

December 19, 2016

INTERVIEW OF S/SGT. KENT OSMOND

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1 MS. O'BRIEN:
2 Q. Good afternoon. This is an interview in the
3 course of the Inquiry Respecting the Death
4 of Donald Dunphy. It is December 19th, 2016.
5 Local time is 12:35 p.m. and the witness to
6 be deposed today is Sergeant Kent Osmond.
7 This interview is taking place at the
8 Commission's offices in St. John's. Present
9 is Sergeant Osmond, counsel for the RCMP,
10 Mark Freeman, and speaking is co-counsel to
11 the Inquiry, Kate O'Brien. Our interview
12 today is being recorded. Sergeant Osmond,
13 I'm going to ask you to affirm your
14 evidence. Do you affirm that the evidence
15 that you give today will be the truth, the
16 whole truth and nothing but the truth?
17 S/SGT. OSMOND:
18 A. I do.
19 MS. O'BRIEN:
20 Q. Thank you. Can you state for me your full
21 name, address and date of birth?
22 S/SGT. OSMOND:
23 A. Douglas Kent Osmond. Address is [REDACTED]
24 (phonetic) [REDACTED]. And what
25 was it you needed besides that?

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MS. O'BRIEN:

Q. Okay. Were any conflict checks done?

S/SGT. OSMOND:

A. Not officially, like in terms of we didn't have a checklist and say, you know, go down through it, but you know, I did talk to people about whether or not they knew Smyth

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and whether or not there was any conflicts. Everybody knew that they were to self-identify if they had one.

MS. O'BRIEN:

Q. Who do you recall talking to?

S/SGT. OSMOND:

A. Just general conversation over the first few days. Like I know for sure I spoke to everybody in MCU, right, because we were going to be the decision makers on all this. It's not like we had a meeting or anything like that. It's just over the course of talking about scene security and everything, you know, just conversations you have. I did know that Steve worked with Joe Smyth, I think, on one VIP call several years before but didn't consider himself really even knowing Joe.

MS. O'BRIEN:

Q. Okay. So you would have asked – so you're saying in general conversation, it was with respect to knowing Joe Smyth. Any other queries?

S/SGT. OSMOND:

A. In terms of?

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1 MS. O'BRIEN:
 2 Q. Any other – did you investigate any other
 3 potential avenues of conflict?
 4 S/SGT. OSMOND:
 5 A. Outside of being family friends with the
 6 Dunphys, I mean, that was my concern
 7 primarily was Smyth and the Dunphys, right.
 8 MS. O'BRIEN:
 9 Q. Okay. So you asked about Smyth and the
 10 Dunphys?
 11 S/SGT. OSMOND:
 12 A. No, just Smyth.
 13 MS. O'BRIEN:
 14 Q. You just asked about Smyth?
 15 S/SGT. OSMOND:
 16 A. Yeah.
 17 MS. O'BRIEN:
 18 Q. Okay. But you didn't take any notes of
 19 this?
 20 S/SGT. OSMOND:
 21 A. No, not specific, no.
 22 MS. O'BRIEN:
 23 Q. Okay. Should there be a more established
 24 procedure for checking conflicts in your
 25 opinion?

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1 S/SGT. OSMOND:
 2 A. Maybe in a larger unit. In our unit, like I
 3 didn't feel that there was a great risk
 4 there. I know the members. I know their
 5 professional backgrounds. I know a lot
 6 about their personal lives and I felt I
 7 would have known if there was a conflict and
 8 not that I'm telepathic or anything but also
 9 I mean, MCU members know that they – and
 10 they will self-identify if they have a
 11 conflict.
 12 MS. O'BRIEN:
 13 Q. Okay. I noted at page four of the ASIRT
 14 report, which I believe your counsel has
 15 there, it says that "steps were taken to
 16 identify any RCMP or RNC police officer who
 17 had a personal and/or professional
 18 relationship with the subject officer. The
 19 recognition of the potential conflict and
 20 the steps taken to isolate the impact of
 21 that conflict were noteworthy and
 22 demonstrative of an intent to maintain the
 23 integrity of the investigation".
 24 S/SGT. OSMOND:
 25 A. Um-hm.

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1 MS. O'BRIEN:
 2 Q. Now is there – I'm not exactly sure, you
 3 know, I haven't been sure exactly what ASIRT
 4 has been referring to there. You're saying
 5 that you kind of in general – you didn't
 6 record it. In general conversation, you
 7 mentioned to people. Is that what they're
 8 referring to there or do you know of
 9 something else that they might be referring
 10 to?
 11 S/SGT. OSMOND:
 12 A. I don't know what they're referring to in
 13 there, other than – I may have made notes in
 14 E&R or on a PROS file or something. I don't
 15 recall. They're not in my notebook. I
 16 don't recall seeing them.
 17 MS. O'BRIEN:
 18 Q. I haven't found them.
 19 S/SGT. OSMOND:
 20 A. Steve Burke may have made them, I don't
 21 know, but I can only speak to what I did and
 22 I mean, I don't have a comment as to -
 23 MS. O'BRIEN:
 24 Q. What that means, and obviously I know you
 25 didn't author the report, but it says "steps

