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Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 Burke: Okay. (Ahh) Today is (ahh) 2015, April 10th. (Ahh) The time is (ahh) 15:03. My
2 name is Cpl. Steve BURKE. I'm with the RCMP Major Crime Unit in St. John's.
3 I'm presently in the community of Mitchell's Brook, near Mount Carmel. (Ahh)
4 We're in the (ahh) the a in the at the residence of (ahh) Donald Dunphy and
5 I'm (ahh) with (ahh) (ahh) Sgt. (ahh) Joe Smyth with the RNC and we're gonna
6 commence a re-enactment of the (ahh) events that (ahh) occurred on (ahh) Sunday,
7 April 5th. (Ahh) Sgt. Smyth, I just want to (ahh) you know, kinda open up the (ahh)
8 floor to you. (Ahh) I want you to (ahh) start from the beginning, (ahh) and provide
9 as much detail (ahh) (ahh) I guess (ahh) a re-enactment of the events that occurred
10 on Sunday and I'll open the floor to you.

11 Smyth: Okay. (Ahh) So Sunday Sunday past, it was probably (ahh) I think originally
12 maybe around 2 p.m., (ahh) that I arrived in Mitchell's Brook. I had done a drive by
13 check of Mr. Dunphy's residence. There was no vehicles in the driveway and (ahh)
14 had determined that there was nobody at home and I'd actually gone to the
15 neighbour's house at the time, not realizing or knowing that it was his brother but
16 learned that his brother and sister-in-law lived there. I ... I had a ... a conversation
17 with them (ahh) about Mr. Dunphy, my reasoning for attending (ahh) to speak with
18 him. (Ahh) They gave me some family history in terms of (ahh) issues they've had
19 around land disputes and and perhaps some other concerns. (Ahh) That didn't

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1 (ahh) bring me certainly any concern for safety or well-being. Primarily, (ahh) maybe
2 some concerns for his his own (ahh) health, physical health and ... and living
3 conditions. (Ahh) (ahh) But nonetheless, they at the time, they didn't know where
4 he was, said he was a bit reclusive, didn't really have any friends or family other than
5 a than a daughter that he saw periodically and could only perhaps suggest that he
6 was with his daughter, (ahh) given that it was Easter Sunday. (Ahh) They give me
7 some information on ... on the daughter and where she (ahh) lived. (Ahh) My
8 intentions were then to leave and and go by the daughter's residence and and
9 see if Mr. Dunphy was there. (Ahh) I (ahh) I left (ahh) the adjacent residence and
10 before I left, I thought I should check back here again and when I did, (ahh) the black
11 Cherokee that is right in front of me, was parked in the driveway, facing up the
12 driveway, (ahh) almost to the top of the driveway. I pulled my vehicle (ahh) which
13 is a black (ahh) GMC Yukon, a RNC vehicle, unmarked, (ahh) in behind this Jeep
14 Cherokee.

15 **Burke:** (Ahh) Just wanted was just gonna for the recording, I'm gonna introduce (ahh)
16 Retired Justice (ahh) David Riche. He's an independent observer and he's gonna be
17 accompanying the (ahh) re-enactment.

18 **Smyth:** (Inaudible) back probably, I'm gonna say around

19 **Riche:** (Unintelligible)

20 **Smyth:** here somewhere..... and I pulled the vehicle, the Yukon, up in this area and my my
21 driver's door would've been about here. This is about where I exited the vehicle.

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1 (Ahh) And I immediately just approached the residence (ahh) with the standard
2 caution, I guess, where you would approach anywhere. (Inaudible) to anybody. It
3 wasn't a ... a it was an overcast day so I could actually see (inaudible). Just a
4 mess, a lot of garbage on the floor, in ... in the house and there was a lot of cats
5 around on the property and (knocking sound) I knocked, just like this and
6 immediately backed up to around here where I could see (ahh) the side of the
7 residence and the front. Within probably ten, fifteen seconds, I heard the screen door
8 open and somebody say "Hello" or a greeting of some sort. I walked over here. I
9 removed (ahh) my police ID and badge. I had my ... my jacket was open and the
10 police ID was in my inside pocket. (Ahh) I had ... I think I actually had it removed
11 as I was walking in the door. I ... I showed the ... I don't know which hand I used but
12 I I showed my ID and badge. ID is the standard (ahh) police ID with photograph
13 and ... and POLICE in large letters, (ahh) and the badge is our our standard issue,
14 RNC wallet badge, which is identical to our breast shield which is substantial in size.
15 I held that up and (ahh) I asked if he was Mr. Dunphy and he said yes. I asked if he
16 was Don Dunphy. I told him I was Joe Smyth, (ahh) I didn't use rank or anything of
17 that nature. I didn't tell him what section I was with, just "Joe Smyth with the RNC,
18 (ahh) wonderin' if I can come in and talk to you for a minute?"

19 Riche: Where you were there?

20 Smyth: That was it. Yeah.

21 Riche: And he was?

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1 Smyth: He was still standin' in the door.

