Smyth had he not been a police
 5 officer?
 6 CPL. BURKE:
 7 A. It's not because he's a police officer he
 8 was told that.
 9 MS. O'BRIEN:
 10 Q. Okay. So, okay.
 11 CPL. BURKE:
 12 A. There was a person in the interview room
 13 that showed that he was stressed and, you
 14 know, clearly affected by the whole
 15 scenario. That person – this was something
 16 that, you know, may have – and you know,
 17 it's more of a criticism than, you know, but
 18 if we told him that so he could maybe get
 19 some sleep or something, but it had nothing
 20 to do with him being a police officer. This
 21 person was involved in this situation and
 22 this information may give him some sort of
 23 relief and that's why.
 24 MS. O'BRIEN:
 25 Q. Okay. Okay. Was part of this because you

Page 309

1 didn't – you know, you didn't think it could
 2 affect the investigation, him having this?
 3 CPL. BURKE:
 4 A. We had a discussion and we made the
 5 determination that it wouldn't affect the
 6 investigation.
 7 MS. O'BRIEN:
 8 Q. Okay. So in hindsight, do you agree that
 9 was still the right decision to make?
 10 CPL. BURKE:
 11 A. Well, I think in totality with being, I
 12 guess, less formal and it could be perceived
 13 as being, you know, something that where had
 14 some favouritism towards this person that we
 15 were interviewing or something, but I don't
 16 feel that it had any effect on the
 17 investigation.
 18 MS. O'BRIEN:
 19 Q. Okay. Had you had any sort of this kind of
 20 principle discussion about any other
 21 information to give Constable Smyth or was
 22 the only one that you discussed within the
 23 command triangle the bullet?
 24 CPL. BURKE:
 25 A. From my recollection, that's the one that

Page 310

1 came up. I don't know what else we had.
 2 From my recollection, I don't know if we had
 3 any other discussions about any other pieces
 4 of evidence. From my recollection, don't
 5 know.
 6 MS. O'BRIEN:
 7 Q. Okay. Page 60 of the interview, this is you
 8 speaking. "You know, we're doing, you know,
 9 a thorough investigation of what went on and
 10 of course, you know, a major part of that is
 11 talking to you. You're the only witness,
 12 you know what I mean." Smyth says "yeah."
 13 You say "so, ah". Smyth says "and nothing
 14 in those cameras, eh, and no" – and you say
 15 "No." Smyth says "no" and then Henstridge
 16 said "I don't know if they'd be much help
 17 anyway. They were outside." Smyth says
 18 "outside? I'm sure they wouldn't have
 19 been." Why did you give information to
 20 Constable Smyth during an interview that he
 21 was the only witness to the event and that
 22 there was nothing in the security cameras?
 23 CPL. BURKE:
 24 A. You know, he was the only one at the house,
 25 so I considered him to be the only witness

Page 311

1 to the actual event and the cameras
 2 themselves, they were non-operational.
 3 MS. O'BRIEN:
 4 Q. Why would you give that information to the
 5 subject of a criminal investigation while
 6 you are interviewing them?
 7 CPL. BURKE:
 8 A. It happened. You know, maybe if I did it
 9 again and I look back at it, it was probably
 10 a mistake.
 11 MS. O'BRIEN:
 12 Q. Would you – I mean, you know, really if
 13 Constable Smyth had not been a police
 14 officer, would you have given him that big
 15 tip off of "by the way, you know what I
 16 mean, you're the only witness, and those
 17 cameras weren't working"?
 18 CPL. BURKE:
 19 A. I didn't think it was a big tip off that he
 20 was the only one in the house.
 21 MS. O'BRIEN:
 22 Q. But what about that there was no recording
 23 of his actions?
 24 CPL. BURKE:
 25 A. I don't – you know, like I said, the – when

