

February 22, 2017

Commissioner Leo Barry
Commission of Inquiry Respecting the Death of Donald Dunphy
Unit 1, 425 Topsail Road
St. John's, NL A1E 5N7

Dear Sir:

Re: Report of Dr. Peter Collins - Application by Cst. Joe Smyth pursuant to Rule 21 of the Rules of Procedure and Practice

The issue of the effect of stress and trauma on a police officer in an officer-related shooting has been raised informally on several occasions during this Inquiry as an area which should be explored.

During Cst. Smyth's testimony at the Inquiry issues were raised as to alleged inconsistencies and discrepancies arising from his numerous police statements as to what occurred in the Dunphy residence on the date in question. Allegations of inconsistencies include descriptions of the event itself, the time frames involved, the placement of the rifle and the failure to provide relevant information to the interviewing police officers.

A recurring theme throughout this Inquiry has been whether or not Cst. Smyth was given preferential treatment on the night of the shooting by being allowed to meet with RNC officers and to postpone his statement versus the testimony of various police officers that the best time to provide a statement for an officer involved in a shooting is at least 24 hours after the event.

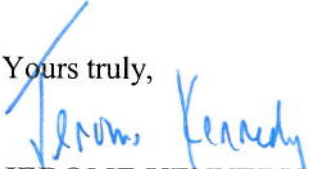
Dr. Peter Collins, a forensic psychiatrist in Toronto, was retained by Counsel for Mr. Smyth on February 6, 2017 and asked to review identified materials on the CIDD website to determine if he could offer any assistance in this matter. Dr. Collins has had extensive involvement in providing expert consultation and/or expert testimony in cases of officer-involved deaths. A copy of Dr. Collins curriculum vitae is enclosed with this letter.

On February 21, 2017 Dr. Collins provided a report which Cst. Smyth maintains is relevant to the Commission's mandate. Pursuant to Rule 21 Cst. Smyth applies to enter Dr. Collin's report into evidence and to call him to give evidence before the Inquiry. Dr. Collins is available to testify on March 1-3, 2017 but has to be back in Toronto on the morning of March 4 as he is scheduled to be in Iceland for work purposes from March 4-10, 2017.

I am available at your convenience to argue this application before the Inquiry, if you wish to hear argument on the same. Please advise of your position.

ROEBOTHAN • MCKAY • MARSHALL

Yours truly,


JEROME KENNEDY, Q.C.

Peter I. Collins, CD, MD, MCA, FRCP(C)
Practice in Forensic Psychiatry

21 February 2017

Mr. Jerome Kennedy, Q.C.
Roebothan McKay Marshall
34 Harvey Road
P.O. Box 5236
St. John's, NL A1C 5W1

Dear Mr. Kennedy,

**RE: Expert Testimony regarding Officer Involved Shootings
Commission of Inquiry Respecting the Death of Donald Dunphy**

INTRODUCTION

At your request, I was asked to provide an opinion on the psychological effects of officers during a shooting event, and the aftermath of an officer involved shooting incident.

QUALIFICATION OF THE EXAMINER

My curriculum vitae is appended to this report. In brief, I am a forensic psychiatrist with the Complex Care and Recovery Program at the Centre for Addiction & Mental Health (CAMH), and an Associate Professor with the Division of Forensic Psychiatry, Faculty of Medicine at the University of Toronto.

As well, I am a co-investigator with the Health Adaptation Research on Trauma (HART) Lab at the University of Toronto and an advisor to the International Performance Resilience and Efficiency Program for police tactical teams, also at the University of Toronto.

I am expert in forensic psychiatry and have provided expert testimony, at all levels of Court, in Ontario as well as in Newfoundland, Nova Scotia, Quebec, Manitoba, Saskatchewan, Alberta, British Columbia, the Northwest Territories and the States of California and Wisconsin.

Practicing as a Medical Corporation
[REDACTED] College Street, Toronto, Ontario, Canada [REDACTED]
416-[REDACTED] 847 • 416-[REDACTED] 965 (fax) • peter.collins [REDACTED]

I have been a member of the Crisis/Hostage Negotiation team of the Toronto Police Service Emergency Task Force (ETF), since 1992, and have attended well over 300 crisis/tactical calls with ETF, as well as, with the OPP, Peel Regional Police, Halton Regional Police, Brantford Police Service, Niagara Regional Police, Waterloo Regional Police, London Police Service, York Regional Police, Barrie Police Service, Thunder Bay Police and Durham Regional Police. I have been consulted over the phone, on hundreds of other critical incident calls, to advise police crisis negotiators and tactical incident commanders, in Ontario and other Canadian provinces.