2 Riche: He was standin' (inaudible).

3 Smyth: Yeah, so he just had the door opened.

4 Riche: Oh.

5 Smyth: And

6 Riche: So you were that far?

7 Smyth: He wasn't even (ahh) (ahh) outside. Yeah. So I wasn't I was no closer than this
8 and no further away than than this and within these couple of feet and I was
9 lookin' directly at him and (ahh) he was lookin' directly at me and I asked if I could
10 come in and speak to him and he said "Sure, come on in" and he even told me to be
11 careful here 'cause of the (ahh) the steps so I I proceeded into the house. He held
12 the door opened and (ahh) walked directly into the home. And (ahh) ... so we got
13 (ahh) we got in this area of his home and he and he stood here for a minute and
14 (ahh) we had some chat we had some just made general small talk. He was
15 askin' you know, "What's what's the RNC doin' out this way" and and
16 (ahh) and (ahh) you know, I told him ... I I can't even remember what I told
17 him. To that question, we uses general small talk about ... it was a generic answer
18 around, you know, we operate all over the province or something along those lines.
19 (Ahh) You know, he asked me where I was from. I asked him where he was he
20 was from out this way originally and (ahh) we got into talk of some of his (ahh) you
21 know, his work history and I told him I understood he was a ... an injured worker.

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1 By this time, we're movin' into the residence. At some point in time, I made it about
2 as far as here and just made a point to to look down to the back of the house. I
3 was (ahh) you tryin' to take in a lot oflot of seein' around a bit of the house.
4 It's in it was in such deplorable condition. This piece of plywood was over that
5 that door so I didn't know what was behind here. (Ahh) You know, I guess I had
6 some ... moderate concern is there anybody else here but at ... at this point, I ... I was
7 not even remotely concerned for my safety or my well-being. (Ahh) You know, I had
8 done all the previous checks on ... on Mr. Dunphy and I didn't feel I had anything to
9 be to be concerned about. (Ahh) The conversation remained cordial for some
10 time. We didn't talk about much of anything specific. He ... he did get in fairly
11 lengthy discussion on ... on his injury. He did tell me he'd been crushed by a dump
12 truck, I think he said in the 1980s and (ahh) you know, he indicated "This is why I
13 live like this" and ... and (ahh) (ahh)

14 Riche: You were both here.

15 Smyth: We were both in this ... this region ... it was within a minute or so and he he said
16 "Come on" you know "Come in, come in, come in" and when we got in around
17 here, he immediately sat down there. He went directly to that chair.

18 Riche: (Inaudible).

19 Smyth: And and sat down in it right there. Told me to come in and (ahh) and I and I
20 came in and just walk here and and tell me to sit down. (Coughing in
21 background). He told me "Sit down" and and you know, I told him I'm fine and

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1 ... and I thought I came over this region to ... to carry on carry on a conversation
2 with this well, at the onset of this, pretty much right where I came in and for the
3 most part, stayed within in this couple feet and it's you know, it's probably
4 around then and I'd probably been in the house, I'm thinkin' you know, five, six,
5 seven minutes max, which is like a real guesstimate (ahh) and it's around this point
6 that the conversation starts to turn and he you know, he gone goes whas. You
7 know, "What is this all about anyway? and so I got immediately into into the
8 reasoning why I was here and I ... I had a folder with some information on him and
9 ... and some information (ahh) on the social media, (ahh) some comments that he had
10 made so I told him I was here to talk to him about some comments he had made on
11 social media that has caused some people some concern and he kinda ... he was kinda
12 (ahh) almost laughed at that and (ahh) but at the same time, was also beginning to get
13 ... get agitated and ... and talked about ... I've ... I've I've read the comments and
14 he's ... he's his demeanor continued to kinda (ahh) go downhill from there. He
15 was (ahh) talking about fuckin' sayin' "Fuckin' MHAs. Fuckin' dead MHAs.
16 There's been lots of dead MHAs. There'll be more dead MHAs" and (ahh) you
17 know, I was askin' him what he meant and ... and his you know, the conversation
18 from this point on is ... is pretty disjointed with him and there's a lot of repetition so
19 you know, excuse me if ... if, you know, I seem a bit (ahh) that I'm not completely
20 ... (ahh) not keeping things in order because it wasn't completely or ordered
21 compilation and (ahh) I ... I, again, go back to why I'm here and I ask him what he

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1 meant by those comments and he said "I can say whatever I want". You know, I can
2 speak out and and it's social media well, he didn't say social media. Twitter
3 he said, hey. "Yeah, I say a lot things in twitter and I can say whatever in the hell I
4 want and and I didn't threaten anybody". Again just talkin' about fuckin'
5 government and MHAs and he's asking me "Who sent you here, anyway? Who sent
6 you?" and I'm tellin' him "Nobody sent me. I'm here because of comments that you
7 made and that we have some concerns" and and "Well, you're just a fuckin' arm
8 of the government". (Ahh) He said that a number of times "An arm of the
9 government. Who sent you?" He said a number of times and he (ahh) what else
10 was it he said about ... about that? Oh "You're a fuckin' puppet". Well, he
11 muttered that a couple of times "You're a fuckin' puppet" and (ahh) you know,
12 "Who sent you?" and ... and he talked a little bit more. I said and I tried to bring
13 him back and relive the conversation a bit around why I was here. I said "You know,
14 (ahh) these comments cause people some concern. They cause me some concern".
15 and and (ahh) he said "Well, fuckin' dead MHAs. There's been lots of dead
16 MHAs" and and he named a couple of names and I think he was referrin' to
17 perhaps some MHAs, who have, in fact, died and (ahh) you know, but (unintelligible)
18 MHAs will die again and but, no, he wasn't threatening them but now he's startin'
19 to
20 get agitated and (ahh) even lookin' at him, he's buildin' up, you know, a lot of froth,
21 dried up saliva on the corners of his mouth and and it was very and that was