Page 312

1 you look at the cameras, it was pretty
 2 obvious that they weren't operational, but
 3 you know, I understand what you're saying,
 4 and it wasn't a – you know, I wouldn't
 5 consider it a tip off, I guess. It's just
 6 something that was there.
 7 MS. O'BRIEN:
 8 Q. Do you think that that was a mistake that
 9 you made there?
 10 CPL. BURKE:
 11 A. I just said that I think. Looking back at
 12 it, yes, it was mistake.
 13 MS. O'BRIEN:
 14 Q. Were you aware that Constable Smyth had
 15 brought the cameras to Corporal Henstridge's
 16 attention the night before at the station
 17 and where he had said "there may" – he
 18 didn't know whether there was cameras. He
 19 saw some cameras outside, didn't know
 20 whether they were functional, wasn't sure
 21 whether they were inside, something to that
 22 effect?
 23 CPL. BURKE:
 24 A. I remember some discussion about the
 25 cameras.

Page 313

1 MS. O'BRIEN:
 2 Q. Right. So you had the information that
 3 Constable Smyth had expressed some concern
 4 or interest about whether or not there was
 5 cameras, functional cameras?
 6 CPL. BURKE:
 7 A. Yeah.
 8 MS. O'BRIEN:
 9 Q. Okay. So he had expressed concern about
 10 whether – or brought it to your attention
 11 that there might be functional cameras.
 12 CPL. BURKE:
 13 A. Right.
 14 MS. O'BRIEN:
 15 Q. Okay. He obviously didn't have – he
 16 obviously at that point didn't know whether
 17 they were working or not?
 18 CPL. BURKE:
 19 A. Right.
 20 MS. O'BRIEN:
 21 Q. Okay. And then in the course of your
 22 interview, you provide him with the
 23 information that they weren't working.
 24 CPL. BURKE:
 25 A. Yes.

Page 314

1 MS. O'BRIEN:
 2 Q. Okay. When I put the information – you
 3 know, when I put it to you that way, do you
 4 really think you would have done that for
 5 another subject of a criminal homicide
 6 investigation?
 7 CPL. BURKE:
 8 A. I don't look at it that way. You know, I
 9 mean, the issue of the cameras came up. It
 10 was presented by the subject of the cameras
 11 being there. The cameras came up again. I
 12 didn't think they were working. It came out
 13 – it wasn't because he was a police officer.
 14 MS. O'BRIEN:
 15 Q. Okay. You are trained in investigation and
 16 interrogation and interviewing, right?
 17 CPL. BURKE:
 18 A. Yes.
 19 MS. O'BRIEN:
 20 Q. Okay. So is it fair to say that you don't
 21 provide information to a subject who's being
 22 interviewed unless there's an investigative
 23 purpose for providing them that information?
 24 CPL. BURKE:
 25 A. Yes.

Page 315

1 MS. O'BRIEN:
 2 Q. Okay. And would you agree with me that
 3 there was absolutely no investigative
 4 purpose for providing Constable Smyth the
 5 information about the cameras?
 6 CPL. BURKE:
 7 A. No.
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 316

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 321

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 323

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 322

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 324

1 MS. O'BRIEN:
 2 Q. Okay. I mean, the way that when you – you
 3 conduct interviews of subjects of criminal
 4 investigations regularly as part of your
 5 job.
 6 CPL. BURKE:
 7 A. Yes.
 8 MS. O'BRIEN:
 9 Q. Okay. Is this the way you normally conduct
 10 your interviews?
 11 CPL. BURKE:
 12 A. It wasn't a whole lot different, no.
 13 MS. O'BRIEN:
 14 Q. So you normally use this kind of comforting,
 15 friendly language?
 16 CPL. BURKE:
 17 A. Yeah, you're building rapport with this
 18 person too and you're trying to, you know,
 19 keep him talking, keep him in the room, keep
 20 him motivated to communicate.
 21 MS. O'BRIEN:
 22 Q. Is that what you were doing with Constable
 23 Smyth? Were you trying to keep him talking,
 24 keep him in the room?
 25 CPL. BURKE:

Page 325

1 A. Well, just to maintain the dialog. To b
2 adverse or to be, you know, the opposite, I
3 guess, of being friendly, he may not have
4 been – you know, we wanted his information
5 and whether it was truthful information or
6 not that – we'd have to determine that
7 through our investigation, so you know,
8 whether his statement lined up with what we
9 had investigated, then we'd have to make
10 that determination, right.