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1 taken to isolate the impact of that conflict
 2 were noteworthy" and I thought you might be
 3 able to shed some light on that for me, but
 4 you're not able to?
 5 S/SGT. OSMOND:
 6 A. No.
 7 MS. O'BRIEN:
 8 Q. Okay.
 9 S/SGT. OSMOND:
 10 A. Clearly if they said that, it's in the file.
 11 I mean it's not a comment you would make
 12 without anything to back it up. But I don't
 13 see it in my notes.
 14 MS. O'BRIEN:
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1 officer's training?
 2 S/SGT. OSMOND:
 3 A. Note taking? Absolutely.
 4 MS. O'BRIEN:
 5 Q. And should an RCMP officer know from his or
 6 her training that this is what they should
 7 be doing in that kind of a situation?
 8 S/SGT. OSMOND:
 9 A. Of course.
 10 MS. O'BRIEN:
 11 Q. Okay. One officer I spoke to said that he
 12 didn't – you know, no one had told him that
 13 he was investigating, so you know, I'm not
 14 going to give you his words exactly because
 15 I won't remember them, but that was – you
 16 know, so that he didn't kind of see it as
 17 duty to be taking notes because no one had
 18 told him that he was part of the
 19 investigation.
 20 S/SGT. OSMOND:
 21 A. Well, I'm reluctant to criticize that
 22 because I don't know what the person's role
 23 was. If they were just standing on the side
 24 of the road having traffic go back and
 25 forth, it's a little bit more forgivable.

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1 If their role was otherwise, I mean
 2 can tell me what their role was, I'll tell
 3 you what my reaction is.
 4 MS. O'BRIEN:
 5 Q. Well, their role was to transport Constable
 6 Smyth to Holyrood detachment.
 7 S/SGT. OSMOND:
 8 A. They should have had notes on that.
 9 MS. O'BRIEN:
 10 Q. Okay.
 11 MR. FREEMAN:
 12 Q. You're talking about Constable [REDACTED]?
 13 MS. O'BRIEN:
 14 Q. Yeah.
 15 MR. FREEMAN:
 16 Q. And he did have a notepad.
 17 MS. O'BRIEN:
 18 Q. Oh, I know, I know, yeah. So in the notes,
 19 should Constable [REDACTED] in that case have
 20 been recording what Constable Smyth was
 21 saying?
 22 S/SGT. OSMOND:
 23 A. Yes.
 24 MS. O'BRIEN:
 25 Q. Okay. And in this case, Constable [REDACTED]

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1 said that he was, you know, trying to
 2 dissuade or keep Constable Smyth from
 3 speaking about the events.
 4 S/SGT. OSMOND:
 5 A. Um-hm. Sorry, yes.
 6 MS. O'BRIEN:
 7 Q. Okay. And I questioned whether that was,
 8 you know, proper police tactics, as I have
 9 worked with police officers over the past
 10 many years. I normally understand they're
 11 quite keen to record spontaneous utterances.
 12 S/SGT. OSMOND:
 13 A. Yes.
 14 MS. O'BRIEN:
 15 Q. Okay. So I would have thought that would
 16 have been part of his training, to record
 17 spontaneous utterances, you know.
 18 S/SGT. OSMOND:
 19 A. Yes.
 20 MS. O'BRIEN:
 21 Q. And but he said no one had told him he was
 22 essentially part of the investigation and
 23 that's why he didn't do it or that's why he
 24 was approaching it that way.
 25 S/SGT. OSMOND:

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1 A. Well, he's come into custody, escort or
 2 otherwise, of a person that's just taken a
 3 life of another person. His desire to
 4 deflect the conversation I think is a smart
 5 one because Major Crime Unit inherits files.
 6 We can't control what happened up to the
 7 point where we arrive there and if Constable
 8 [REDACTED] had made the decision that Joe Smyth
 9 was a suspect or not a suspect and made a
 10 decision on talking to him, with or without
 11 the Charter, it would have severely
 12 complicated things later because he may not
 13 have been in the know that he needed to be
 14 and if that was me in that situation, I
 15 would have taken notes on what was said and
 16 done, his demeanour, his clothing, whatever
 17 I felt was required, but I too would have
 18 deflected that conversation.
 19 MS. O'BRIEN:
 20 Q. Okay.
 21 S/SGT. OSMOND:
 22 A. Because I would not want to have caused a
 23 Charter issue later on, due to my
 24 misunderstanding of the situation.
 25 MS. O'BRIEN:

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1 Q. I can certainly see that if he was actively
 2 questioning, then there could be a Charter
 3 concern.
 4 S/SGT. OSMOND:
 5 A. Um-hm.
 6 MS. O'BRIEN:
 7 Q. I see your – I take your point there. But
 8 what if it's just Constable Smyth speaking,
 9 not Constable [REDACTED] asking him questions,
 10 just Constable Smyth speaking?
 11 S/SGT. OSMOND:
 12 A. You're – it's a bit of a situation there too
 13 because nothing's being recorded. I mean I
 14 know his notebook is recording, but he's
 15 driving and his notes then are going to be
 16 made from memory. I really do believe that
 17 if it was me, I would have done what he did.
 18 MS. O'BRIEN:
 19 Q. Okay. What if it was – would that be the
 20 same whether Constable Smyth was a police
 21 officer or not?
 22 S/SGT. OSMOND:
 23 A. Yes. I would not have wanted to – I was in
 24 a situation a couple years back where a
 25 member picked up somebody involved in one of