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1 what struck me 'cause it's not somethin' I think I'm unfamiliar to to police when
2 we're dealin' with people who are agitated and to see that (ahh) you know, that build
3 up in the mouth and and when he's talkin', the the saliva is connected to his
4 bottom lip, his top lip and his teeth and when he opens his mouth, this ... just a string
5 of ... of white and you know, so I could see, you know, the the physiological (ahh)
6 aspects of ... of this ... of him being agitated and and stressed but again, I still
7 didn't feel (ahh) threatened by any stretch. And at one point in time, I did point out
8 that there was a a bat or a large stick and it was down in this region here and I
9 believe it was red and it had some (ahh) duct tape on it wrapped up. And I was
10 there awhile lookin' around. As he's gettin' more and more agitated, I'm constantly
11 lookin' out into the hallway. I'm lookin' around the room. (Ahh) I'm mostly lookin'
12 around, kinda takin' in and absorbing the state of of his living conditions and
13 (ahh) I mean my feelings for him, at the time, were for his they were empathy and
14 I ... I ... (ahh) I ... I'm it's almost a state of disbelief that somebody's living in
15 in these conditions and you know, a lot of (unintelligible) ... is (ahh) and I was
16 articulatin' a little bit a little bit of this to him in so much that I said I have ... I
17 have real concerns for him and I don't know how he took that. It did agitate him, me
18 sayin' that and I don't know if he took that as I have concerns because I feel he's a
19 security threat or if he was agitated because I ha I was pointing out the deplorable
20 conditions and and you know, I was pointing out the garbage and all that and he
21 said "Well, this is your fault. This is government and I live like this because of

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1 fuckin' government" and (ahh) and you know, I had I told him "Look
2 (unintelligible). You know I'm not here you're not under arrest. I'm not here to
3 (ahh) give you a hard time, you know, in talkin' about these comments" and (ahh)
4 you know, I'm still lookin' around and again I saw the bat and point that out. I said
5 "Why, you know, why do the ... (ahh) the bat there" and he said "Well, it's it's for
6 protection and you don't know who's gonna show up here" and and (ahh) I said
7 "Okay". I I said "As long as it stays there" and he didn't he didn't really have
8 any comments around that. A couple of times he muttered and mumbled some things
9 that were incoherent and I ... I didn't didn't understand and he was continually
10 gettin' aggravated by me lookin' around. I'm lookin' around and lookin' behind me
11 and at the ceiling and at the floor and I'm moving things on the floor. There was
12 some carpenters movin' around here on the floor and I moved them around at one
13 point in time. "What are you lookin' at it?" he kept sayin'. "What are you lookin'
14 at? What are you lookin' for? **What** are you lookin' for?" and you know, I I
15 didn't have any answer for it. "I'm not lookin' for anything. I'm you know, I'm
16 lookin' at the state of your ... your living conditions" and I said at one point in time
17 and that's that's when he'd said "Fuckin' this is your ... fuckin' government" and
18 (ahh) so he's still in this chair and the whole time he's movin' around (ahh) you
19 know, from side to side and ... and when you puts weight on one side and weight on
20 the other side nothin' that ... that drew my attention to it. I you know, I
21 remember that in hindsight but nothin' that I would think was out of the ordinary for

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1 someone that was uncomfortable or agitated for ... for whatever reason. And (ahh)
2 anyway, him bein' agitated by me lookin' around, lookin' around the residence, I ...
3 at this point, I kinda backed over in this area. I was leanin' every now and then,
4 leanin' on the ... the mantle here and it was partially tryin' to get him at ease (ahh)
5 to not feel intimidated by me in and (ahh) and not that I you know, I think I
6 give him any reason to be intimidated by and clearly he was agitated and and I had
7 the folder in my hand and I started, at some point in time, that I had a ... I got a pen
8 in this hand and I started to look down at the folder but I wasn't really truly lookin'
9 at it. I ... I was just tryin' to stop lookin' around because it was agitatin' him and you
10 know, this is probably exactly what I was thinking 'cause I feel like while I'm
11 looking here, there's enough of that chair in my peripheral vision that this is around
12 where I ... I saw ... I first saw the gun and and I don't know where it came from.
13 Other than that, I can say him seated there, it came from his right hand side. It
14 could've been jammed into the cushion. It could've been, you know I originally
15 after I was tryin' to dissect this myself after I thought it was mashed into the side
16 of the chair. I can see that that's not the case of unless he had it poked in that side
17 pocket. (Ahh) And I don't remember that garbage can bein' there. It may have ...
18 it may have been there and and the firearm may have been down this side and a
19 lot of garbage, just like there is right now. I don't know if if some things had been
20 moved. (Ahh) But I don't know where that gun came from, other than to say that it
21 came from his right and I remember it coming up in such a way that the barrel to me,