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 326

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 327

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 328

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 329

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 330

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 MS. O'BRIEN:
 5 Q. Okay. And on page 58, this is where – just
 6 before you give Constable Smyth the
 7 information about the gun in the – about the
 8 bullet in the chamber. Smyth says “I don’t
 9 know if I want to know because I feel like
 10 if the answer is no, then I don’t know what
 11 he was doing” and he goes on. I won’t quote
 12 him all. And “I don’t know if -- if it was
 13 loaded, then I walk out of here feeling like
 14 I’ve saved my life” and then Henstridge says
 15 to him “you saved your life”. That’s the
 16 statement he gives Constable Smyth, okay.
 17 Now in this time, you are investigating
 18 whether or not Constable Smyth used
 19 appropriate use of force and acted properly
 20 in self-defence or not, right. Is it
 21 appropriate to say to him in this interview
 22 “you saved your life”?
 23 CPL. BURKE:
 24 A. No.
 25 MS. O'BRIEN:

Page 331

1 Q. Okay. Again, I’m going to ask you, do you
 2 think these kinds of statements would have
 3 been made to Constable Smyth had he not been
 4 a police officer?
 5 CPL. BURKE:
 6 A. That wasn’t the intention or that’s not why
 7 the information was brought out. We didn’t
 8 go in and say “oh, we’re going to tell him
 9 all this because he’s a cop” and you know,
 10 we’re trying to protect him or we’re trying
 11 to make him feel a bit better or anything
 12 like that.
 13 MS. O'BRIEN:
 14 Q. I understand, but looking at it in hindsight
 15 now, do you see – you know, looking at it
 16 now, when you look back at it and say – you
 17 know, do you really think that you and
 18 Constable Henstridge would have conducted
 19 this interview like that had he not been a
 20 police officer?
 21 CPL. BURKE:
 22 A. I can’t say that for sure. I just know that
 23 some of the things that were said, yes, were
 24 inappropriate and they probably shouldn’t
 25 have been said, and that’s as far as, you

Page 332

1 know, I agree. The discussion of him being
 2 a cop or not being a cop and what we told
 3 him, we never had that discussion basically.
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

[REDACTED]

Page 343

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 342

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 344

1 CPL. BURKE:
 2 A. It didn't come up, no.
 3 MS. O'BRIEN:
 4 Q. Okay. Just because you didn't think of it?
 5 CPL. BURKE:
 6 A. I didn't think of it and looking back at it,
 7 I don't know if I would have did it or not.
 8 MS. O'BRIEN:
 9 Q. Okay. How come?
 10 CPL. BURKE:
 11 A. I don't – I didn't see any value – I don't
 12 see any value in it. Like yeah, maybe the
 13 dust would have been disturbed on the
 14 mantel, you know, it didn't – it's not
 15 something that I thought of and would be
 16 relevant.
 17 MS. O'BRIEN:
 18 Q. Okay. Now today, thinking about it, do you
 19 think it's something that should have been
 20 done?
 21 CPL. BURKE:
 22 A. It could have been done. You know, should
 23 it have been done? I don't know. It's hard
 24 for me to make a call on that. It's not -
 25 MS. O'BRIEN:

Page 345

1 Q. You said at the beginning when I started
2 asking you about this statement that you
3 felt the statement was both impartial and
4 thorough, right?
5 CPL. BURKE:
6 A. Yes.
7 MS. O'BRIEN:
8 Q. Okay. Why wasn't Constable Smyth questioned
9 about his training, on his use of force
10 training, his training in de-escalation
11 tactics? You didn't question him in that
12 area.
13 CPL. BURKE:
14 A. I guess it didn't – I didn't think about it
15 or not something that I really – de-
16 escalation tactics, you know, is not
17 something I'm kind of familiar with, so
18 whether he had training or not, I don't
19 know.
20 MS. O'BRIEN:
21 Q. Okay. You didn't question him about his use
22 of force training?
23 CPL. BURKE:
24 A. Not at that time, no.
25 MS. O'BRIEN:

Page 346

1 Q. Okay. I mean, you're there to – you're
2 saying you're doing a thorough examination.
3 You're investigating use of force incident
4 on an officer. Why wouldn't he have been
5 questioned on that area?
6 CPL. BURKE:
7 A. No reason. You know, I know you've – a
8 statement, you want it – everything has to
9 be in there, you know. Like his use of
10 force training is something that we could
11 have got by documents or certificates or you
12 know, we went to the RNC for that
13 information.
14 MS. O'BRIEN:
15 Q. What if he had use of force training that
16 wasn't gained while within the RCMP or in
17 the RNC, wasn't in his file?
18 CPL. BURKE:
19 A. Could have happened. It's not something
20 that we -
21 MS. O'BRIEN:
22 Q. - would know about because you didn't ask
23 the question. Okay. Why wasn't he
24 questioned about his experience as a police
25 officer?

Page 347

1 CPL. BURKE:
2 A. No reason. It's just those are – you know,
3 those are things that we can obtain after
4 the fact basically from the RNC.
5 MS. O'BRIEN:
6 Q. But did you get information from the RNC
7 about specifically what types of files he
8 had experience in, what type of incidents
9 he'd faced before?
10 CPL. BURKE:
11 A. We attempted to get that, yeah.
12 MS. O'BRIEN:
13 Q. Did you get it?
14 CPL. BURKE:
15 A. We asked for it. We asked for any instance
16 where he used use of force or anything like
17 that and there were none.
18 MS. O'BRIEN:
19 Q. Okay. Do you know whether he had ever drawn
20 his weapon before?
21 CPL. BURKE:
22 A. No, I don't.
23 MS. O'BRIEN:
24 Q. Okay. You didn't ask him that question?
25 CPL. BURKE:

Page 348

1 A. No.
2 MS. O'BRIEN:
3 Q. Okay. That's not something you would know
4 from his records necessarily, right?
5 CPL. BURKE:
6 A. No. There may be incident reports if you
7 draw your firearm, but they weren't produced
8 and I don't know if they existed or not.
9 MS. O'BRIEN:
10 Q. Okay. I mean, did you – I mean, when you
11 had him there and you were interviewing him,
12 did you think to ask him whether he had ever
13 been disciplined for inappropriate use of
14 force?
15 CPL. BURKE:
16 A. No.
17 MS. O'BRIEN:
18 Q. Okay. You didn't question him about whether
19 he'd been involved in any altercations,
20 fights, any – you know, any sort of violent
21 incidents?
22 CPL. BURKE:
23 A. No.
24 MS. O'BRIEN:
25 Q. Okay. There's some of those things might

Page 349

1 not show in his personnel file, right?

2 CPL. BURKE:

3 A. Sure.

4 MS. O'BRIEN:

5 Q. Okay. So wouldn't that kind of information

6 be relevant to an investigation of a use of

7 force incident by a police officer?

8 CPL. BURKE:

9 A. Yes.

10 MS. O'BRIEN:

11 Q. Okay. So he should have been asked those

12 questions, should he not have been?

