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Typed notes of Kelly LEE dated 2015-04-10 at 1040 Hrs. re: video re-enactment with Joe SMYTH at DUNPHY's residence.

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Notes regarding video re-enactment with A/Sgt. Joe Smyth, RNC, at DUNPHY residence in Mitchell's Brook, NL. Re-enactment took place on 2015-04-08, approximately 13:30 hrs.

Cpl. Burke of MCU conducted the re-enactment. A/Sgt. Smyth was participating with his consent. He was accompanied by Bill James, Use-of-Force co-ordinator for the RNC. Also present: retired Justice David Riche (independent observer), Sgt. Osmond, Cpl. Dion Foote, Cst. John Galway.

The re-enactment began at the bottom of the DUNPHY residence driveway; the driveway slopes up to the house, and terminates close to the corner of the house. Cpl. Burke provided the date and time, and made introductions of the persons involved.

A/Sgt. Smyth explained that he was there that day to follow up on some disturbing comments made on social media by Dunphy. A/Sgt. Smyth explained that he stopped by the next door neighbour's house prior to attending Dunphy's residence as part of his overall information-gathering measures. He was unaware until that time that the neighbour was in fact Dunphy's brother. He said there had been no vehicle in Dunphy's driveway, but a vehicle was present when he finished at the brother's residence. He described parking his vehicle in Dunphy's driveway, and getting out and assessing what he could see of the property. At this time, A/Sgt. Smyth described his duties and the steps he follows when going about this sort of investigation. He said he had spoken with Cst. Adrian Cox of Holyrood Detachment to let him know about the investigation he was involved with, and to see if the members had any information to offer. He had conducted background checks with the police systems on Dunphy prior to coming.

He could see Dunphy through the living room window, sitting in an arm chair. He knocked on the window and stepped back to observe the property, in case someone came from some other part of the grounds or house. Dunphy came to the door and A/Sgt. Smyth talked to him from the front lawn, below the front steps. He displayed his ID and identified himself as A/Sgt. Smyth of the RNC. At some point early in his dealings with Dunphy, Dunphy questioned why an RNC officer was out working in the RCMP's area, and A/Sgt. Smyth explained his duties with the Premier's detail, and that he was there to speak with him. Dunphy invited him and told him to watch his step.

A/Sgt. Smyth went inside the front door with Dunphy and had some conversation with him there, small talk, rapport building. He was continuing to try to assess the house as he didn't know if there was anyone else present. He noted a sheet of plywood covering the kitchen door, blocking his view of that part of the house. Dunphy told him to come in and sit down, and Dunphy went into the living room and sat in the recliner. A/Sgt. Smyth went into the living room as well, but didn't sit. He was observing the condition of the house, which was deplorable. He explained to Dunphy that he was there to talk to him about some disturbing comments made on Twitter by Dunphy. He said Dunphy was laughing and agitated, and was talking about the government and Worker's Comp. A/Sgt. Smyth said he had noted a stick on the floor next to Dunphy's recliner, within reach of Dunphy's left hand. He asked about the stick and Dunphy told him it was for protection, and he didn't need to worry about that. He described it as red in colour with duct tape, and indicated where on the floor he observed it (note: this was where the stick was found during our FIS scene examination. The stick was not red, but was aged wood and did have a slightly reddish appearance. The duct tape described was wrapped around one end).

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A/Sgt. Smyth said he moved between the couch and coffee table and stood in front of the fire place. He said he stayed within a couple of steps of this spot during his interaction with Dunphy. He continued to try to see out into the hallway and to the rest of the house. Dunphy asked him what he was looking for and seemed to be bothered by it. Dunphy asked him a couple of times to sit down, but he had no interest in sitting (note: the condition of the furniture was very poor, and all surfaces appeared very dirty. There were dozens of cats, and what appeared to be soil from the cats almost everywhere).

A/Sgt. Smyth said Dunphy was ranting somewhat, and repeating the same things over and over about the government and Worker's Comp. A/Sgt. Smyth brought up the details of the Twitter posts, and specified the one that referred to "two dead prick MHAs" and "families that may get hurt". He said Dunphy talked about deceased MHAs, and he made notes of the names in the yellow folder he had in his hands. He was standing somewhere in front of the fireplace, near the end of the coffee table at this time. He continued to look around, and Dunphy seemed to be getting agitated by this. A/Sgt. Smyth said he pretended to look at information in his folder to calm Dunphy.

A/Sgt. Smyth said he told Dunphy he was concerned for his health and well-being, living in these conditions. He said Dunphy reacted to this, and made comments along the lines of "you put me here, you're an agent of the government".