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1 my investigations and he was directed
 2 speak to this person for this very fact and
 3 he did so anyway and it caused us Charter
 4 hiccups later and I would have erred on the
 5 side of caution there. I would have.
 6 MS. O'BRIEN:
 7 Q. And actively deflected or kept someone from
 8 making statement?
 9 S/SGT. OSMOND:
 10 A. The thing is I don't know what he said to
 11 you and I don't know what the conversation
 12 was in the car, but I know my instinct would
 13 have been to play it very safe there.
 14 MS. O'BRIEN:
 15 Q. Okay.
 16 S/SGT. OSMOND:
 17 A. Because I'm not in the know as to what
 18 happened, what his jeopardy is, what his
 19 status is and how that's going to just, you
 20 know, evolve into the file. Because I mean,
 21 you know, if you mess something up early,
 22 it's hard to wipe the slate clean, right.
 23 MS. O'BRIEN:
 24 Q. So can you – you know, can you give me – so
 25 you're saying in other examples where you

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1 have a subject of an investigation wh
 2 there's just been a shooting or a serious
 3 incident that police officers would, you
 4 know, as good police practice, deflect that
 5 subject from making statements about what
 6 just happened?
 7 S/SGT. OSMOND:
 8 A. When their status is ambiguous. I'm not
 9 talking about police officers. I'm talking
 10 about what I would do.
 11 MS. O'BRIEN:
 12 Q. Okay.
 13 S/SGT. OSMOND:
 14 A. But where that person's status is ambiguous,
 15 I would err on the side of caution and I
 16 would probably tell the person not to speak
 17 about it, and that's got nothing to do with
 18 them being a police officer. That's got to
 19 do with absolute fear of jeopardizing the
 20 Charter and then having them willing to give
 21 statement later, only to have it murky about
 22 what happened on the drive there.
 23 MS. O'BRIEN:
 24 Q. Okay.
 25 S/SGT. OSMOND:

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1 A. I like things – when it comes to the Charter
 2 issue, I like it very clear.
 3 MS. O'BRIEN:
 4 Q. Okay. So my understanding that officers are
 5 trained to essentially record spontaneous
 6 utterances.
 7 S/SGT. OSMOND:
 8 A. Oh absolutely. I mean, spontaneous
 9 utterance is a different scenario from what
 10 you're saying. I mean, if I was driving and
 11 he was talking, I would get back and I would
 12 make notes about what was said. But I
 13 wouldn't encourage the dialog. I wouldn't
 14 engage in the dialog and I may very well
 15 say, "you know what, I'm just your escort.
 16 You need to talk to the guys when you get
 17 back to the office."
 18 MS. O'BRIEN:
 19 Q. So you may actually shutdown the dialog?
 20 S/SGT. OSMOND:
 21 A. Absolutely, because I'm not in the know and
 22 that's a scary place to be.
 23 MS. O'BRIEN:
 24 Q. [REDACTED]
 25 [REDACTED]

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 24 MS. O'BRIEN:
 25 Q. Okay. And I take it this was prior to you

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1 getting a statement from Constable Smyth?
 2 S/SGT. OSMOND:
 3 A. Yes.
 4 MS. O'BRIEN:
 5 Q. Okay. Is there, to your knowledge, any
 6 policy or protocol that would govern this
 7 type of situation where you have – you know,
 8 you have a subject who's a member of another
 9 force meeting with his – you know, members
 10 of his force.
 11 S/SGT. OSMOND:
 12 A. There's no policy that I'm aware of. I
 13 mean, we asked Constable Smyth for a
 14 statement that day. He declined and offered
 15 to give us one the next day. We couldn't
 16 control his comings and goings and who he
 17 spoke to until that time. We couldn't
 18 compel a statement from him. We felt that
 19 we had a responsibility to allow him to have
 20 emotional support. I think one of the
 21 people there was an EAP, like employee
 22 assistance person or a union person. So,
 23 that was their capacity, to my knowledge,
 24 was professional. I guess they were looking
 25 after their employee. But there was nothing

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1 that we could do, that I'm aware of, to stop
 2 that and we couldn't force Joe to give us a
 3 statement.
 4 MS. O'BRIEN:
 5 Q. Okay. Would you have preferred to have
 6 gotten a statement from him that night?
 7 S/SGT. OSMOND:
 8 A. I'm torn on that. I think that – like when
 9 he said to me that he didn't want to give a
 10 statement until the following day and all
 11 that, that is consistent with prevailing
 12 guidance I've always been given, if I was
 13 involved in a use of force incident that was
 14 traumatic that I should wait to give a
 15 statement. Having said that, it would have
 16 been nice to get a statement from him that
 17 day and then a follow-up statement.
 18 MS. O'BRIEN:
 19 Q. Okay. So what is this prevailing guidance
 20 that you're talking about?
 21 S/SGT. OSMOND:
 22 A. It's just information that I've received
 23 from my superiors – well, not my superiors,
 24 I guess, from my – in the RCMP we have what
 25 we call SRRs. They're defunct now, but