With Michel St-Yves, PhD, I co-edited the book, *Crisis Negotiation for Law Enforcement Officers* published by Carswell. For many years, I instructed both the Crisis Negotiators Course and the Incident Commanders Course at the Canadian Police College, and continue to instruct these courses at the OPP Police Academy, and elsewhere. Since its inception, I have served on the advisory board of the Canadian Crisis Intervention Association.

I am a member of the board of the Canadian Association of Threat Assessment Professionals and serve as a contributing editor for the *Journal of Threat Assessment and Management*.

I have been consulted on, and/or provided expert testimony, regarding cases involving officer involved deaths, by the Office of the Chief Coroner for Ontario, the Department of Justice for Newfoundland and Labrador, the Office of the Attorney General for Guam, police agencies, the prosecution and the defence, including - Lester Donaldson, 1989; Dominic Sabitino, 1992; Troy Emmerson, 1995; David Melzer, 2000; Edmund Yu, 1997; Wayne Williams, 1997; Henry Masuka, 2000; Darryl Power, 2000; David Melzer, 2000; Mark Graham, 2001; Tony Brookes, 2004; Nathan Brown, 1996; Reynaldo Garcia, 2008; Eric Osawe, 2010; Kyle Newman, 2012; Jilberto Guiterrez, 2012; Sammy Yatim, 2013; Beau Baker, 2015, and Samuel Maloney, in 2016.

With Kris Mohandie, PhD, and Reid Meloy, PhD, I co-authored a research paper that examined 707 officer-involved shootings. The paper, which was published in the *Journal of Forensic Sciences* Vol. 54, No. 2 pp 456-462, is entitled "Suicide by Cop Among Officer-Involved Shooting Cases".

I have lectured to, and worked with, numerous criminal justice agencies in North America, Latin America, South America, South Africa, Australia, New Zealand, Micronesia, South-West Asia and Europe including the FBI, Interpol and Europol.

ACKNOWLEDGEMENT of an EXPERT'S DUTY

As an expert, it is my duty to provide a professional opinion that is fair, objective and non-partisan and to provide opinion evidence that is related only to matters that are within my area of expertise. This duty prevails over any obligation which I may owe to any party by whom, or on whose behalf, I am engaged.

MATERIALS REVIEWED

The majority of the material reviewed was available on the Inquiry website:

1. The Terms of Reference of the Inquiry, dated 23 September 2016. (P-0001).
2. The undated Royal Canadian Mounted Police (RCMP) Investigation report (P-0003).
3. The report of the Alberta Serious Incident Response Team (ASIRT), dated 30 August 2015. This report was authored by Susan Hughson, Q.C., the Executive Director of ASIRT and addressed to RCMP Assistant Commissioner, Peter Clark. (P-0004)
4. Decision of the Independent Observer, The Honourable David G. Riche, dated 11 January 2016. (P-0005)
5. Saskatoon Police Service report to Chief Wm. Janes of the Royal Newfoundland Constabulary (RNC) dated 14 September 2016. (P-0006)
6. Letter to Inspector Sue Bill, RNC Professional Standards Section, from Chief Janes regarding the findings of the Saskatoon Police Service Internal Investigation. This letter was dated 5 October 2016. (P-0007)
7. Excerpt (page 4) from a statement provided by Constable Joe Smyth. (P-0082)
8. Notes from Cpl. Monty Hentsridge duty book dated 9 April 2015. (P-0083)
9. Cpl. Hentsridge's Supplementary Occurrence Report dated 6 April 2015. (P-0091)
10. General occurrence narrative text hardcopy authored by Constable Smyth and dated 7 April 2015 (P-0092)
11. Cpl. Hentsridge's Supplementary Occurrence Report dated 9 April 2015. (P-0093)