13 CPL. BURKE:

14 A. Yes.

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 350

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 351

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 352

1 [REDACTED]

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 389

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 390

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 [REDACTED]
 7 [REDACTED]
 8 [REDACTED]
 9 [REDACTED]
 10 [REDACTED]
 11 [REDACTED]
 12 [REDACTED]
 13 [REDACTED]
 14 [REDACTED]
 15 [REDACTED]
 16 [REDACTED]
 17 [REDACTED]
 18 [REDACTED]
 19 [REDACTED]
 20 [REDACTED]
 21 [REDACTED]
 22 [REDACTED]
 23 [REDACTED]
 24 [REDACTED]
 25 [REDACTED]

Page 391

1 [REDACTED]
 2 [REDACTED]
 3 [REDACTED]
 4 [REDACTED]
 5 [REDACTED]
 6 MS. O'BRIEN:
 7 Q. Okay. Did you ever have any communications
 8 with legal counsel for Joe Smyth?
 9 CPL. BURKE:
 10 A. Just Wendy Zdebiak who was the RNC counsel.
 11 MS. O'BRIEN:
 12 Q. Okay.
 13 CPL. BURKE:
 14 A. His counsel now is – no, no. No, he had
 15 counsel initially, but we never had
 16 interaction – I never had any interaction
 17 with that person.
 18 MS. O'BRIEN:
 19 Q. Okay. I see – so I'm just going to go over
 20 some of the communications from Smyth. So
 21 we talked about the first one April 10th. I
 22 see one here on April 18th where it's Joe
 23 Smyth to you, "Steve, just wondering if
 24 there's any update on your investigation,
 25 primarily in terms of timelines. Do you know

Page 392

1 yet what kind of timeframe you anticipate
 2 for completion? Weeks, months maybe? I
 3 realize you may have nothing on that yet.
 4 Thanks. Hope all is well. Joe". Did you
 5 respond to that email?
 6 CPL. BURKE:
 7 A. I don't know. There's -
 8 MS. O'BRIEN:
 9 Q. I didn't see a response, so that's why I'm
 10 asking the question.
 11 CPL. BURKE:
 12 A. Okay, yeah. I responded – you know, there's
 13 several emails of similar nature and I don't
 14 know if I responded. He might have – there
 15 were phone conversations as well, so I may
 16 have followed up with a phone conversation.
 17 MS. O'BRIEN:
 18 Q. If you followed up with a phone conversation
 19 would there necessarily be a note or could
 20 you have just given him an update without
 21 providing any note to the file?
 22 CPL. BURKE:
 23 A. I've tried to note the phone conversations,
 24 but they're not all – I might have been off
 25 duty on a weekend or something and -

Page 393

1 MS. O'BRIEN:
 2 Q. Okay. Is there any policy or protocol for
 3 providing updates to subjects of
 4 investigations?
 5 CPL. BURKE:
 6 A. No.
 7 MS. O'BRIEN:
 8 Q. Okay. Is it something that you normally do?
 9 CPL. BURKE:
 10 A. No.
 11 MS. O'BRIEN:
 12 Q. Okay. So that would be something different
 13 here than it would be in a normal
 14 investigation? And we're talking about
 15 homicide investigation here too.
 16 CPL. BURKE:
 17 A. Yes.
 18 MS. O'BRIEN:
 19 Q. Okay. Did you let the independent observer
 20 know that Constable Smyth was getting
 21 updates? Was he informed of that or just
 22 part of the regular disclosure he would have
 23 seen it?
 24 CPL. BURKE:
 25 A. Part of regular disclosure I think, yeah.