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1 when I was standing here, it was a gun barrel. There was no question in my mind
2 that there was a gun barrel come towards me and it was just it was completely
3 it was completely shocking to me that this conversation, albeit him bein' agitated,
4 had escalated to the point where there's a gun comin' at me and (ahh) (inaudible)
5 mostly face me facing me and at some point in time, I just I dropped the folder
6 that's in my hand, the pen and I don't know if I the pen was there in my hand
7 or if it was in the folder. I don't know where the pen was (ahh).if I dropped that or
8 if it wasn't in my hand, I don't know. And (ahh) so, you know this at this point,
9 I I thought I was gettin' shot. I fe I (unintelligible) a bullet and my instinct was
10 to put my hand out, like a like a ball is comin' at me and in hindsight, it sounds
11 so stu so stupid because it's gonna do nothing but I did. I put my hand out like
12 this and turned away (ahh) and then (thudding noise) everything else from from
13 here for me is completely instinctual. I drew my firear I went directly for my
14 firearm and also wanting to get out of the room so I wanted to get out of here but
15 instinctively, I'm also (unintelligible) as the gun is coming towards me and I'm
16 moving, facing like ... like this to come away from it and I don't have I can't ...
17 it's really hard for me to remember how I accessed my firearm. If I thr threw my
18 jacket back or if I lifted it up and even unhasping ... my holster is is just a hasp
19 and I don't have, you know, great recollection of of doing that 'cause it was just,
20 to me, one solid motion of of drawing it and I ... I drew my firearm and I'm
21 like the gun is coming towards me and he's bringing it like it's from his right

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1 like this and I still got my hand out and the only thing I could verbalize (ahh) was
2 “No” and I kept sayin’ “No! No! No!” and (ahh) it felt like it was a plea for him not
3 to shoot me. And I I was there’s a lot of stuff that amazingly enough, I think,
4 goin’ through my mind but it was gonna be the feeling of being shot. I felt there’s
5 gonna be this is really gonna hurt. There’s a bullet’s gonna enter me and this is
6 gonna really fuckin’ hurt. (Clears throat). And my hand’s out, I drew the firearm.
7 I think my my first shot and it was completely instinctive. There was no thought.
8 It was “You’re gonna be shot. You better start shootin’ back” and I think I pretty
9 much fired, maybe from here I don’t think I even had time to punch out but you
10 know, whether it was here or here, it’s really hard for me to say and I would I
11 would venture to guess that my first shot probably from around here somewhere.
12 And I don’t know what I kept doing with this hand, if this hand eventually made it
13 back to (coughing) to link up with my gun for a proper grip or if it stayed out and I
14 by this time, I had punched out my my shooting hand and my eyes were still,
15 pretty much, on that that gun and I can see the gun, still pointed at me. The
16 ‘cause this is milliseconds from that ... fir ... the first shot the gun was pointed at me.
17 The second shot, I still feel that gun pointed at me and albeit we’re talkin’ through
18 it, it was just instantaneous there’s no there’s no break there’s no like it’s
19 just time is almost stopped at this point, while also going very, very fast and (ahh)
20 I don’t even know how to properly explain that or make anyone understand it but ...
21 and I and I movin’ towards the door. I’m ... I’m punched down I mean I’ve

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1 locked my arm out in the shooting position and I'm I'm going for his center mass.
2 (Sniffs). And ... and but I'm lookin' at the firearm. The second shot is fired. I ... I
3 my hand's down here but I don't know if it was it's still out here or if it was
4 here and I still feel there's a threat.

5 Burke: (Coughing).

6 Smyth: To me, I raise and I fire towards his head and I don't know if that shot hit I felt
7 like that shot was not on target. Like, I did not hit him. Like it hadn't to me, I
8 hadn't had any impact. What I had done so far had done nothing. It was he was
9 there he was still there and he was I was still in in imminent danger and ...
10 and that's but while, at the same time, this is all happening so, so fast and so that
11 head shot, to me, missed. The center mass shots ... I don't even re I don't ... I
12 don't know if they ... if they had connected or not and I get to about here and I'm still
13 punched out and I (ahh) shot for his head again. I know that that shot connected
14 because I ... I can still see his head move from that shot and within another instant,
15 I'm out of the room and it's it's that fast. It's it's under like if that whole
16 process, from the time when of me seein' the gun to bein' out here, if that was any
17 more than a second and a half to two seconds, I would be very surprised.
18 (Coughing). And I I immediately got out of here and still had the firearm in my
19 hand and pretty much instantaneously started back into the room. I and I told him
20 I was now saying "Drop ... drop the gun. Drop the gun. Drop the gun". I was
21 actually further over here because I couldn't see I couldn't see the couch, I