At this time, A/Sgt. Smyth said he saw Dunphy move to the side of the recliner on Dunphy's right, which didn't immediately alarm A/Sgt. Smyth as Dunphy had been moving around in his chair throughout their interaction. He then saw the barrel of a gun come up from the side of Dunphy's chair and immediately recognized it as a long gun. He also mentioned seeing the bolt. He dropped the folder he had in his hands (note: the yellow folder was found on the edge of the coffee table where A/Sgt. Smyth said he had been standing, but this folder was not present during the re-enactment) and reacted. He said he threw up his left hand, and said he knew this was futile, but did it instinctively, and remembers saying "no no no". He describes anticipating the impact of a bullet to his body. He recalls that his jacket was open, but has no recollection of the mechanics of drawing his sidearm – whether he had to push his jacket out of the way or not. He recalls coming out with his pistol and discharging the first shot one-handed, instinctively. He was not sure if this shot made contact, but recalls focusing his next shot on Dunphy's centre of mass. He could not recall if he had both hands on his pistol grip at this time, or if he was still operating with his left hand out. He felt this shot was placed on the centre mass but recalls that the barrel of the gun in Dunphy's hand was still up and that the threat was still present. He then aimed for Dunphy's head and discharged a shot. He felt this shot missed and fired again. He felt sure that this shot met the target of Dunphy's head as he saw movement of Dunphy's head. He thinks that both of his hands were on his pistol when he discharged the shots at Dunphy's head. He explained that as all this was happening, he was moving for the opening to the hallway, and described his path as going between the couch and the coffee table.

A/Sgt. Smyth said that he moved around the wall at the opening between the living room and the hallway (in effect, putting him behind the wall somewhat behind Dunphy's chair). He said he kept his

pistol drawn and was calling to Dunphy to "drop the weapon" or "drop the gun". He demonstrated how he carefully looked around the corner to see Dunphy. At this time, he said he could see the gun on the floor. He continued around the corner and could see the wound to Dunphy's left temple and that there was no movement from Dunphy. He described Dunphy's position with his head back (note: upon my arrival, Dunphy's head was not back, but a dried blood flow pattern from the temple wound suggested that it had been; the body had settled lower in the chair). He said that Dunphy's gun was on the floor, resting against something. A/Sgt. Smyth looked at the items in the living room in front of the recliner and indicated a greenish-blue plastic tote that was close to the foot of the recliner. He said that Dunphy's gun was resting against something in a similar position to where the tote was now, though he didn't recognize the tote (note: upon arrival by myself and Sgt. Saunders, the rifle was found resting against this plastic tote in this position). A/Sgt. Smyth recalled that the barrel of the gun was pointing up, with the stock against the floor, though he didn't seem certain (note: the barrel of the gun was against the floor and the stock pointing up upon my arrival at the scene).

A/Sgt. Smyth said he didn't touch the gun, though he feels he should have ensured that it was made safe as he hadn't cleared the residence for any other persons. He placed a call to RCMP communications and reported the situation; he identified himself, his location, that shots were fired and a person was down. He requested paramedics and police at the scene, and asked them to contact RNC communications to advise them. Shortly after, he contacted RNC communications himself and requested that they notify the duty officer (note: I can't recall if A/Sgt. Smyth said he made the calls prior to or after clearing the house and the exterior of the property).

A/Sgt. Smyth went to the doorway and scanned the exterior, still with his pistol drawn. He was mindful that a person could approach the house, having heard shots fired, and could pose a threat. After a few moments, no one approached. He cleared the house, and said that he did a poor job of it. He moved a sheet of plywood that had been blocking the kitchen opening, and observed the marijuana plants in the back porch. At the time of the re-enactment, he noticed the laundry/storage room off the back porch and said that he hadn't noticed that room at the time. He described checking other rooms off the hallway. During the re-enactment, he looked into the room I refer to as the "cat room", and said he didn't find this room familiar, and said that he thinks that door had been closed and that he hadn't opened it (note: this room was closed upon my arrival to conduct the scene examination; I opened this room on the second day of the scene exam, and judged it had been closed for some time based on the strong smell that permeated the house after opening it).

At some point, A/Sgt. Smyth had received a call back from RCMP telecoms. They were in contact with the Health Sciences who wished to know if an airlift was necessary. A/Sgt. Smyth describes that he had gone back to the living room and had assessed Dunphy and saw a "significant" wound to the front of Dunphy's head, and said this must have been the shot that he thought had missed. He said that he recognized the signs that Dunphy was deceased, and had difficulty telling the operator not to send the airlift. He said that he knew Dunphy was deceased, and an airlift would be a complete waste of time, but struggled with saying this.

A/Sgt. Smyth then described going outside to wait for the arrival of police and paramedics. He described how his mouth had gone completely, bone dry and that he got some water from his vehicle. He recalled standing outside near his vehicle, holding his head. He also said that he turned on the emergency lights of his vehicle so that responders would find him easily, and in case anyone approached the house. He said that a dark coloured car passed by a couple of times, but that no one approached and he didn't speak to anyone until Cst. Adrian Cox arrived.

A/Sgt. Smyth said that he met Cst. Cox at the bottom of the driveway, and had his coat open so that Cst. Cox would see his ID and recognize him as a police officer. He recalls telling Cst. Cox that the house had not been properly cleared.

A/Sgt. Smyth went over the timing, that the entire interaction with Dunphy was probably only about 15 minutes.

The re-enactment finished outside in the driveway.

2015-04-10, 10:40



Cpl. Kelly Lee

Clarendville Forensic Identification Section