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1 they're your staff representative. And
 2 remember reading literature that says, you
 3 know, in the case of trauma, usually you
 4 have much better recall 24 to 48 hours after
 5 the event. I can't base that in science.
 6 I'm just saying what I've been told. So
 7 when he told me that himself, those weren't
 8 – were his words, but it wasn't something
 9 that was unfamiliar to me and it's not like
 10 I could have changed his mind anyway, I
 11 mean, or forced him to give a statement.
 12 MS. O'BRIEN:
 13 Q. Okay. In generally doing police
 14 investigation, is – you know, are you
 15 normally trying to get statements as soon
 16 after events as they happened?
 17 S/SGT. OSMOND:
 18 A. It completely depends on the situation and
 19 the person's status. Oftentimes you'll be
 20 much better off waiting and getting
 21 investigative facts, you know, lined up so
 22 you can have a high impact statement from
 23 someone that you anticipate may lie or you
 24 may just want to gather as much information
 25 as you can so you can ask pertinent

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1 questions to the best of your ability.
 2 Sometimes it would be beneficial to meet
 3 with people right away. It completely
 4 depends on the situation.
 5 MS. O'BRIEN:
 6 Q. Okay. So here, had he – your intention was
 7 to interview him right away? Is that fair
 8 to say, initially until he said he didn't
 9 want to?
 10 S/SGT. OSMOND:
 11 A. We would have taken a statement from him
 12 right then, yeah.
 13 MS. O'BRIEN:
 14 Q. But is that what you wanted to do?
 15 S/SGT. OSMOND:
 16 A. I can't speak for what Steve wanted to do.
 17 To me, it would have been optimal, but I
 18 wasn't directing Steve "go interview him
 19 now". That would have been his decision to
 20 make.
 21 MS. O'BRIEN:
 22 Q. Okay. And I know you said, you know, you
 23 can't control – you couldn't control who
 24 Constable Smyth spoke to.
 25 S/SGT. OSMOND:

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1 A. Um-hm.
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 21 MS. O'BRIEN:
 22 Q. Okay. A couple of things. In the daily log
 23 – now, I understood from what you said, you
 24 had some direct discussion with Constable
 25 Smyth about his giving a statement? Is that

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1 right?
 2 S/SGT. OSMOND:
 3 A. Yes. That's in my notebook.
 4 MS. O'BRIEN:
 5 Q. Okay. So, and I have seen it in your
 6 notebook but I'm going to take you to an
 7 entry made by Monty Henstridge, and I have
 8 it here in the daily log, but he's saying at
 9 17:30 approximate time, Corporal -
 10 MR. FREEMAN:
 11 Q. If you'd prefer to see it, that's okay too,
 12 if you want to see it.
 13 S/SGT. OSMOND:
 14 A. No, that's fine.
 15 MS. O'BRIEN:
 16 Q. "Corporal Henstridge spoke briefly with
 17 Constable Smyth who had several RNC members
 18 with him for support, including Warren
 19 Sullivan of the RNC Association. Smyth was
 20 shaken but cooperative. He stated he very
 21 much wanted to provide a statement
 22 immediately but would prefer to wait until
 23 tomorrow once he settled. Sullivan noted
 24 that he advised Smyth of this, given the
 25 research which showed recall was stronger

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1 and more accurate the following day.
 2 Corporal Henstridge agreed and advised that
 3 this would not be a problem. Corporal
 4 Henstridge provided his business card and
 5 asked Constable Smyth to contact him as soon
 6 as he was up to it in the morning." Okay.
 7 Were you – you know, when this interaction
 8 took place between Monty Henstridge and
 9 Constable Smyth and obviously Warren
 10 Sullivan is there speaking to him, so were
 11 you there for this interaction or
 12 discussion?
 13 S/SGT. OSMOND:
 14 A. I don't think so. The conversation that I
 15 had with Joe was he just happened to be
 16 walking by. There was somebody with him. I
 17 can't remember – I think it was Sullivan.
 18 Just trying to find the note there.
 19 MS. O'BRIEN:
 20 Q. Okay. It might be on page four of your
 21 notes.
 22 S/SGT. OSMOND:
 23 A. Yeah. So, I was in the boardroom and he was
 24 walking by and, you know, I just – basically
 25 I said, you know, "we're going to need to

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<p>1 talk to you” kind of thing, and he said</p> <p>2 “yeah” and I remember he said like “I want</p> <p>3 to give a statement with every bone in my</p> <p>4 body, but I know I’ll be a better witness if</p> <p>5 I wait” and I agreed with him. I mean based</p> <p>6 on what I understand to be trauma recall and</p> <p>7 what I’ve been told, but also because of the</p> <p>8 fact that if he was declining, he was</p> <p>9 declining and there was nothing – we</p> <p>10 couldn’t compel it from him, so we might as</p> <p>11 well just, you know, maintain a good rapport</p> <p>12 and hope he comes in the next day.</p> <p>13 MS. O'BRIEN:</p> <p>14 Q. Okay. This seems to be – so looking at your</p> <p>15 notes on page four, it seems to be at 17:45</p> <p>16 you note that at approximately that time</p> <p>17 “Henstridge advises Smyth not prepared to</p> <p>18 provide statement at this time”.</p> <p>19 S/SGT. OSMOND:</p> <p>20 A. Right.</p> <p>21 MS. O'BRIEN:</p> <p>22 Q. “Says he will provide, just wants to</p> <p>23 decompress” and that is – then your note is</p> <p>24 at 19:00 approximate time, so later than</p> <p>25 that “I saw Smyth walking by the boardroom</p>	<p>1 A. No.</p> <p>2 MS. O'BRIEN:</p> <p>3 Q. None at all?</p> <p>4 S/SGT. OSMOND:</p> <p>5 A. No.</p> <p>6 MS. O'BRIEN:</p> <p>7 Q. Okay. And in fact, you felt he was right in</p> <p>8 not giving a statement and told him that?</p> <p>9 S/SGT. OSMOND:</p> <p>10 A. Yeah.</p> <p>11 MS. O'BRIEN:</p> <p>12 Q. Okay. And you’re saying that this comes</p> <p>13 from your – what you had learned, you know,</p> <p>14 been told sort of along the way by your SSR?</p> <p>15 S/SGT. OSMOND:</p> <p>16 A. Yeah. I mean, I – there’s – I’ve seen</p> <p>17 documentation, like brochures, you know, and</p> <p>18 that kind of thing and you read them and I</p> <p>19 mean that’s what it advises, if you’re</p> <p>20 involved in a police – like a traumatic use</p> <p>21 of force event, you’re better off waiting</p> <p>22 for a while.</p> <p>23 MS. O'BRIEN:</p> <p>24 Q. And is this advising police officers who’ve</p> <p>25 been involved in traumatic events?</p>
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<p>1 and spoke briefly. I noted he had changed</p> <p>2 his clothes and asked him how he was doing.</p> <p>3 He said he keeps playing it over in his head</p> <p>4 and wondered why the guy did what he did.</p> <p>5 Then he wonders if he could have done</p> <p>6 something different in response. I told him</p> <p>7 that was a normal reaction in my opinion.</p> <p>8 He said he wants to provide a statement now</p> <p>9 with every bone in his body but knows his</p> <p>10 recall will be better tomorrow. I told him</p> <p>11 he was right and he should go home and be</p> <p>12 with family and we could talk tomorrow”.</p> <p>13 S/SGT. OSMOND:</p> <p>14 A. Um-hm.</p> <p>15 MS. O'BRIEN:</p> <p>16 Q. And is that an accurate note of your</p> <p>17 interaction with him?</p> <p>18 S/SGT. OSMOND:</p> <p>19 A. Um-hm.</p> <p>20 MS. O'BRIEN:</p> <p>21 Q. Okay. So at this point, you know, there</p> <p>22 wasn’t – you know, there was no effort made</p> <p>23 to persuade Constable Smyth to give a</p> <p>24 statement that night?</p> <p>25 S/SGT. OSMOND:</p>	<p>1 S/SGT. OSMOND:</p> <p>2 A. Yes.</p> <p>3 MS. O'BRIEN:</p> <p>4 Q. Okay. Have you ever read anything like that</p> <p>5 about potential like suspects of criminal</p> <p>6 investigations that they should be given</p> <p>7 time to – you know, 24-48 hours prior to</p> <p>8 being interviewed?</p> <p>9 S/SGT. OSMOND:</p> <p>10 A. I’ve never seen anything like that, no.</p> <p>11 MS. O'BRIEN:</p> <p>12 Q. Okay. So in that case, isn’t what you’re</p> <p>13 trying to get is the freshest evidence from</p> <p>14 – you know, when you have a suspect of a</p> <p>15 criminal investigation aren’t you trying to</p> <p>16 get the freshest evidence from them?</p> <p>17 S/SGT. OSMOND:</p> <p>18 A. Um-hm. And like I said, I mean, you know, I</p> <p>19 would have preferred if he had done it that</p> <p>20 night and then we could have followed up</p> <p>21 with a second or a third statement even,</p> <p>22 right, like we did, but we can’t compel it</p> <p>23 and I’m trying to establish a rapport with</p> <p>24 him and –</p> <p>25 MS. O'BRIEN:</p>

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1 Q. Okay. You say you couldn't compel it. Did
 2 you make any investigations or any inquiries
 3 to find out whether he was required by the
 4 RNC to give a report of his activities that
 5 day before going off shift?
 6 S/SGT. OSMOND:
 7 A. I didn't, no.
 8 MS. O'BRIEN:
 9 Q. Okay. Do you know if anybody else did?
 10 S/SGT. OSMOND:
 11 A. No, I don't.
 12 MS. O'BRIEN:
 13 Q. Okay. Do you think that's something the
 14 RCMP should have found out?
 15 S/SGT. OSMOND:
 16 A. It wouldn't have mattered because if he was
 17 required to report, then he would have
 18 reported and then we would have gotten that
 19 information either way, but if he's required
 20 to report then the information we get from
 21 him is compelled and I don't know how useful
 22 it is to us anyway if it's compelled. Like
 23 if it had been a criminal investigation,
 24 then he has a right not to incriminate
 25 himself. So maybe that information wouldn't

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1 have been any good to us anyway.
 2 MS. O'BRIEN:
 3 Q. Did you consider it to be a criminal
 4 investigation at this time?
 5 S/SGT. OSMOND:
 6 A. No, I'm throwing the theory out here, right.
 7 MS. O'BRIEN:
 8 Q. Okay.
 9 S/SGT. OSMOND:
 10 A. What I'm saying, if he was required to
 11 report then he would have reported and we
 12 would have gotten that file material anyway,
 13 be it that day or the next day or the day
 14 after, but it wouldn't have changed. It
 15 would have been his report. And if it had
 16 been, theoretically a criminal
 17 investigation, then compelled information
 18 from a person, the subject of a criminal
 19 investigation, once we see it, we can't
 20 unsee it and it could be a problem.
 21 MS. O'BRIEN:
 22 Q. Okay. So are you saying that if a police
 23 officer who's involved in a use of force
 24 incident is required to give a statement
 25 that it can't be used in a criminal

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1 investigation?
 2 S/SGT. OSMOND:
 3 A. I'm saying I would have to consider whether
 4 or not it should be and whether or not it
 5 could be. I don't know that and if you are
 6 compelled by policy or guideline through
 7 your organization to provide a written
 8 account of something that happened and then
 9 either at that time or later it's determined
 10 that it was a criminal thing that you did
 11 and the investigators now have that
 12 compelled testimony in effect from you, then
 13 there's a problem.
 14 MS. O'BRIEN:
 15 Q. Do you know that there's a problem?
 16 S/SGT. OSMOND:
 17 A. Well, in my opinion, there could be a
 18 problem, yes.
 19 MS. O'BRIEN:
 20 Q. Okay.
 21 S/SGT. OSMOND:
 22 A. Because it's compelled. You haven't been
 23 read your Charter rights. Nothing's been
 24 done to protect your rights, but you've
 25 handed that over to your employer who's then

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1 handed it over to the police. Yeah, I think
 2 there could be a big problem there.
 3 MS. O'BRIEN:
 4 Q. Okay.
 5 S/SGT. OSMOND:
 6 A. I've never been involved in that aspect of
 7 it. I'm just talking from my experience, my
 8 thoughts, I guess.
 9 MS. O'BRIEN:
 10 Q. Absolutely, okay. Have you ever – do you
 11 see any potential downside or negative
 12 impact that allowing Constable Smyth, you
 13 know, so much time before he gave his
 14 statement? So, not until the next evening
 15 that he gave his statement, right? Do you
 16 see any potential for a negative impact on
 17 the investigation because of that?
 18 S/SGT. OSMOND:
 19 A. Well, I mean, theoretically, he could have
 20 concocted a story. I mean, that's clearly a
 21 downside. But our choice was – like we
 22 didn't have a choice.
 23 MS. O'BRIEN:
 24 Q. He seemed very willing to cooperate.
 25 S/SGT. OSMOND:

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<p>1 A. Um-hm.</p> <p>2 MS. O'BRIEN:</p> <p>3 Q. You know, if – you could have said “we’d</p> <p>4 really like it if you could give us a</p> <p>5 statement now”.</p> <p>6 S/SGT. OSMOND:</p> <p>7 A. I believe that was said to him. I don’t</p> <p>8 have a note of that, but I mean -</p> <p>9 MS. O'BRIEN:</p> <p>10 Q. Who do you believe said that to him?</p> <p>11 S/SGT. OSMOND:</p> <p>12 A. I think Steve Burke may have said that to</p> <p>13 him, but I mean, it was clear that we</p> <p>14 desired – in my opinion anyway, it was clear</p> <p>15 that we desired a statement from him, if he</p> <p>16 was going to give one, and he declined.</p> <p>17 MS. O'BRIEN:</p> <p>18 Q. Okay. But your statement says you told him</p> <p>19 he was right and he should go home.</p> <p>20 S/SGT. OSMOND:</p> <p>21 A. Yeah, but you got to understand, I wasn’t</p> <p>22 asking him for a statement. I was talking</p> <p>23 to him about his decision to make a</p> <p>24 statement.</p> <p>25 MS. O'BRIEN:</p>	<p>1 MS. O'BRIEN:</p> <p>2 Q. Okay. Do you know if Meghan Dunphy was told</p> <p>3 she didn’t have to provide a statement that</p> <p>4 night?</p> <p>5 S/SGT. OSMOND:</p> <p>6 A. No, Joe wasn’t told he didn’t have to</p> <p>7 either. He just opted not to. And I told –</p> <p>8 when I spoke with Meghan, I clearly told</p> <p>9 her, “no, you didn’t have to give us a</p> <p>10 statement that night.”</p> <p>11 MS. O'BRIEN:</p> <p>12 Q. Do you think she understood that?</p> <p>13 S/SGT. OSMOND:</p> <p>14 A. At the time?</p> <p>15 MS. O'BRIEN:</p> <p>16 Q. Yeah.</p> <p>17 S/SGT. OSMOND:</p> <p>18 A. No, I’m sure she didn’t.</p> <p>19 MS. O'BRIEN:</p> <p>20 Q. Okay. Do you think Joe would have</p> <p>21 understood it at the time that he -</p> <p>22 S/SGT. OSMOND:</p> <p>23 A. Absolutely.</p> <p>24 MS. O'BRIEN:</p> <p>25 Q. Okay. What about the risk that, you know,</p>
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<p>1 Q. Okay. So you think Corporal Burke might</p> <p>2 have said that to him, but you don’t know?</p> <p>3 S/SGT. OSMOND:</p> <p>4 A. Yeah.</p> <p>5 MS. O'BRIEN:</p> <p>6 Q. Okay. Any other potential downsides? He</p> <p>7 could have concocted a story is one you</p> <p>8 gave.</p> <p>9 S/SGT. OSMOND:</p> <p>10 A. I mean clearly, you know, after speaking</p> <p>11 with Meghan Dunphy, I mean, clearly it was</p> <p>12 an issue with her, but I mean, she didn’t</p> <p>13 understand the realities of the situation we</p> <p>14 were in and thought that we just arbitrarily</p> <p>15 decided “no, you go home. We don’t need a</p> <p>16 statement from you” but we were at her house</p> <p>17 and what she perceived to be kind of an</p> <p>18 aggressive or insensitive statement. So I</p> <p>19 mean, it would have – I guess the downside</p> <p>20 of it was, you know, the friction it caused</p> <p>21 with the family, but I mean, we can’t – I</p> <p>22 can’t change that and we can’t compel a</p> <p>23 statement out of a person that’s unwilling.</p> <p>24 We just have to manage the family’s reaction</p> <p>25 to it as best we can.</p>	<p>1 when you’re – if you don’t give a statement</p> <p>2 immediately and give it sometimes later,</p> <p>3 you’re learning other information, you know,</p> <p>4 that’s coming your way and it contaminates</p> <p>5 your memory. Is that a concern?</p> <p>6 S/SGT. OSMOND:</p> <p>7 A. Not in this case because he was the lone</p> <p>8 person there. So there was – it’s not like</p> <p>9 there were three or four witnesses who could</p> <p>10 have phoned him and said “well, we told the</p> <p>11 police this. Remember when that happened?</p> <p>12 Well, I told them about that”. I mean, it</p> <p>13 was fairly isolated in that regard and you</p> <p>14 know, clearly that was the biggest challenge</p> <p>15 with the investigation was the fact that</p> <p>16 there was no witnesses other than Constable</p> <p>17 Smyth. So, you know, in that concern, I</p> <p>18 would have had less.</p> <p>19 MS. O'BRIEN:</p> <p>20 Q. Okay. What about in talking through his</p> <p>21 statement with other people, them sort of</p> <p>22 suggesting ideas to him even though they</p> <p>23 hadn’t been there? Was that – you know,</p> <p>24 would that be a concern?</p> <p>25 S/SGT. OSMOND:</p>

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1 A. As I said, I mean, I would have prefe
2 get some version from him that night, but
3 ultimately people change their stories – if
4 they choose to, people can change their
5 stories, you know. They can come back a
6 couple days later and say “you know, I’ve
7 been thinking about that. I don’t think
8 that’s the way that happened.” They can
9 change it and it could be due to counselling
10 from someone else. We never know those
11 things.

12 MS. O'BRIEN:

13 Q. Right. Do you know if Constable Snyth was
14 ever asked not to discuss matters with
15 somebody else, you know, prior to giving his
16 statement?

17 S/SGT. OSMOND:

18 A. I don’t know.

19 MS. O'BRIEN:

20 Q. Okay. Do you think that might have made a
21 difference?

22 S/SGT. OSMOND:

23 A. It might have. I don’t know that he did. I
24 mean, I know – I don’t know, but I would
25 think he discussed it with his EAP person

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1 and probably a psychologist, but I mea
2 can’t control people. We can suggest.

3 MS. O'BRIEN:

4 Q. Okay. But it wasn’t suggested to him that
5 he not?

6 S/SGT. OSMOND:

7 A. I don’t know. I didn’t. But I don’t know
8 if it was or not.

9 MS. O'BRIEN:

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 18 MS. O'BRIEN:
 19 Q. Okay. In your notes on Page 15—now, we know
 20 that after this re-enactment, the video was
 21 lost.
 22 S/SGT. OSMOND:
 23 A. Yeah.
 24 MS. O'BRIEN:
 25 Q. And so at the bottom of Page 15 of your

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1 notes, you write, "We agreed," so this is a
 2 meeting—you're back at your office. "Upon
 3 returning to MCU office, Cpl. Burke advises
 4 me that the video had been lost. I
 5 immediately attended at Pat Cahill's
 6 office."
 7 S/SGT. OSMOND:
 8 A. Yes.
 9 MS. O'BRIEN:
 10 Q. "Before going to Pat Cahill, we discussed
 11 remedies, and I stated, 'Everyone is to make
 12 exceptional notes, et cetera.' We agreed."
 13 And I don't—is that "we" you and Burke or is
 14 that "we" you and Cahill? I'm not sure.
 15 S/SGT. OSMOND:
 16 A. Well, that's before going to Cahill.
 17 MS. O'BRIEN:
 18 Q. So "we" is you and Burke?
 19 S/SGT. OSMOND:
 20 A. Yes.
 21 MS. O'BRIEN:
 22 Q. Okay. "We agreed we will not ask Smyth to
 23 do it again. It was traumatic for him to
 24 relive it once. Detrimental to ask him to
 25 do it again due to our mistake: mental

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1 health consequences, PTSD.
 2 S/SGT. OSMOND:
 3 A. Yes.
 4 MS. O'BRIEN:
 5 Q. Okay, so I know, ultimately, he was asked to
 6 do it again.
 7 S/SGT. OSMOND:
 8 A. Yes.
 9 MS. O'BRIEN:
 10 Q. So, you know, obviously, what—you were
 11 pretty clear here. You have underlined—"We
 12 will not" is both underlined.
 13 S/SGT. OSMOND:
 14 A. Yeah.
 15 MS. O'BRIEN:
 16 Q. So, what caused the change?
 17 S/SGT. OSMOND:
 18 A. That wasn't meant to be defiance. That was
 19 meant to highlight a key decision.
 20 MS. O'BRIEN:
 21 Q. Okay.
 22 S/SGT. OSMOND:
 23 A. So, what changed was the realization that we
 24 have an obligation to capture best evidence.
 25 Even though we had attempted before, we—I

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1 mean, if you look on Page 17, you know, you
 2 see the evolution of a decision, and,
 3 ultimately, we went through a whole bunch of
 4 pros, cons, benefits, drawbacks, and we're
 5 still torn. And, also, I wish to say that
 6 when I made that decision, or when we made
 7 that decision, I can't speak for Steve, but
 8 I don't think I was aware that we had lost
 9 audio. Like, when we go in and we do a
 10 video re-enactment, it's always backed up.
 11 You're sitting here with two.
 12 MS. O'BRIEN:
 13 Q. Two recorders, you're point to, yes.
 14 S/SGT. OSMOND:
 15 A. Yes. We do the same. If you look at our
 16 interview with Joe Smyth, there's one
 17 sitting on the desk. It—I didn't know that
 18 they walked into that re-enactment without
 19 that. That's highly irregular, but I think
 20 the reason it was done that way is because
 21 we had our professional FIS unit there.
 22 Nothing can go wrong, right? So, I don't
 23 think I was aware at that point that it was
 24 all gone. It was just a video that was
 25 gone, so we had what I consider to be a

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1 comprehensive statement in the detail
2 or, you know, headquarters. Then we had a
3 re-enactment where we had an independent
4 observer there. We have multiple people
5 that could take notes, and we could compare
6 it, and then we compared it. You know, then
7 we took that we juxtaposed it against the
8 strain (phonetic) to him. Any changes that
9 may occur in that second statement—because
10 he's had a chance to reflect on it and go
11 over it in his head and all those things.
12 And, ultimately, I went to my boss. I went
13 to Spt. Cahill, and he said, "Okay, we need
14 to discuss this with Andrew Boland," and so
15 we went and met with Andrew. I was still
16 leaning towards probably not doing it, and
17 Andrew made the management decision that
18 he's entitled to make, and it was the
19 correct one, and we redid it.
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25 [REDACTED]

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December 19, 2016

INTERVIEW OF S/SGT. KENT OSMOND

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1 MS. O'BRIEN:
 2 Q. Okay. Now, we know that on the same date,
 3 April 10th, Cpl. O'Keefe called Cst. Smyth.
 4 S/SGT. OSMOND:
 5 A. Yes.
 6 MS. O'BRIEN:
 7 Q. And were you aware of that?
 8 S/SGT. OSMOND:
 9 A. Yes.
 10 MS. O'BRIEN:
 11 Q. And how did it come to your attention? And
 12 you might—it's in your notes, I think, on
 13 April 14th, to refresh your memory.
 14 S/SGT. OSMOND:
 15 A. I'm assuming that Steve Burke told me that
 16 because it's in the same entry. I didn't
 17 actually write that, though. I said, "I
 18 learned it," so I probably should've said
 19 how I learned it, but from reading my notes
 20 there, it seems like it came from Cpl.
 21 Burke.
 22 MS. O'BRIEN:
 23 Q. Okay, so can you tell me, you know, what you
 24 did or what you thought and what you did
 25 when you got that information?

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1 S/SGT. OSMOND:
 2 A. I was taken aback. I thought it was
 3 inappropriate, and I took steps to mitigate
 4 it. I sent an email to Staff Sgt. Rod
 5 Tiller advising him of what had happened,
 6 and directing him to direct Cpl. O'Keefe to
 7 document every single word he said.
 8 MS. O'BRIEN:
 9 Q. Okay, and why did you feel it was
 10 inappropriate?
 11 S/SGT. OSMOND:
 12 A. Because he was the first responder at the
 13 site, which made him a de facto investigator
 14 of whatever capacity, and this was not a
 15 documented conversation. It wasn't
 16 audiotaped. It wasn't videotaped. Trevor
 17 O'Keefe had no inside knowledge of what was
 18 going on with that file, but it still was
 19 completely inappropriate, and I felt he
 20 should've known better than to do that.
 21 MS. O'BRIEN:
 22 Q. Okay. Was the issue just that he didn't
 23 record? You know, he didn't document it?
 24 S/SGT. OSMOND:
 25 A. No, no, the phone call -

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1 MS. O'BRIEN:
 2 Q. It was just that he—where it was -
 3 S/SGT. OSMOND:
 4 A. The phone call should not have been made.
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