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1 couldn't see any any aspect of him at all. So, I'm I'm right here and I'm tellin'
2 him to drop the weapon, drop the gun drop the gun and I start comin' back in the
3 room and I get about here and I see the firearm on the floor. The firearm is leaned
4 up against I'm guessin' it's ... it's it's this (ahh) green case, albeit I can't if
5 it was a box, if it was a Tupperware container, if it was somethin' else ice cream
6 bucket ... it was leaned up against somethin' in that region. It was not on top of the
7 coffee table and it wasn't laid on the floor but that green bucket, for some reason,
8 doesn't doesn't completely resonate with me. But the firearm was there. I saw
9 it. It was (ahh) a long barrellled gun, al ... (clears throat) but also not a big gun and
10 (ahh) so I saw that there (clears throat) set a little bit more to, to some extent in ... in
11 that I thought the threat was now on the floor so I came in here, continued to here
12 and saw Mr. Dunphy had come back in the chair completely. (Sniffs). And (ahh)
13 (ahh) I noticed the I could see an entry wound on the side of his head. (Ahh)
14 (Unintelligible). It was on this side of his head and to me, there was no signs of

15 Unknown: Mmm.

16 Smyth: of of like that first look, there was no signs of of life. But (ahh) I didn't
17 ... I ... I stayed in the ... in the ... like very high alert mode at this point. My hearing
18 is almost non-existent after I fired the first shot. There was very little I processed
19 from an auditory perspective, even my subsequent shots were were almost
20 completely silent and my ears were ringing and there was a lot of smoke in the room.
21 There was the smell of of gunpowder and once I I determined that the gun was

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1 down there, (ahh) I didn't check the gun for some reason. I know that I should've.
2 I should've made that firearm clear. (Ahh) I don't know who else is in the house.
3 I'm still thinkin' there's somebody else, maybe, in the house. There's still a threat
4 here so my instinct then is get to this back over here.

5 **Burke:** (Clears throat).

6 **Smyth:** Now, I'm worried (ahh) the brother who I knew lived next door, (ahh) granted he
7 gave me no reason when I visited him to fear. I also there was also just shots fired
8 in his brother's home so my thought is there's still potentially somebody in the house.
9 There still might be somebody comin' across the yard and (ahh) I was in full full
10 threat mode. (Ahh) And I'm I'm lookin' out the window and lookin' over my
11 shoulder back here and at (ahh) and I'm even doin' the math of how many rounds
12 I'm carryin'. I'm thinkin' and should I do a tactical reload. I've got I should have
13 eight eight rounds left in my gun. I'm even questionin' how many shots I fired.
14 Did ya shy did ya fire four? Did ya fire more? And (ahh) maybe you should just
15 reload and because if you get into a fire fight, you know, you even the more I
16 think about this since I was here on Wednesday, (sniffs) I ... I was thinking even to
17 the point of (ahh) you know, you gotta conserve your ammunition. If you get into a
18 fire fight here now with other residents, you need to be very strategic about what you
19 shoot. Breathe, do not unload your weapon when somebody's fifty feet away 'cause
20 you're not gonna hit him. You're gonna have nothing. You're gonna be done. And
21 do I do a tactical reload and I'm I'm shakin', really. I've noticed ... even to

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1 myself, like I'm shakin' a lot. Like don't tact reload because you're gonna drop it
2 and you're and then your threat is gonna present itself and you're not gonna be
3 able to pick it up and (ahh) eight rounds is eight rounds is is ... is significant
4 to engage in in another threat, if you had to so keep that and I checked even to
5 make sure I had my my magazine and (ahh) which I did and (sniffs) I (ahh) I was
6 you know, from there it seemed like a really, really long time that I was here and
7 between here 'cause I at some point in time, I ... I come back and I'm checking in
8 the hallway. Also, at some point in time, I come out and I take a better look at Mr.
9 Dunphy. He was still (unintelligible) way. (Unintelligible) and called my first
10 call was the RCMP Communications and I hit the emergency line. (Ahh) I told them
11 (ahh) who I was and where I was, that I was (ahh) you know, the officer that was at
12 a residence in Mitchell's Brook and that there were shots fired and I needed (ahh)
13 police assistance and I need paramedics. (Ahh) And (ahh) (ahh) they went through
14 the process of what they were gonna send and to stay calm and so on and so forth and
15 I hung up the phone with them but then there was a after the phone call, that I
16 started to think of clearing the house and like, in hindsight, clearing the house was
17 poor. I came down here and looked down here, there's nothing here. This plywood
18 is over this door and I removed this. I'm giving verbal commands at this point. I'm
19 sayin' "Police. Police". (Ahh) (ahh) (Inaudible). (Inaudible) in there 'cause this
20 is as far as I checked. (Inaudible). I came back out here (inaudible) and clearing of
21 the bathroom and I (unintelligible) this room here (inaudible) (ahh) would not open