Page 394

1 MS. O'BRIEN:
 2 Q. Okay. On April 10th, Corporal O'Keefe called
 3 Constable Smyth to pass along his concern.
 4 How – that came to your attention. How did
 5 that come to your attention?
 6 CPL. BURKE:
 7 A. I think Sergeant Osmond received that
 8 information initially. I don't know how he
 9 received it. I can't remember. That
 10 Corporal O'Keefe was speaking with Joe
 11 Smyth.
 12 MS. O'BRIEN:
 13 Q. Okay. Did you take any action after
 14 learning about that call?
 15 CPL. BURKE:
 16 A. Myself or Sergeant Osmond asked for his
 17 notes regarding that call.
 18 MS. O'BRIEN:
 19 Q. Okay. And he didn't have any notes at that
 20 time? Is that right?
 21 CPL. BURKE:
 22 A. No.
 23 MS. O'BRIEN:
 24 Q. But, so you had him -
 25 CPL. BURKE:

Page 395

1 A. Yes.
 2 MS. O'BRIEN:
 3 Q. He was requested to make a note?
 4 CPL. BURKE:
 5 A. Yes.
 6 MS. O'BRIEN:
 7 Q. Okay. Do you know if this was – this
 8 information was – the independent observer
 9 was specifically advised of that
 10 information?
 11 CPL. BURKE:
 12 A. No.
 13 MS. O'BRIEN:
 14 Q. Okay. You just said he might have called –
 15 Constable Smyth might have called you at
 16 home. Would he – did he have your cell
 17 number? How would he be calling you at
 18 home?
 19 CPL. BURKE:
 20 A. Yeah, cell number.
 21 MS. O'BRIEN:
 22 Q. Okay. So he would contact you that way?
 23 CPL. BURKE:
 24 A. Um-hm.
 25 MS. O'BRIEN:

Page 396

1 Q. Okay. Is that usual for suspects to have
 2 your cell phone number?
 3 CPL. BURKE:
 4 A. No.
 5 MS. O'BRIEN:
 6 Q. Okay. So why did Constable Smyth have it?
 7 CPL. BURKE:
 8 A. Way of communicating I guess. No particular
 9 reason. You know, I maintained contact with
 10 both Smyth and Meghan Dunphy for updates on
 11 the investigation.
 12 MS. O'BRIEN:
 13 Q. Okay. But you know, in other cases where
 14 you have a subject of a homicide – or a
 15 suspect of any criminal investigation, do
 16 you normally give out your cell phone?
 17 CPL. BURKE:
 18 A. No.
 19 MS. O'BRIEN:
 20 Q. Okay. On June 9th, there's an email where
 21 Constable Smyth emails you and says "hey,
 22 Steve. I'm wondering if you can share a
 23 copy of my interview with you, whether it be
 24 the audio, video or transcript. Joe" and
 25 you respond, and your response here is

Page 397

1 recorded. "Sorry, Joe, the interview forms
2 part of an ongoing investigation and cannot
3 be released. Hope you understand. Thanks,
4 Steve." Did you – I mean, Constable Smyth
5 is a police officer, so he knows how these
6 things go. Did you consider it
7 inappropriate of him to be reaching out to
8 you looking for a copy of his statement?
9 CPL. BURKE:
10 A. Yeah, I guess so.
11 MS. O'BRIEN:
12 Q. Okay. And you didn't give it to him because
13 it wouldn't be appropriate, I take it?
14 CPL. BURKE:
15 A. Right.
16 MS. O'BRIEN:
17 Q. Okay. Did you advise – was the independent
18 observer, you know, advised, you know,
19 specifically advised that Constable Smyth
20 was looking for a copy of his statement and
21 it had been refused?
22 CPL. BURKE:
23 A. No.
24 MS. O'BRIEN:
25 Q. On July 29th, Joe Smyth writes to you again.