12. RCMP FIS scene photograph of .22 calibre rifle. (Scene-097)
13. RCMP FIS scene photograph of a wooden stick with duct tape wrapped around one end and lying on the floor of Mr. Dunphy's residence. (Scene-098)
14. Constable Smyth's curriculum vitae. (P-0118)
15. Transcript of statement provided by Constable Smyth, to Cpl. Monty Hentsridge, on 6 April 2015. (P-0119)
16. The video of the re-enactment in the proceedings of the Inquiry on 24 January 2017. (P-0329)
17. Transcript of Constable Smyth's re-enactment, at the scene, with Cpl. Steve Burke - 10 April 2015. (P-0120)
18. Transcript of Constable Smyth's statement to Detective Sergeant Grant Little of the Saskatoon Police Service, taken on 17 June 2015. (P-0121)
19. Transcript of statement provided by Constable Smyth, to Cpl. Steve Burke, on 26 August 2015. (P-0122)
20. Transcript of the statement of Constable Joe Smyth, to Constable Peter Gosse, dated 9 November 2016. (P-0123)
21. Email dated April 10, 2015 (07:32 AM) from Joe Smyth to All Staff Royal Newfoundland Constabulary regarding Death of Donald Dunphy. The copy of this e-mail was sent by CBC reporter, David Cochrane, to RNC media relations. (P-0191)
22. Hand drawing of the scene, by Constable Smyth, dated 6 April 2015. (P-0213)
23. Diagram of Mr. Dunphy's residence, prepared by RCMP. (P-0129)
24. Letter from Marina E. Hewlett, of Accord Consulting Psychological Services, addressed to "Whom it may Concern" at the Commission of Inquiry. This letter was dated 17 January 2017 and was in regards to her psychological debriefing of Constable Smyth. (C-0006)
25. Transcripts of Volume 4; 5; 6; 7; 8; 9 from the Commission of Inquiry Respecting the Death of Donald Dunphy.

PROLOGUE

The purpose of this report is to provide the Commission of Inquiry into the Death of Donald Dunphy, with the areas of science related to police officers in deadly force confrontations.

ATTENTION, PERCEPTION and MEMORY DISTORTIONS in OFFICER INVOLVED SHOOTING INCIDENTS

In officer involved shootings the research consistently demonstrates the deterioration of accurate perception, much of which is counterintuitive to a layperson. Most individuals believe that they can remember everything that occurs within one's visual scope, storing it much as a video camera would. Memories are not a flawless "videotape" that is played back exactly the same way each time a memory is retrieved.

In actuality our brain tends to screen, filter and distort what we were looking at, particularly when we are intently concentrating. When human beings are forced to make quick decisions, in response to sudden threats, their attention tends to become very narrowly and externally focused on the perceived threat. Because human beings can only attend to a small portion of their environment, at any given time, this is an adaptive mechanism that allows people to pay intense attention to cues that are relevant to survival while ignoring other less salient cues. Individuals, in a high threat situation, devote their attention to a particular object and they tend not to notice unexpected objects even when those unexpected objects appear in their visual field.

When individuals are engaged in a situation where they perceive that they are threatened, cognitive arousal can lead to perceptual narrowing, especially if a weapon is involved. This is referred to as weapon focus effect and is a primitive survival response due to cognitive arousal leading to perceptual narrowing. It is a biologically mediated, automatic reaction to a traumatic event in order to focus on that which is most salient to survival.

In weapon focus effect the attention is directed to a weapon, during the violent event, at the expense of other details. Typically individuals, who are in a weapon present condition, display poorer memory for other details peripheral to the weapon such as the perpetrator holding the weapon. As a result, in potentially deadly force confrontations police officers are frequently unable to provide salient information such as facial features, other threats in the area, or other easily seen objects in the periphery.

Artwohl (2002 & 2003) examined perceptual and memory distortion during officer involved shootings and found that officers exhibit a variety of reactions to traumatic events, especially officer involved shootings. Slightly more than 60% felt the incident transpired in slow motion whereas 17% thought time sped up.

Eighty-four percent of the officers experienced auditory lock-out, whereas 16% thought that sounds were intensified. As well, 79% had tunnel vision, while 71% experienced heightened clarity of vision. These officers, according to Artwohl (2002), responded to the threat, not with "conscious thought," but, rather, on "autopilot." Almost 40% reported a sense of detachment from the event or unreality, while 46% reported memory loss.

Artwohl (2002), in her survey of 157 officers involved in shootings, found that 52% of the officers could not remember some of the event and 46% could not remember some of their own behavior. In addition to memory gaps, 21% of the officers, in her study, experienced memory distortions in which they saw, heard, or experienced something during the event that they later found out had not really happened. This lack of recall of one's own behavior can include inaccuracies in the recall of how many rounds were fired and even the failure to remember having fired one's weapon at all.

Artwohl (2002) found that 84% of officers involved in 157 shootings experienced the perceptual distortion of diminished sound, meaning that they could not hear loud sounds such as gunshots that ordinarily would not be missed. The failure to hear the gunshots could contribute to the officers not realizing they had a weapons discharge or not knowing the exact number of rounds that were fired. In my professional experience I have interviewed officers who cannot accurately remember the number of rounds they fired during an officer involved shooting.

Reactions under stress can be based on instinct and previous learning experiences instead of rational conscious thought. This contributes failing to consciously remember firing their weapon, especially in the suddenness, noise, confusion, and fear that often characterizes deadly force encounters. Artwohl (2002) found that 74% of 157 officers involved in shootings reported that they responded automatically to the perceived threat, giving little or no conscious thought to their actions. Officers will often observe that their training just automatically "kicked in" without my thinking about it.

Under extreme stress, the sympathetic nervous system is activated. In addition to the visual distortions and auditory blunting, that occur during an officer involved shooting, heart rate and respirations increase secondary to the flooding of adrenaline. Under stress, cortisol is released and this can have a negative effect on selective attention and what an individual can consciously recall.

MEMORY RETRIVAL

The Special Investigations Unit (SIU), of the Ministry of the Attorney General, Ontario cannot compel a "subject" officer to be interviewed by their investigators. A "witness" officer requires to be interviewed within 24 hours however according to Gordon Oliver, a supervisor with SIU, individual investigators can make a

“judgement call” and interview a “witness officer” after 24 hours if it is perceived that the officer was traumatized or emotionally distressed from the event.¹ Investigator Len Minello, with the Alberta Serious Incident Response Team (ASIRT), informed the undersigned that ASIRT is tasked with interviewing the “witness officer”, or where there are appropriate grounds for delay, no later than 24 hours after the request was made.

“In some of the matters we investigate, even in the case of an officer involved shooting, there are occasions when witness officers have already gone home prior to our arrival simply because it may take an hour before our agency is notified of the incident, and secondly it could take us a two or three hours to respond to the scene if it occurred outside of Calgary. Our preference is to interview witness officers ASAP however if information presents that a witness officer is clearly traumatized or there is information to lead us to believe it would be better for us to wait, then we will. We have had situations where we have interviewed witness officers more than once on different dates to extract additional details.”²

The position of the Police Psychological Section of the International Association of Chiefs of Police (IACP) regarding Officer-Involved Shooting Guidelines (2013) is:

“While officers may be asked to provide pertinent information soon after a shooting to aid the initial investigative process, whenever feasible, officers should have some recovery time before providing a full formal statement. Depending on the nature of the incident, the demands on the agency, and the emotional and physical status of the officers, this can range from a few hours to several days. An officer’s memory will often benefit from at least one sleep cycle prior to being interviewed leading to more coherent and accurate statements. Providing a secure setting, insulated from the press and curious coworkers, is important during the interview process”.

Due to the fact that experiencing a traumatic event will inevitably result in memory impairment, a factor in facilitating memory retrieval for traumatic events would be that the not make their full statement, to investigators, until at least 24 hours has passed and they have had the opportunity to get a decent night’s sleep. Research indicates that Rapid Eye Movement (REM) sleep is important in integrating memories and facilitating learning and memory retrieval. This would enable officers to give a more complete and coherent statement.

¹ A telephone conversation, with Mr. Oliver, on 15 February 2017.

² e-mail communication, with Investigator Minello, on 15 February 2017.

CONCLUSION

Situations, involving weapons, can happen in an extremely short period of time. Officers have to react instantaneously and do not have the time to evaluate the situation in an analytical manner to determine what level of risk the threat poses.

The response of sympathetic nervous system (SNS), during high stress deadly force situations, has to be taken into account when examining an officer's actions. Arousal of the SNS will narrow and distort perception, can inhibit rational decision making, deteriorate motor skill performance, and greatly reduce memory immediately after a critical incident. This SNS response is automatic, involuntary and uncontrollable.

An individual, under threat, will focus on the weapon. As a result, this person may not be able to describe other factors related to the event, including an accurate physical description of the person with the weapon, or the presence of others in close proximity. Often time will seem to be in "slow motion" and voices or noises will be described as muffled or dampened. Expecting officers to have a perfect and totally accurate recall, of a deadly force encounter, is not realistic.

What we know about human factors, in deadly force confrontations, explains why Constable Joe Smyth's had perceptual and memory discrepancies regarding the incident.

I trust this report is of assistance to you and the Commission of Inquiry. Please do not hesitate to contact me if you have any questions or concerns regarding the above.

Sincerely yours,



Peter I. Collins, CD, MD, MCA, FRCP(C)
Associate Professor
Division of Forensic Psychiatry
University of Toronto

Bibliography

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