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 and I don't know if I used the door knob or if I just pushed it by hand. (Ahh)
2 There's one large marihuana plant in here. (Ahh) I check in here. Again, I didn't
3 go any further than here. I figured this door was closed. I know when I was here on
4 Wednesday that was open (sound of door closing) but this, to me, looks like what it
5 looked like on Sunday. I think it was just like that and I didn't go in there. I didn't
6 open that door. I came back out here again still thinkin' that there's (ahh)
7 potential threats and I got to deal with an exterior. (Ahh) I had also called our
8 communications center after callin' (ahh) the RCMP communication center. (Ahh)
9 Although, I'd asked them to do it, I still did it and and called them and told them
10 what happened, notify duty officer and (ahh) at some point in time through this, I ...
11 I checked Mr. Dunphy again and (ahh) for signs of life and to me, he gave me every
12 indication that he was deceased, that there was no there was no breathing, there
13 was no no indication that he was alive. (Ahh) At some point in time, the RCMP
14 communications center called me back. (Ahh) I tell them that (ahh) (ahh) they ask
15 ... like they said the Health Sciences need to know if they need air ... an airlift for
16 for the (ahh) injured person and it was at point in time, I I think I give a closer
17 examination of him to see what I took to be a a significant head wound and (ahh)
18 you know, another look at him. There's no colour, there's (unintelligible -
19 background noise). (Ahh) I don't know if I touched his his neck but (ahh) I may
20 have put my fingers against his neck and it wasn't it was just zero sign of life and
21 it was just it was startin' to hit me that this man is he's dead and I told him that

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 and even when I was tellin' him, I was pretty much struggling with "Who are the hell
2 are you to deny this man of ... of an airlift or of medical attention but at the same
3 time, he was dead. He was he was dead and he was and I knew that. And I told
4 them he was ... he was deceased and (ahh) so eventually, I was probably I was
5 probably fifteen minutes in here, movin' in this area or stood right in that corner
6 lookin' out the front window at the burm trees and (ahh) I you know, I ... I did, at
7 this point, holster my weapon. (Ahh) I fe I feel like the threat of anybody else
8 comin' is probably lessened and I start to kind of gather my composure and I make
9 my way outside. My mouth had gone instantaneously bone dry and it just completely
10 bone dry and that was almost immediately when I exited that room after the
11 shooting and I know when I was making the phone calls, really had to try to ... to
12 generate saliva even to talk. (Ahh) and I (inaudible). At this point, I ... I leave
13 I leave the house and

14 **Burke:** Okay, (ahh) just to Joe just before we leave and we'll continue from here, I just
15 wanna go back in the (ahh) living room here. (Ahh) Couple of questions, (ahh) when
16 you entered the front door to the time you (ahh) arrived back here after the firearm
17 was presented, (ahh) can you give us a time frame of how long that was?

18 **Smyth:** From the time the firearm was presented to the time ...

19 **Burke:** Well, from the time you entered the house and how long you were here in this ... in
20 the in the residence before (ahh) the firearm was presented.

21 **Smyth:** It was (ahh) no more than fifteen minutes and I would say no less than ten minutes

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 so between ten and fifteen minutes. I ... you know I think the ... the first part ... to
2 me, the whole interaction is almost broken into two parts and that it was that cordial
3 part of the conversation where it wasn't aggressive, he wasn't agitated and it was
4 (ahh) you know, which is how I would always try to start that type of meetings, a
5 rapport building phase (ahh) to joy ... to try to generate some comfort and that, from
6 my perspective had been going relatively well and you know, that was you know,
7 five to seven minutes for me. You know, it might've been eight minutes but it was
8 out in that range and you know, once I know we were over here and we're talkin', it
9 gets in that agitated that part of the conversation starts and it's very disjoin
10 disjointed. There's not a lot of coherency to it to the whole entirety of the
11 conversation. It's it's back and fo it's back and forth between me talkin' about
12 the reason of bein' here to him just kinda demanding to know who sent me and (ahh)
13 tellin' me how I am another arm of the government and (ahh) (ahh) to talkin' about
14 "fuckin' MHAs and dead MHAs" and and me tryin' to tell him he's not under
15 arrest so I think that portion also lasted a similar amount of time. You know, five to
16 seven minutes. It may be a little bit shorter. It may be a little a little bit longer but
17 (ahh) that's really that's a guestimate and of course, the last aspect of it is ... I
18 would say no more than two seconds. Once the firearm I saw that to everything
19 unfolded from drawin' my firearm and exiting the room and and firing off rounds.
20 It was two seconds. I had to stretch it to two and a half seconds and I'd go as low as
21 a second and a half. It was so unbelievably fast.

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 Burke: Um hmm.

2 Smyth: And (ahh) then the other portions of it were I would suggest I was in the house for
3 another fifteen minutes before I mean, I you know, I holstered my weapon and
4 ... and left the residence.

5 Burke: Okay. Can you kind of explain for us the (ahh) where Mr. Dunphy was when you
6 were interactin' with him when you first came in and where he ... he went in the
7 residence and did you go anywhere else, basically?

8 Smyth: We were in ... in the hallway, right in front of this door for a minute to two minutes
9 and he immediately came in here and went right to that chair. That heater was on and
10 it was pointed in the direction it is. It wasn't pointed at him or the chair. It was
11 pointed just like it is. I remember that was odd 'cause it was ... it was red and he
12 walked and he sat in that chair and he never moved from that chair.