Page 398

1 "Corporal Burke, I would sincerely
2 appreciate an update on your investigation.
3 There have been times where the RCMP have
4 referred to me as 'another victim' in this
5 case" -- Another victim is the part that's
6 in quote – "and investigation. If that is
7 the situation, then I would like to think I
8 should be privy to some semblance of an
9 update or perhaps an explanation as to what
10 'other investigative steps' refers to, given
11 we are now four months out from the
12 incident. I of course know explicitly well
13 what happened, so to hear at this point that
14 there are other investigative steps being
15 undertaken that are beyond lab results does
16 indeed give me some cause to lie awake at
17 3:30 in the morning running through the
18 incident time and time again wondering what
19 is it that somebody else would perceive or
20 believe to cause them to still be
21 undertaking investigative steps of which I
22 am not aware. Of course, if my status is
23 not what I believe it to be, then I
24 naturally know you cannot update in any way.
25 If that is the case then you will not hear

Page 399

1 from me again before disclosure. Thanks
2 again for your time. Joe." Did you reply
3 to that email?
4 CPL. BURKE:
5 A. I don't think so.
6 MS. O'BRIEN:
7 Q. Okay. You know, he – this idea, he says
8 here that "there have been times where the
9 RCMP have referred to me as 'another victim'
10 in this case." Have you ever heard anyone
11 in the RCMP refer to him as another victim?
12 CPL. BURKE:
13 A. No.
14 MS. O'BRIEN:
15 Q. Okay. Did you do any follow up with anyone
16 to see if anyone had been telling Constable
17 Smyth he was a victim?
18 CPL. BURKE:
19 A. No.
20 MS. O'BRIEN:
21 Q. Okay. Did you see this as an appropriate
22 email to be coming from Constable Smyth?
23 CPL. BURKE:
24 A. No.
25 MS. O'BRIEN:

Page 400

1 Q. Okay. You know, again when you look at he's
2 talking about the effects on his family, you
3 know, lying awake, that kind of thing, do
4 you see this as an example, you know, of him
5 trying to – again elicit sympathy or
6 influence the investigation?
7 CPL. BURKE:
8 A. Maybe or the investigation was taking a long
9 time, I guess, in his view and he felt that,
10 you know, it should have been – maybe he
11 felt it should have been concluded by this
12 time, right.
13 MS. O'BRIEN:
14 Q. Why did you not follow up on this idea of
15 him saying – you know, he's writing to you
16 and something – he knows it's going to be
17 recorded.
18 CPL. BURKE:
19 A. Um-hm.
20 MS. O'BRIEN:
21 Q. That RCMP, you know, have "referred to me as
22 another victim", why didn't you take some
23 follow up on that?
24 CPL. BURKE:
25 A. I didn't (unintelligible) about that.

Page 401

1 MS. O'BRIEN:
2 Q. Okay. Did you consult with a superior about
3 it?
4 CPL. BURKE:
5 A. No, I don't think so.
6 MS. O'BRIEN:
7 Q. Okay. Did you phone Smyth at all in
8 response to this email?
9 CPL. BURKE:
10 A. Not to my recollection, no.
11 MS. O'BRIEN:
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 402

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 403

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 404

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 441

1 house, they didn't enter one – a whole room
 2 of the house that had an exterior door on
 3 it?
 4 CPL. BURKE:
 5 A. No.
 6 MS. O'BRIEN:
 7 Q. Okay. There was – you know, one of the
 8 things noting in the, you know, initially
 9 some of the statements, including Smyth's
 10 initial statement, there's discussion of the
 11 rifle being on the ground and then when we
 12 see – you know, that's the words used "on
 13 the ground" and then when we see the
 14 photographs taken by FIS and also the
 15 earlier photographs, there was a few
 16 photographs captured by Corporal Foote when
 17 he was there, it's propped – you know, we
 18 can see the gun is propped on the green
 19 Tupperware tub.
 20 CPL. BURKE:
 21 A. Yes.
 22 MS. O'BRIEN:
 23 Q. Did you note that as a discrepancy between
 24 the early statements and what was captured
 25 on the scene?