13 Burke: And when you moved from say the porch area to the fireplace (ahh), at what point
14 did you do that?

15 Smyth: (Ahh) Pretty much about the same time he went to the chair.

16 Burke: Mmm.

17 Smyth: And I may have stayed out there for an extra ten to fifteen seconds. I think I slowly
18 walked in here and I walked in here, I'm kinda lookin' around. He was tellin' me to
19 sit down. I was lookin' at it I looked down at the couch and you know, looked
20 over here and ... and I remember that ... that printer and ... and (ahh) but it was just
21 a slow walk over here. I ... it was no concerted effort to get there quickly or it was

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 ... I wasn't lookin' back at him. I was not in fear of ... of him at all. I ... if he wanted
2 to had shot me at that time, this would've been a good time to do it 'cause I was walk
3 ... I stood here and I was pretty much back on to him and he could've shot me right
4 here and I would never ever I wouldn't (unintelligible) had known nothin'. You
5 know I would have no response to it at all. And (ahh) and it's it's just a few
6 seconds to walk over here and then it's me pacin' back and forth here.

7 Burke: Um hmm.

8 Smyth: And that's the (ahh) the interaction.

9 Burke: Okay.

10 Smyth: You know, 'cause ..(unintelligible). I don't think I ever looked behind here. I don't
11 think I even made it this ... I never made it within this proximity to him. I was never
12 really closer to him than this. And (ahh) I spent that's it, back and forth there.
13 That's where the rest of that conversation took place and that's right where I was
14 when he showed the firearm.

15 Burke: So Mr. Dunphy (ahh) was where in the livin' room during this?

16 Smyth: He sat right in that chair.

17 Burke: Um hmm.

18 Smyth: He never moved from it. He moved around in it.

19 Burke: Right.

20 Smyth: You know, he sat up and sat back and moved to one side, to the other and but he
21 never got out of it.

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 Burke: And (ahh) when you (ahh) when you saw a firearm, can you kind of describe can
2 can you come over by the chair and kind of describe to us where it came from or
3 where you first saw it?

4 Smyth: You don't need me to sit down in the chair?

5 Burke: No, no. No, no. No, I just want you to kind of point out where where you think
6 the firearm came from when you

7 Smyth: It came from his right.

8 Burke: Okay. So it'd be over on this this side?

9 Smyth: (Unintelligible). I don't know. He took it from his right hand side.

10 Burke: Okay. Yeah.

11 Smyth: And he's he's sat like this. He's sat in the chair and he could've reached down. He
12 could've brought it out from this side here. He could've reached in with one hand.
13 What I remember is a barrel a barrel coming up like this towards me so he's sat
14 here and I'm over there. I see a barrel that comes up in this direction. It came from
15 down here to here. His body, at some point in time, had been, you know, in this
16 direction. Was it down here like this or was it like this or this I don't know.

17 Burke: Okay. And (ahh) just while you're there, can you kind of describe the way the gun
18 was I know you touched on it but the way the gun was positioned after

19 Smyth: It was I'm gonna say it was this. It was leaned up (ahh) probably right here. If
20 this hasn't moved and I'm thinking these the butt and it was the gun was on the
21 floor and I'm pretty certain that the barrel was pointed up.

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

- 1 Burke: And a description of the gun whatta ya whatta ya seen? (Ahh) What kind
- 2 Smyth: It's a rifle. I saw a bolt so it's a bolt action rifle. It didn't seem long to me. Like it
- 3 wasn't it wasn't ... I haven't got tremendous familiarity with rifles, I'm I'm afraid
- 4 and and but it wasn'tsay, a (ahh) a a long rifle that you would use for ...
- 5 for hunting large game.
- 6 Burke: (Ahh) Can you describe the lighting conditions (ahh) when you here on that day
- 7 (ahh) ...
- 8 Smyth: Exactly what they are right now.
- 9 Burke: Okay.
- 10 Smyth: You know, maybe li like less shadows but the light entering the home was very
- 11 much similar to what it is now. A a little bit flatter, perhaps but it was essentially
- 12 what it is right now.
- 13 Burke: Um hmm. Can you describe for me what (ahh) Mr. Dunphy was wearing on that
- 14 day?
- 15 Smyth: (Ahh) I don't think I can. I you know it's I know he he wasn't dressed well.
- 16 He was dis he was dishevelled. (Ahh) I don't know. A sweater or a hoodie type
- 17 of shirt and (ahh) his pants I I wouldn't (ahh) I can't say with certainty.
- 18 Burke: Okay. Okay, (ahh) so you (ahh) you do the clearing of the residence and (ahh) you
- 19 ... you're on your way out. Well, I guess we can continue from there. Is there
- 20 anything else you want to say about the interior of the residence before we (ahh) we
- 21 leave? Any other points that you wanna bring up? Anything that (ahh) just came in

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 your mind.

2 Smyth: I don't think so. You know, if I was to sit here all day with ya and talk about what

3 I'm feelin' and and and what I, (ahh) in terms of bein' relevant or (ahh) to

4 have, I think the the technical aspects of it are they are what they are and

5 (inaudible). I don't know. No, I don't think there's anything that's of relevance at all.

6 Burke: Okay.

7 Riche: (Inaudible).

8 Smyth: He did not.

9 Riche: (Unintelligible).

10 Smyth: Before before he drew the firearm? He did not speak.

11 Riche: Before you saw the firearm, he didn't say

12 Smyth: No.

13 Riche: You didn't hear him?

14 Smyth: No, he didn't say yeah, he didn't sa you'd almost think he would. I would've

15 thought you would but there was no it was yeah, in in hindsight, it was the

16 one point where he was he was silent. Where he hadn't said anything. Where if

17 I wasn't talkin', he he wasn't talkin'. Not that it was for a long time. It was ... but

18 no, there was no words that preceded him during that firearm that would have given

19 me any indication of even (ahh) what he was feelin' or what his intentions were.

20 Burke: Okay, continue on. (Clears throat).

21

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 Smyth: (Unintelligible) cognizant of what's goin' on around me and I'm lookin' down here
2 and I'm lookin' back over here. My firearm is holstered and (inaudible) I
3 remember lookin' down here to these trees ... towards that (unintelligible). And I
4 look up there towards the side of the residence. I didn't go back. I didn't go behind
5 it. I didn't go to that side of the residence. I went to my vehicle and I opened up the
6 door and I remember, at one point in time, puttin' my hands on my head and kinda
7 standin' by the vehicle like this, just tryin' to process everything that just happened
8 and and I got water out of the car. I drank water from the cup holder and (ahh)
9 (ahh) I came like I came back here. I spent a bit of time probably right here in
10 this spot. It's probably where I spent most of my time, between here and and the
11 driver's side door of the vehicle. Within a couple minutes, I ... I started the car and
12 turned on the emergency lights on it. I wanted the (ahh) officers responding to be
13 able to see the lights of the vehicle to ... to (unintelligible) stop and it (ahh) seemed
14 like maybe another ten ten minutes out here and an RCMP vehicle (ahh) passed
15 here but he immediately saw it and stopped abruptly right in front and and he
16 backed up and (ahh) I came here I was I stood out here. He pulled up, I was
17 I (ahh) I opened up my jacket so he could see my police 'cause I had
18 another badge ... my aside from my badge in my wallet and badge that ... that
19 sits on my belt. I had that there so I opened up my jacket to make sure he knew I was
20 a police officer and and (ahh) he acknowledged that he saw that and you know,
21 asked if we had some conversation, asked if I was okay and and I immediately

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 told him what happened inside and I told I told him that the house wasn't properly
2 cleared and I told him the firearm was still on the on the ground and and (ahh)
3 that was about it. A few more R more officers showed up, paramedics showed up.
4 The paramedics came up here. (Ahh) I ... you know, I ... I ... I told them, as well,
5 that (ahh) the house hadn't been properly cleared and (ahh) that was it. Ev
6 eventually they ... they went inside and determined that he ... of course he was
7 deceased as (sniffing).... Then I eventually got into one of the RCMP vehicles and
8 spent the ... the remainder of the time before they removed me from here in ... in a
9 vehicle.

10 **Burke:** Who was the first person you had contact with when you came outside?

11 **Smyth:** Adrian Cox, the officer. (Unintelligible) I did see there was a vehicle that ... that
12 drove up back and forth and it was a black I think maybe like a newer model
13 Impala (unintelligible) Chev product vehicle. (Ahh) A man and a woman. A man
14 driving, female passenger. (Ahh) They drove down slowly, looked up but when they
15 drove by, I did have the lights on on the vehicle and (ahh) I may have I may have
16 turned them on after they drove by the first time and I wanted them to know, too, like
17 if they came up here, if there's gonna be an encounter that you know, I was kinda
18 tryin' to prepare myself to tell 'em that they can't come up and and I was thinkin'
19 of what I was goin' to say. I say that there's a been shooting there's a
20 deceased person inside but it ... that never came to fruition anyway. They didn't
21 come up here. They drove by a couple of times and and then they went on and

Re-enactment between Joe SMYTH and Cpl. Steve BURKE

1 Officer Cox arrived.

2 Burke: Okay. (Ahh) This is your opportunity now if you (ahh) left anything out or if you
3 wanted to add something to what (ahh) what you presented here today. (Ahh)

4 Smyth: I don't think so. I think that's it.

5 Burke: Okay. (Ahh) Okay. The time is (ahh) 15:51. (Ahh) The date is still April the 10th,
6 2015. (Ahh) Just wanted to (ahh), for the record, (ahh) this is the second (ahh) re-
7 enactment that (ahh) took place. There was one (ahh) on Wednesday that (ahh) the
8 video wasn't properly captured. (Ahh) And (ahh) this is our ... our second (ahh) re-
9 enactment. (Ahh) The (ahh) just wanted to (ahh) you know, describe who was
10 here (ahh) in the video. (Ahh) It's myself, Cpl. Steve Burke, (ahh) and (ahh) Sgt. Joe
11 Smyth of the RNC and this is (ahh) Retired Justice David Riche, independent
12 observer and (ahh) there's also a second camera, (ahh) which is (ahh) Monty
13 Henstridge of the RCMP. And (ahh) I think that's it and we'll end the re-enactment.

Tape Ends.

Transcribed by Diane Martin, PS

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