Page 442

1 CPL. BURKE:
 2 A. No, I didn't note it.
 3 MS. O'BRIEN:
 4 Q. Okay. So you just hadn't noticed that?
 5 CPL. BURKE:
 6 A. You know, not to my recollection.
 7 MS. O'BRIEN:
 8 Q. Okay. Did you note – I think in his
 9 statement, Constable Smyth had the barrel of
 10 the gun pointing away from Mr. Dunphy and
 11 when it's found, of course, it's barrel
 12 towards him. Did you notice that
 13 discrepancy?
 14 CPL. BURKE:
 15 A. Ah -
 16 MS. O'BRIEN:
 17 Q. Between what Constable Smyth had said in
 18 this statement of how the gun was placed,
 19 you know, his statement of how the gun was
 20 placed and then -
 21 CPL. BURKE:
 22 A. Okay.
 23 MS. O'BRIEN:
 24 Q. - and then how the gun was ultimately found
 25 or recorded in the photographs, did you -

Page 443

1 CPL. BURKE:
 2 A. Was it – did he say the barrel was pointed
 3 down?
 4 MS. O'BRIEN:
 5 Q. He just said I think the barrel – maybe I'll
 6 let Ms. Chaytor speak to that, because she's
 7 -
 8 CHAYTOR, Q.C.:
 9 Q. Yeah, he talks about in his account of what
 10 happened that Mr. Dunphy points a rifle at
 11 him, the barrel is pointed at him and
 12 following him, and when the gun is found,
 13 it's in the opposite direction.
 14 CPL. BURKE:
 15 A. Right.
 16 CHAYTOR, Q.C.:
 17 Q. It's pointed towards Mr. Dunphy. So was
 18 there any investigation? Was that seen as a
 19 discrepancy? Any investigation as to how
 20 that could be?
 21 CPL. BURKE:
 22 A. Yeah, well, it's – the gun, you know, I
 23 guess ended up in that position, whether,
 24 you know, it dropped out of Mr. Dunphy's
 25 hands or – you know, it's hard – I didn't

Page 444

1 put a whole lot of weight on that, you know,
 2 the way the gun was placed on the Tupperware
 3 container. It could have fell there and
 4 landed in any manner.
 5 MS. O'BRIEN:
 6 Q. Okay.
 7 CHAYTOR, Q.C.:
 8 Q. You didn't see any discrepancy between the
 9 statements in that some of the witnesses and
 10 first responders talked about it being on
 11 the floor versus propped up against the –
 12 the photo showing it being propped up
 13 against the container?
 14 CPL. BURKE:
 15 A. Yeah, well, yeah.
 16 CHAYTOR, Q.C.:
 17 Q. And whether or not that needed further
 18 investigation?
 19 CPL. BURKE:
 20 A. Well, the – yeah, I guess the majority –
 21 like I know that people describe things in
 22 different ways and on the ground, on the
 23 floor, or basically propped up against the
 24 Tupperware container. Some people are more
 25 detailed in their account of where the gun

Page 445

1 actually was. So, I was -
2 CHAYTOR, Q.C.:
3 Q. It wasn't of concern to you that - you
4 didn't see that as a concern or something to
5 go back and clarify what people meant when
6 they said the gun was on the floor?
7 CPL. BURKE:
8 A. No, I didn't. I didn't consider that, you
9 know.
10 CHAYTOR, Q.C.:
11 Q. Okay. So you didn't have any concerns that
12 the gun may - as photographed, may or may
13 not be in the original position that it came
14 to rest?
15 CPL. BURKE:
16 A. I was concerned about it and considered it,
17 but you know, I didn't know really how to
18 establish which way the gun could have fell
19 and land in that manner, yes, or it could
20 have been positioned in another manner when
21 it fell. It's hard to kind of establish
22 that.
23 CHAYTOR, Q.C.:
24 Q. And it's not anything you felt you needed to
25 note in your report?

Page 446

1 CPL. BURKE:
2 A. I didn't consider it for my report, not that
3 I left it out. It's just it's not something
4 that I considered.
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 447

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]

Page 448

1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 [REDACTED]
5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]
17 [REDACTED]
18 [REDACTED]
19 [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]
25 [REDACTED]: