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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 Civil Action No. 1:12-cv-11908-FDS
4 * * * * *

5 EURIE A. STAMPS, JR. AND NORMA *
6 BUSHFAN STAMPS, Co-Administrators *
7 of the Estate of Eurie A. Stamps, *
8 Sr., *
9 Plaintiffs *
10 vs. *
11 THE TOWN OF FRAMINGHAM, AND PAUL *
12 K. DUNCAN, individually and in *
13 his Capacity as a Police Officer *
14 of the Framingham Police *
15 Department, *
16 Defendants *

17 * * * * *

18 VIDEOTAPED DEPOSITION OF SERGEANT TIMOTHY O'TOOLE
19 Kreindler & Kreindler LLP
20 277 Dartmouth Street
21 Boston, Massachusetts
22 September 23, 2013 10:06 a.m.
23
24 Maryellen Coughlin, RPR/CRR

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1 APPEARANCES:
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19 Also Present: Lucille Sharp, Paralegal
20 Christina Graziano, Law Clerk
21
22 Videographer: Christopher Coughlin
23
24

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1 P R O C E E D I N G S

2
3 THE VIDEOGRAPHER: We are now on
4 the record. My name is Chris Coughlin. I'm a
5 videographer for Golkow Technologies. Today's
6 date is September 23, 2013, and the time is 10:06
7 a.m.

8 This video deposition is being held
9 in Boston, Massachusetts in the matter of Eurie
10 A. Stamps, Jr. and Norma Bushfan Stamps, as
11 Co-Administrators of the Estate of Eurie A.
12 Stamps, Sr., plaintiffs versus the Town of
13 Framingham, and Paul K. Duncan, individually and
14 in his Capacity as a Police Officer of the
15 Framingham Police Department as defendants in the
16 United States District Court, District of
17 Massachusetts, Civil Action Case No.
18 1:12-cv-11908-FDS.

19 The deponent is Officer Timothy
20 O'Toole.

21 And will counsel please identify
22 yourselves for the record.

23 MR. MUSACCHIO: Yes, my name is
24 Joseph Musacchio, and I represent the Estate of

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1 Eurie Stamps, Sr.

2 MR. DONOHUE: Tom Donohue for the

3 defendants.

4 THE VIDEOGRAPHER: And would all
5 others present please state your names for the
6 record.

7 MS. GRAZIANO: Christina Graziano
8 working alongside Attorney Musacchio.

9 MS. SHARP: Lucille Sharp,
10 paralegal working with Joe Musacchio.

11 THE VIDEOGRAPHER: Thank you.
12 Would the court reporter, Maryellen Coughlin,
13 please swear in the witness.

14
15 SERGEANT TIMOTHY J. O'TOOLE,
16 having been first duly sworn, was examined
17 and testified as follows:

18
19 EXAMINATION

20 BY MR. MUSACCHIO:

21 Q. Good morning, officer. My name is
22 Joseph Musacchio. I represent the Estate of
23 Eurie Stamps, Sr. in this case.

24 Could you please state your name

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1 for the record?

2 A. Timothy O'Toole.

3 Q. And what is your present address?

4 A. [REDACTED]

5 [REDACTED]

6 Q. And what is your present
7 employment, officer?

8 A. A police officer with the Town of
9 Framingham.

10 Q. And what is your rank?

11 A. I'm a Sergeant.

12 Q. And what was your rank back on
13 January 5, 2011?

14 A. Patrolman.

15 Q. Patrolman. And how long have you
16 been a police officer with the Framingham Police
17 Department?

18 A. Approximately eight years.

19 Q. Before becoming a police officer
20 with the Framingham Police Department, were you a
21 police officer with any other department?

22 A. Yes.

23 Q. Which departments?

24 A. The Shrewsbury Police Department

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1 and Pepperell Police Department.

2 Q. So in total, how long have you been
3 a police officer?

4 A. Approximately 15 years.

5 Q. Can you just very briefly describe
6 your educational background, high school, if you
7 had any college education, the basics?

8 A. Yes, high school degree, and I got
9 my bachelor's degree in criminal justice from
10 Salem State College.

11 Q. Are you presently a member of the
12 Framingham Police Department SWAT team?

13 A. Yes, I am.

14 Q. And how long have you been a member
15 of the SWAT team?

16 A. Almost six years.

17 Q. And what is your present status and
18 position on the SWAT team?

19 A. Just as a patrolman-type, operator.

20 Q. Okay. Do you have any leadership
21 position with the SWAT team?

22 A. No, I do not.

23 Q. And what was your position back on
24 January 5, 2011, was it a patrolman?

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1 A. Yes, operator.

2 Q. Operator. I'm sorry. Now you
3 understand we're here today to ask you questions
4 about your involvement in the execution of a
5 search warrant at 26 Fountain Street, the home of
6 Eurie Stamps, Sr., on January 5, 2011, shortly
7 after midnight?

8 A. Yes, sir.

9 Q. And you understand that Mr. Stamps
10 was killed in his home during the execution of
11 the search warrant by a bullet fired from the
12 weapon of Officer Paul Duncan?

13 A. Yes, sir.

14 Q. Now, you participated in the
15 execution of that search warrant back on January
16 5th; isn't that correct?

17 A. Yes.

18 Q. And the execution occurred in the
19 first floor apartment; is that correct?

20 A. Yes.

21 Q. Now, January 5, 2011, was not the
22 first time that you were in the first floor
23 apartment at 26 Fountain Street; is that correct?

24 A. Yes.

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1 Q. And about four weeks prior to
2 January 5, 2011, as I understand it you were in
3 26 Fountain Street, the first floor, relating to
4 what, can you explain that to me?

5 A. Yes, I was part of the street
6 crimes unit with the Framingham Police

7 Department, and we were there searching or
8 looking for a subject believed to be at that
9 residence.

10 Q. Who were you looking for?

11 A. [REDACTED]

12 Q. And when you were looking for him,
13 what was the purpose that you were looking for
14 him?

15 A. [REDACTED]

16 Q. Do you remember what [REDACTED]

17 [REDACTED]

18 A. I do not.

19 Q. So you have no memory of what
20 all -- as to what the search -- what [REDACTED]

21 [REDACTED]

22 A. Correct.

23 Q. And you entered the first floor
24 apartment at 26 Fountain Street when you were

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1 executing [REDACTED] out --

2 A. Yes.

3 Q. I'm sorry. There were [REDACTED]
4 [REDACTED] is that right?

5 A. Yes.

6 Q. Okay. And what was the outcome of
7 the execution [REDACTED]?

8 A. The subject was not located there.

9 Q. And did you follow up any further
10 about the [REDACTED] after that?

11 A. I don't recall.

12 Q. And what rooms did you enter in the
13 first floor apartment of 26 Fountain Street?

14 A. Just the kitchen area.

15 Q. And do you have a -- so you had a
16 memory of that kitchen area before the execution
17 of this search warrant on January 5, 2011; is
18 that correct?

19 A. Yes.

20 Q. Now, in preparation of your
21 deposition, did you review the transcript or
22 interview that you gave to the Framingham Police
23 Department in early January of 2011 concerning
24 your involvement in the execution of the search

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1 warrant at 26 Fountain Street?

2 A. Yes.

3 Q. And when did you review that
4 transcript?

5 A. Several times over the past several
6 days.

7 Q. And after you gave the interview
8 back on I think it was January 6, 2011, did you

9 ever review that transcript before you reviewed
10 it in the past few days?

11 A. I believe once.

12 Q. What was the context in which you
13 reviewed it then?

14 A. I was given my minutes due to a
15 meeting that we were suppose to have here.

16 Q. Okay. And what did that meeting
17 relate to?

18 A. For the same situation. I believe
19 it was cancelled.

20 Q. Oh. I'm sorry. So it was related
21 to another scheduled deposition in this case?

22 A. Yes, that's correct.

23 Q. Outside of this litigation, did you
24 review your transcript of your interview at any

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1 time after January 5, 2011, unrelated to this
2 litigation?

3 A. No, I did not.

4 Q. Now, in preparation of your
5 deposition today, did you review any other
6 materials?

7 A. Yes, I did.

8 Q. What did you review?

9 A. The SWAT team policy and the
10 firearms policy.

11 Q. Now, when you reviewed your -- the
12 transcript of your interview that you gave to the
13 police department on January 6, 2011, did you
14 find any inaccuracies or things in there that you
15 needed to correct?

16 A. No.

17 Q. Did you discuss your deposition
18 with Officer Paul Duncan before coming here
19 today?

20 A. No, I did not.

21 Q. He's still on the police
22 department; isn't that correct?

23 A. That's correct.

24 Q. Did you discuss it with any other

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1 person affiliated with the Framingham Police
2 Department before coming here today?

3 A. No, I did not.

4 Q. Has any other Framingham Police
5 Department officer or person of any rank in the
6 Framingham Police Department discussed their
7 deposition with you at any time?

8 A. No, they did not.

9 Q. Did you discuss your deposition
10 today with any other Framingham -- any

11 administrative personnel employed by the Town of
12 Framingham?

13 A. No, I did not.

14 Q. Now I want to call your attention
15 back to January 4, 2011, that's the day before
16 the execution of the search warrant at 26
17 Fountain Street.

18 Now, did you receive a text or a
19 page to report to the police department that
20 evening?

21 A. Yes, I did.

22 Q. And about what time did you receive
23 that page or text?

24 A. I don't know.

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1 Q. I think you said in your interview
2 that it was approximately around 9:30. Is that a
3 fair estimate of when you may have received the
4 call to the police department?

5 A. I don't recall if -- just from
6 reviewing my minutes, that's what I did see in my
7 minutes, but I don't recall exactly the time.

8 Q. Okay. But you recall seeing
9 that -- when you say your minutes, that's the
10 transcript of your interview?

11 A. Yes.

12 Q. Okay. You can use that term if you
13 want, as long as we understand each other.

14 A. The minutes?

15 Q. Yes.

16 A. Okay.

17 Q. And do you recall what time you
18 arrived at the police department?

19 A. I do not.

20 Q. I think you said in your interview
21 that it was approximately around 11 o'clock. Is
22 that your memory of what you said in your
23 interview transcript?

24 A. Yes.

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1 Q. And -- now, when you arrived at the
2 police department on January 4th at approximately
3 11 p.m., was that the first time you became aware
4 that there was going to be a search warrant
5 executed at 26 Fountain Street?

6 A. I don't know.

7 Q. But as best as you can recall, had
8 you ever heard about a warrant being executed at
9 26 Fountain Street before you arrived at the
10 police station at approximately 11 p.m.?

11 A. I don't know what time I or when I
12 received the information.

13 Q. Okay. Now, do you recall that a
14 planning meeting was conducted?
15 A. Yes.
16 Q. And is it true that deputy chief
17 Davis provided the briefing to all of the SWAT
18 team members?
19 A. I do not recall.
20 Q. Do you remember anyone who was
21 providing information at the -- other than
22 yourself, providing information regarding that
23 briefing?
24 A. I do not know.

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1 Q. Now, at the planning meeting, did
2 you share with the SWAT team your knowledge of
3 the layout of the apartment?
4 A. Yes, I did.
5 Q. And during the briefing, did you
6 actually see a layout of the apartment that was
7 presented to the SWAT team?
8 A. I cannot recall.
9 Q. But you provided information to the
10 SWAT members as to the layout of at least the
11 entrance into 26 Fountain Street and the kitchen
12 area; is that correct?
13 A. That's correct.
14 Q. Did you provide them any other
15 information beyond that as to the layout of the
16 apartment?
17 A. No, I did not.
18 Q. Officer O'Toole, I'm going to show
19 you what's been previously marked at a prior
20 deposition in this case, Exhibit No. 12 which is
21 the After Action Report submitted by Deputy Chief
22 Craig Davis.
23 A. Okay.
24 Q. Have you ever seen that document

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1 before?
2 A. No, I have not.
3 Q. I want to read to you what appears
4 at the bottom of Page 1. It begins about one,
5 two, three, four, five lines down where it says,
6 "When officer O'Toole." Do you see that?
7 A. Yes, sir.
8 Q. Okay. When Officer -- "When
9 Officer O'Toole arrived, he drew a floor plan of
10 the first floor apartment on a wide board that
11 was wall mounted in the command briefing room."
12 Did I read that correctly?
13 A. Yes, you did.
14 Q. "The floor plan indicated positions

15 of doors, stairways and a hallway. Officer
16 Murtagh arrived in the command briefing room and
17 produced aerial view maps, street view maps and
18 interior photos for 26 Fountain Street. Officer
19 Murtagh produced a PowerPoint presentation based
20 on these photographs." Is that your memory of
21 what happened that evening during part of the
22 briefing?

23 A. Just from reading this. I don't
24 recall but just by reading this.

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1 Q. Does this refresh your recollection
2 as to what you did at the briefing?

3 A. I don't recall. I remember
4 providing information, but I don't recall exactly
5 what.

6 Q. Okay. Now, during the briefing,
7 were you told as to the targets of the search
8 warrant at 26 Fountain Street; in other words,
9 were you told who the individuals were who were
10 suspected of distributing drugs from that
11 address?

12 A. Yes.

13 Q. And who do you recall those persons
14 being?

15 A. I just recall Joseph Bushfan.

16 Q. Okay. If you turn the page of
17 Exhibit 12, the After Action Report. I want you
18 to look at the top of Page 2, and see if that
19 refreshes your recollection as to who you were --
20 who were identified as the suspects distributing
21 drugs from 26 Fountain Street?

22 A. Yes.

23 Q. Okay. And it indicates Dwayne
24 Barrett, Deandre Nwaford and Joseph Bushfan as

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1 the individuals that were suspected of selling
2 drugs from 26 Fountain Street; is that right?

3 A. Yes.

4 Q. Is that consistent with your
5 recollection of what occurred back on January 4,
6 2011?

7 A. I recall Dwayne Barrett and Joseph
8 Bushfan.

9 Q. Okay. And you can see here it's
10 also indicated on the Action -- in the After
11 Action Report [REDACTED]
[REDACTED]; is that correct?

13 A. Yes.

14 Q. Do you remember being provided that
15 information at the planning meeting?

16 A. Yes.

17 Q. And in addition to that, you were
18 also told at the planning meeting that other
19 people who were not suspected of selling drugs
20 were -- who may also be present in the apartment.
21 Do you recall that?

22 A. I do not recall that.

23 Q. Okay. If you can read -- I'll read
24 to you where it starts in the After Action

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1 Report, the second full paragraph. "Additionally
2 to the above suspects these persons were believed
3 to be within the premises: Eurie Stamps, date of
4 birth [REDACTED];" is that correct? Did I read
5 that correctly?

6 A. Yes, you did.

7 Q. Okay. Do you have a recollection
8 of being told that Eurie Stamps, a man of
9 approximately 68 years of age would possibly be
10 present in the apartment?

11 A. I don't recall that.

12 Q. Do you have any reason to doubt
13 what's in the After Action Report as to what was
14 told to the SWAT team in terms of who else may be
15 in the apartment?

16 A. No, I do not.

17 Q. And you can see next to that it

18 says [REDACTED]
19 [REDACTED]. Do you remember being
20 told about [REDACTED] at the
21 briefing?

22 A. I do not remember.

23 Q. Do you have any reason to doubt
24 that SWAT team members were told [REDACTED]

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1 [REDACTED]
2 [REDACTED]

3 A. No, I do not.

4 Q. Can you -- I'm going to refer you
5 to Page 2 of Exhibit 12, and I'm going to read
6 beginning with the second to the last sentence on
7 the bottom of the page. Where it starts with "At
8 this briefing." The bottom of the page.

9 A. Yes.

10 Q. Okay. The report states, "At this
11 briefing, the three 8-by-11 color photographs of
12 the main suspects were taped to the wall for
13 viewing." Do you remember seeing pictures of the
14 suspects?

15 A. I do recall photos being placed
16 there, yes.

17 Q. And then it goes on to state in the
18 After Action Report, "We also discussed that

19 Dwayne Barrett's aunt and uncle and a male named
20 Eurie Stamps were believed to reside in the
21 apartment." Did I read that correctly?
22 A. You did.
23 Q. Does that refresh your recollection
24 that the SWAT team members including yourself

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1 were told that Eurie Stamps was believed to be in
2 the apartment?
3 A. I do not recall that.
4 Q. Then it goes on to state in the
5 report, "We did not possess photographs of them,
6 aunt, uncle, Stamps, but were told that they were
7 possibly in their 40's, except for Stamps, 68
8 years old." Did I read that correctly?
9 A. Yes, you did.
10 Q. Does that refresh your recollection
11 that you were told that Eurie Stamps was
12 approximately 68 years old and resided at the
13 apartment?
14 A. No, it does not.
15 Q. Do you have any reason to doubt
16 that you were told that based on what's stated in
17 the After Action Report?
18 A. No, I do not.
19 Q. Now, I want to refer you -- you can
20 put that aside, officer.
21 A. Okay.
22 Q. I want to go back to the planning
23 meeting. During that meeting, you and other
24 officers were not provided with any information

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1 that Mr. Stamps was armed or dangerous; is that
2 correct?
3 A. I do not recall.
4 Q. You have no recollection of being
5 told anything about whether Eurie Stamps was
6 armed or dangerous or was a suspect in any
7 criminal activity or was involved in any way in
8 the distribution of drugs?
9 A. No, I do not recall.
10 Q. But you do recall after looking at
11 this that there was some discussion that his --
12 [REDACTED]
13 [REDACTED] isn't that correct?
14 MR. DONOHUE: Object to the form.
15 Go ahead.
16 Q. You recall that in the After Action
17 Report there was a reference made that [REDACTED]
18 [REDACTED]
19 [REDACTED] isn't that correct?
20 A. I do not recall that.

21 Q. So you don't have a memory of being
22 told that; is that correct?

23 A. Correct.

24 Q. But it's in the After Action

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1 Report; isn't that correct?

2 A. Yes.

3 Q. And do you have any reason to doubt
4 that you were told during the planning meeting
5 that [REDACTED]

6 [REDACTED]
7 A. No, I do not.

8 Q. Now, at the planning meeting,
9 assignments were given to each of the police
10 officers involved in the execution of the
11 warrant; is that correct?

12 A. Yes.

13 Q. Before we do that, can we mark as
14 Exhibit 25 -- this is Timothy O'Toole's
15 transcript of his interview that took place on
16 January 6, 2011.

17 (Exhibit No. 25 was marked
18 for identification.)

19 Q. (By Mr. Musacchio) Officer O'Toole,
20 I'm going to show you what's been marked as
21 Exhibit No. 25. I'm going to represent to you
22 that it's a transcript of your interview with
23 Lieutenant Forster on January 6, 2011. Can you
24 confirm that that's a transcript of your

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1 interview?

2 A. Yes.

3 Q. You can put that aside for a
4 moment. Now, the SWAT team arrived at 26
5 Fountain Street shortly after midnight on
6 January 5, 2011; is that your memory?

7 A. Yes.

8 Q. And the warrant was planned to be
9 executed for the first floor only; is that
10 correct?

11 A. Yes.

12 Q. Can you mark that as the next
13 exhibit, 26?

14 (Exhibit No. 26 was marked
15 for identification.)

16 Q. (By Mr. Musacchio) Officer O'Toole,
17 Exhibit No. 26 is a floor plan for 26 Fountain
18 Street that was prepared by an engineer that we
19 retained in this case.

20 I want you to -- I want to go
21 through this with you just very quickly, just to
22 make sure that this is a fair and accurate

23 representation of what you remember the layout of
24 the first floor to be. Do you see the front

00026

1 entry?

2 A. Yes, sir.

3 Q. This would be Fountain Street right
4 here (indicating).

5 A. Yes.

6 Q. Okay. And the front entry is a
7 common hallway; is that correct?

8 A. Yes.

9 Q. And I'm going to ask you these
10 questions if these are all consistent with your
11 memory of what that first floor apartment looked
12 like, okay.

13 There was a front hallway entry; is
14 that correct?

15 A. Yes.

16 Q. And there was a door at the end of
17 the hallway that led into the kitchen; is that
18 correct?

19 A. Yes.

20 Q. And there was another doorway off
21 the front entry that led into another room in the
22 first floor apartment; is that correct?

23 A. Yes.

24 Q. That we have marked as a living

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1 room, but I'm going to represent to you that that
2 was actually a bedroom on the evening of
3 January 5, 2006.

4 And if you go into the kitchen --
5 do you have a recollection of a threshold that
6 led into a hallway area off of the kitchen, do
7 you have a recollection of that?

8 A. Yes.

9 Q. Okay. And off of that hallway area
10 there was a back bedroom; is that correct?

11 A. Yes.

12 Q. And there was a bathroom off that
13 hallway area; is that correct?

14 A. Yes.

15 Q. Okay. Looking at this full diagram
16 here, is this a fair and accurate depiction of
17 what you remember the layout of the first floor
18 apartment being on January 5, 2011?

19 A. Yes.

20 Q. Now, your assignment that evening
21 was to be part of a team that would make entry
22 into the house; is that correct?

23 A. Yes.

24 Q. And was part -- and your assignment

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1 was to enter into the front entryway of the
2 house; is that correct?

3 A. Yes.

4 Q. To walk down the hallway and to
5 enter the kitchen area, is that correct? Is that
6 what you remember your assignment was that
7 evening?

8 A. Yes.

9 Q. Now, your team consisted of -- your
10 team that made entry into the kitchen consisted
11 of yourself and Officer Sheehan; is that correct?

12 A. Yes.

13 Q. Okay. And was Officer Downing a
14 part of your team as well that made entry into
15 the kitchen?

16 A. I don't know.

17 Q. You don't recall?

18 A. I don't recall.

19 Q. Okay. Now, when you approached the
20 house and before making -- and do you recall
21 there being a porch area on the front of the
22 house?

23 A. Yes.

24 Q. And when you approached the house,

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1 do you remember encountering a woman who was on
2 that porch area?

3 A. Yes.

4 Q. And do you remember what she looked
5 like, could you describe her for me?

6 A. I don't recall.

7 Q. And she was ordered to the ground;
8 is that correct?

9 A. Yes.

10 Q. And did you order her to the
11 ground?

12 A. Yes.

13 Q. And who was with you at that time?
14 I'm assuming it was you, Officer Sheehan and the
15 other officers that were going to make entry into
16 the -- into this -- what we've marked as a living
17 room; is that correct?

18 A. I only recall Officer Sheehan.

19 Q. You only recall Officer Sheehan
20 being with you?

21 A. That's correct.

22 Q. Okay. Do you recall Lieutenant
23 Downing being with you at that time?

24 A. There were more members behind me.

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1 I don't know who they were.
2 Q. Okay. But there was a team of
3 people behind you?
4 A. Correct.
5 Q. But it was you and Officer Sheehan
6 that encountered the woman on the porch area; is
7 that correct?
8 A. Yes.
9 Q. And she was ordered to the ground
10 by you; is that correct?
11 A. Yes.
12 Q. And did she comply?
13 A. Yes.
14 Q. And do you recall where she was
15 when she was -- when she got down on the ground?
16 I say the ground. It could have been the porch
17 area. Was she on the porch area when she got
18 down?
19 A. I don't recall her exact position.
20 Q. You don't, okay. So you don't know
21 whether she was on the porch or actually out on
22 the sidewalk area or on the ground?
23 A. Right.
24 Q. Do you recall speaking with her at

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1 all?
2 A. Just my commands.
3 Q. Okay. What did you tell her?
4 A. Just that we were the Framingham
5 SWAT team and to get down on the ground.
6 Q. Did you tell her the reason you
7 were at the house?
8 A. I don't recall.
9 Q. Did she immediately comply when you
10 told her to get to the ground?
11 A. Yes, she did.
12 Q. And she was an older woman; is that
13 correct?
14 A. I don't recall.
15 Q. Well, do you recall whether she
16 was -- let's do ballpark here -- 50 years
17 older -- 50 years or older?
18 A. I don't know.
19 Q. You don't recall, okay.
20 A. I don't know her age.
21 Q. Do you recall putting your weapon
22 to her neck when she was on the ground?
23 A. No.
24 Q. You don't recall doing that?

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1 A. No, I do not.
2 Q. And did she say anything to you?

3 A. No, I don't recall that.

4 Q. So where was your weapon when you
5 ordered her to the ground and before you made
6 entry into the house?

7 A. It was pointed straight ahead
8 towards the house.

9 Q. So you don't have any memory of
10 pointing the gun at her or putting the gun to her
11 neck at any time?

12 A. No, it was not.

13 Q. Okay. Now as I understand it, you
14 bypassed this woman and you made entry with
15 Officer Sheehan into the front entryway into the
16 house; is that correct?

17 A. Yes.

18 Q. And the front door was unlocked; is
19 that correct?

20 A. I don't recall.

21 Q. Do you recall having to breach the
22 door?

23 A. Well, I don't know. I believe it
24 was open.

00033

1 Q. You believe it was open?

2 A. Yes.

3 Q. And your assignment was to approach
4 with Officer Sheehan the doorway leading from the
5 entryway into the kitchen; is that correct?

6 A. Yes.

7 Q. And can you just mark on here just
8 with a line the path that you took from the entry
9 into the first floor to the kitchen? Do it in
10 red.

11 MR. DONOHUE: Do you want it on
12 this one?

13 MR. MUSACCHIO: Yes.

14 A. (Witness complies.)

15 Q. Okay. When you arrived at the
16 kitchen door, you knocked on the door and yelled
17 "Police officer, search warrant;" is that
18 correct?

19 A. Yes.

20 Q. And at the same time was there
21 another team that was making entry into the, the
22 right-side door in the front entryway into what
23 we have marked as the living room?

24 A. I don't know.

00034

1 Q. So you don't recall whether another
2 team was making entry into this doorway into the
3 living room?

4 A. I don't know whether they made

5 entry.

6 Q. Okay. Do you know whether the plan
7 was for them to make entry through this door into
8 the living room area?

9 A. No, I do not.

10 Q. So you don't have any memory of
11 what this other team was -- there was more than
12 one team. There was your team and then another
13 team of three; is that correct?

14 A. I'm not sure how many members were
15 on that other team.

16 Q. All right. Well, there was another
17 team?

18 A. That's correct.

19 Q. And what was your understanding of
20 what the other team was doing?

21 A. They were going to knock and
22 announce.

23 Q. At the door leading into the living
24 room?

00035

1 A. Yes.

2 Q. Okay. So when you knocked and
3 announced, did you hear other officers knocking
4 and announcing at this right door off of the
5 front entryway into the living room?

6 A. Yes.

7 Q. Did you receive any answer when you
8 knocked and announced?

9 A. No, I did not.

10 Q. And then you heard an order to
11 execute; is that correct?

12 A. I don't remember what the exact
13 order was.

14 Q. Well, at some point -- the warrant
15 was going to be executed at some point?

16 A. Yes.

17 Q. Okay. Do you remember receiving an
18 order to execute?

19 A. I don't -- from my memory I don't
20 recall exactly what was said.

21 Q. Was some command given for you to
22 make entry into the kitchen?

23 A. I can't recall.

24 Q. Okay. At some point, did you hear

00036

1 or see a flashbang go off in the kitchen?

2 A. I did hear it, yes.

3 Q. Could you tell that the sound you
4 heard was a flashbang as opposed to a weapon?

5 A. Yes.

6 Q. And that was part of the plan,

7 right, to have the flashbang go off in the
8 kitchen; is that correct?
9 A. Yes.
10 Q. And once the flashbang went off, it
11 was -- the plan was that as soon as that occurred
12 that you were to make, you and Officer Sheehan
13 were to make entry into the kitchen; is that
14 correct?
15 A. Yes.
16 Q. And you did that; is that correct?
17 A. Yes.
18 Q. And the kitchen door was unlocked?
19 A. I can't recall.
20 Q. You didn't have to breach the door;
21 is that correct?
22 A. The door was closed.
23 Q. Correct.
24 A. Yes.

00037

1 Q. And you were able to open the door
2 and to enter the kitchen; is that correct?
3 A. Yes.
4 Q. And you didn't have to breach or
5 break the door to enter?
6 A. We didn't have to break it, no.
7 Q. And when you made entry into the
8 kitchen, do you recall whether there was any
9 lighting on in the kitchen?
10 A. I do not recall.
11 Q. Do you remember it being dark in
12 there, or do you remember it being lighted enough
13 so that you could see the area?
14 A. I could see the area.
15 Q. And do you have a memory of there
16 being lights on?
17 A. I do believe there was lights on.
18 Q. Okay. Now, when you entered the
19 kitchen, you and Officer Sheehan, was Lieutenant
20 Downing with you at that time?
21 A. I do not know.
22 Q. Now, when you entered the kitchen,
23 your attention was drawn to movement in the rear
24 bedroom area; is that correct?

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1 A. Yes.
2 Q. Okay. And the rear bedroom area
3 I'm talking about is, once you entered the
4 kitchen, there's the hallway here. You saw
5 movement in this bedroom back here; is that
6 correct?
7 A. In the doorway.
8 Q. In the doorway. Can you just mark

9 there with a circle where you saw movement?
10 A. (Witness complies.)
11 Q. So you actually saw movement in the
12 hallway; is that correct?
13 A. Right, in and out of the bedroom.
14 Q. In and out of the bedroom. And do
15 you have a description of that person, what he
16 looked like, who was entering in and out of the
17 bedroom?
18 A. I saw what I believed to be two
19 black males going in and out of the doorway
20 there.
21 Q. And where were you standing when
22 you first observed them?
23 A. Right in this general area
24 (indicating). Do you want me to mark it?

00039

1 Q. Yeah, you can mark it.
2 A. Okay. (Witness complies.)
3 MR. MUSACCHIO: Can we mark this as
4 Exhibit 27? We're going to backtrack a second.
5 (Exhibit No. 27 was marked
6 for identification.)
7 Q. (By Mr. Musacchio) Officer O'Toole,
8 I'm going to show you what's been marked as
9 Exhibit 27. It's a photograph of the front of
10 26 Fountain Street. Is that what you recognize
11 that photograph to be?
12 A. Yes.
13 Q. And you notice that your name is
14 written on the bottom, "Timothy O'Toole,
15 1/6/2011"?
16 A. Yes.
17 Q. Do you recall being shown this
18 photograph at your interview that took place on
19 January 6th?
20 A. I do not recall that, no.
21 Q. Would you agree with me that -- I'm
22 going to represent to you that this is the
23 photograph that you were shown at your interview.
24 Is that your signature on the bottom?

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1 A. I printed my name, yes.
2 Q. You printed your name. And that's
3 your badge number?
4 A. That's correct.
5 Q. Okay. And what's your badge
6 number?
7 A. 294.
8 Q. Do you recall being asked at your
9 interview where the female you encountered when
10 you first made entry into the house was located?

11 A. Yes.
12 Q. And do you see where you indicated
13 that woman was? You've got it marked with an "X"
14 under the -- well, on the door to the entry of
15 the house. Do you see that?
16 A. Yes.
17 Q. Does that refresh your recollection
18 that the woman that you encountered was told to
19 lie down and she actually laid down on the porch
20 area?
21 A. I do not recall her exact position.
22 Q. You do not recall. Do you know if
23 there were cars in front of the building that
24 night?

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1 A. I don't recall them.
2 Q. So looking at this photograph does
3 not refresh your recollection as to where the
4 woman was located after she was told to lie on
5 the ground?
6 A. Yes, that's correct.
7 Q. It does not refresh your
8 recollection?
9 A. It does not refresh my
10 recollection.
11 Q. Did you see any light coming from
12 the bedroom when you saw the two black
13 individuals moving in this area here between the
14 threshold of the bedroom and the hallway?
15 A. By light, just general lighting?
16 Q. Any kind of lighting, television
17 lighting, lights from lamps, anything.
18 A. Well, I could see, yes.
19 Q. You could see. So you actually
20 could see them?
21 A. Yes.
22 Q. Okay. And did you see any light
23 coming from the bedroom?
24 A. I don't recall.

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1 Q. And when you saw the two
2 individuals that you've described, at that point
3 you yelled to them to come out with your hands
4 up; is that correct?
5 Why don't you tell me what you
6 remember doing once you saw the individuals in
7 the back bedroom hallway area?
8 A. I don't recall specifically what I
9 said. I do remember announcing who we were, our
10 reason for being there and to come out.
11 Q. Okay. Did you tell them to come
12 out with their hands up?

13 A. Yes, I believe so. I don't know
14 exactly my actual words, but I believe it was,
15 yes, come out with your hands up.
16 Q. And did you see a -- and after you
17 said come out with your hands up, you saw a large
18 black male actually come out with his hands up;
19 is that correct?
20 A. Yes.
21 Q. Okay. And were you able to -- can
22 you describe that male who came out?
23 A. He was a tall older black male.
24 Q. When you say older, probably in his

00043

1 60's?
2 A. Approximately.
3 Q. Did it register to you at that
4 moment that it was Eurie Stamps, the man that was
5 identified as a 68-year old black man during the
6 planning meeting?
7 A. I do not recall.
8 Q. So you didn't make the connection.
9 Let's go back. At the planning
10 meeting -- we discussed how the residents were
11 described to you during the meeting; is that
12 correct?
13 A. I do not recall Mr. Stamps being
14 described. I do not recall that.
15 Q. Well, I showed you the After Action
16 Report, correct?
17 A. Correct.
18 Q. And in the After Action Report
19 there was -- it indicates in the report that the
20 SWAT team was told that there was a 68-year old
21 elderly black man who resided at the apartment.
22 A. Correct.
23 Q. When you first saw that elderly
24 black man, did it register to you that that was

00044

1 the person that was described to you during the
2 planning meeting?
3 A. No, I do not.
4 Q. Okay. It didn't register to you?
5 A. No, I don't recall that.
6 Q. Okay. And we know today that that
7 individual was Eurie Stamps, Sr.; is that
8 correct?
9 A. Yes.
10 Q. Now, you saw Eurie Stamps come out
11 of the bedroom and enter into the hallway area
12 when you called out to him to come out with your
13 hands up; is that correct?
14 A. Yes.

15 Q. Where did the other black
16 individual go?
17 A. I believe he was still in the back
18 bedroom.
19 Q. Can you describe that person for
20 me?
21 A. Just a black male.
22 Q. Do you know whether he was a
23 younger man or an older man?
24 A. I didn't get a good look at them --

00045

1 at him when he went into the back bedroom, just a
2 black male.
3 Q. Now, Officer Sheehan testified at
4 his deposition that Eurie Stamps walked up to the
5 threshold between the hallway and the kitchen and
6 stopped very close to the threshold and moved no
7 further. Is that your memory of what he did?
8 A. Yes.
9 Q. So can you just mark on here -- so
10 let me just go through this. When you first saw
11 him he was in this position near the threshold to
12 the bedroom and the hallway; is that correct?
13 A. Yes.
14 Q. And when you called out to him to
15 come out with his hands up, he walked up to the
16 threshold between the kitchen and the hallway; is
17 that correct?
18 A. Yes.
19 Q. Okay. Did he make it right up to
20 the threshold?
21 A. He was hesitant in this area, and
22 he eventually made it up to the threshold area,
23 right in this general area (indicating).
24 Q. Okay. Now, eventually Mr. Stamps

00046

1 stopped moving; is that correct?
2 A. Yes.
3 Q. I want you to mark here with a
4 circle where he was standing in the hallway in
5 relation to the threshold into the kitchen, if
6 you would.
7 A. (Witness complies.)
8 Q. And can you just put an "S" in the
9 middle of that for Stamps?
10 A. (Witness complies.)
11 Q. And when he approached the
12 threshold and stopped right before the threshold
13 where you have this marked, did you say anything
14 else to him?
15 A. I was telling him to get down on
16 the ground.

17 Q. And did he comply?
18 A. Yes, he did.
19 Q. Did he kneel down first?
20 A. I believe he went to his knees and
21 then laid down on the ground.
22 Q. Okay. So he complied with your
23 order to get down on the ground; is that correct?
24 A. Yes.

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1 Q. And then when he got down on the
2 ground, he was -- well, strike that.
3 And he was lying on his stomach; is
4 that correct?
5 A. Yes.
6 Q. Now, Officer Duncan stated in his
7 interview with the state police that Stamps had
8 his -- when he was lying on the ground, he had
9 his elbows on the floor with his hands up. Is
10 that consistent with your memory of where his
11 elbows and hands were?
12 A. Not when I went by him, no.
13 Q. Okay. So when you told him to get
14 down to the ground, where were his hands?
15 A. Out in front.
16 Q. Out in front of him. So you could
17 see them very plainly?
18 A. Yes.
19 Q. And that was important to you, to
20 make sure you could see his hands plainly; is
21 that right?
22 A. Yes.
23 Q. And he complied with showing his
24 hands to you?

00048

1 A. Yes.
2 Q. Now, as I understand it from your
3 interview, your plan at this point, once you had
4 Mr. Stamps on the ground, was to make your way
5 past Mr. Stamps and to enter into the back
6 hallway; is that correct?
7 A. Yes.
8 Q. Okay. And that's because -- did
9 you see any other movement in this area -- other
10 than the black man who remained in the bedroom
11 and Mr. Stamps, did you see any other movement in
12 this hallway area?
13 A. Yes, I did.
14 Q. What did you see?
15 A. I saw another silhouette which was
16 later determined to be a cat enter the bathroom.
17 Q. Okay, so you saw a cat entering the
18 bathroom. At that time you didn't know it was a

19 cat.
20 A. I didn't know. I just saw --
21 Q. You just saw movement?
22 A. -- movement, yes.
23 Q. And so your plan was at that point,
24 having Mr. Stamps on the ground and this

00049

1 individual in the back bedroom and what you
2 thought may be another individual entering the
3 bedroom, your plan at that point was to make
4 entry past the threshold into the hallway and to
5 secure the bathroom and the back bedroom; is that
6 correct?

7 A. My plan was to have Mr. Stamps
8 enter this larger area here and then be able to
9 go into the bathroom and clear the bathroom area.

10 Q. But that didn't happen because he
11 laid down at the threshold from the hallway into
12 the kitchen; is that correct?

13 A. That's correct.

14 Q. But ultimately your plan was still
15 to get into that back bathroom to see who was
16 there; is that correct?

17 A. Yes.

18 Q. Okay. Now, in this area right here
19 which is -- would have been to the left of
20 Mr. Stamps as he was lying on the ground, there
21 were things, objects in that area; is that
22 correct?

23 A. Yes.

24 Q. And they were like larger bins,

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1 containers; is that correct?

2 A. That's how I would describe them,
3 yes.

4 Q. And how big were they in feet?

5 A. I'm not sure.

6 Q. Were they -- when we say bins and
7 plastic containers, are we talking things that
8 are bigger than a bread box?

9 A. Oh, yes.

10 Q. Okay. So they're like larger
11 containers, probably, let's estimate, say three
12 feet long; is that correct?

13 A. I don't know their exact length but
14 larger than, like you said, a bread box.

15 Q. Well, give me your best memory as
16 to how big they were?

17 A. A couple feet in length.

18 Q. And how many of them were there?

19 A. I don't recall the exact amount.

20 Q. And were these bins impeding your

21 plan to make entry into the hallway and into the
22 back bathroom?

23 A. Yes.

24 Q. And you -- what did you do, did you

00051

1 remove those bins?

2 A. Yes, I pushed them out of my way.

3 Q. And when you pushed them out of
4 your way, where did they end up?

5 A. I don't know exactly where they
6 ended up. I pushed them in this direction
7 (indicating).

8 Q. Towards Mr. Stamps?

9 A. Towards the rear of Mr. Stamps.

10 Q. Towards the rear of Mr. Stamps. So
11 when you moved those bins out of the way, was
12 this area where the bins were located cleared?

13 A. No, it was not.

14 Q. What was still there?

15 A. I believe there was still a bin at
16 the bottom. It was still cluttered.

17 Q. It was still cluttered. Can you
18 just write the word "bin" or "bins" right where
19 you saw the bins?

20 A. Sure.

21 Q. So your memory was that there was
22 one bin that still remained in that corner where
23 you've marked?

24 A. I remember there still being some

00052

1 clutter there. I don't recall if it was actually
2 a bin. I do remember there was some sort of
3 clutter still down in that area.

4 Q. Still there. Do you remember what
5 that clutter was?

6 A. I do not.

7 Q. Officer O'Toole, I'm going to show
8 you what's been marked previously at another
9 deposition, Exhibit 18, which is a photograph
10 from the kitchen showing the threshold into that
11 back hallway. Is that a fair and accurate
12 depiction of what you remember the apartment
13 looking like?

14 Not in terms of items but in terms
15 of the -- not in terms of what's around, you
16 know, the cabinets and the bags but just in terms
17 of the layout of the apartment.

18 A. Yes.

19 Q. Okay. Now, Officer Langmeyer
20 stated in his interview with the state police
21 that Stamps' location on the floor was impeding
22 his entrance into the hallway leading into the

23 bathrooms.

24 Did Mr. -- was the positioning of

00053

1 Mr. Stamps on the floor in any way impeding your
2 entrance into that back hallway?

3 A. Yes, we had to step over him to get
4 into that area.

5 Q. So that's consistent with your
6 memory, that he was impeding your entrance into
7 the hallway?

8 A. Yes.

9 Q. Now, Officer Sheehan testified --
10 well, strike that.

11 And the reason he was impeding your
12 entrance into that back hallway, is it because
13 his head and shoulders were very close to the
14 threshold; is that correct?

15 A. Yes.

16 Q. Can you mark on -- using a green
17 magic marker, can you mark, if you can -- I know
18 you've got a mark here where he was standing, can
19 you mark where Mr. Stamps's head was in
20 relationship to that threshold?

21 A. I do not recall exactly where his
22 head was positioned in relevance to the
23 threshold. No, I cannot.

24 Q. Do you know whether his head was

00054

1 close to the threshold?

2 A. Yes, it was close to the threshold.
3 I don't know the exact position, though.

4 Q. Yeah. Because if he was impeding
5 your entrance into the back hallway, his head and
6 shoulders had to be somewhat -- had to be close
7 to the threshold; is that correct?

8 A. Correct.

9 Q. So your memory was that his head
10 and his shoulders were close to the threshold; is
11 that correct?

12 A. Yes.

13 Q. Was his head past the threshold
14 into the kitchen, do you know?

15 A. I do not recall.

16 Q. Okay. So you're not able to mark
17 here where you think his head was; is that fair?

18 A. Correct.

19 Q. But your testimony here today is
20 that his head and shoulders were close to the
21 threshold to the extent that it would have
22 impeded your entrance into the back hallway; is
23 that correct?

24 A. Yes.

00055

1 Q. Now, when you ordered Mr. Stamps to
2 the ground and he complied and he was showing his
3 hands, he was not free to move at that point; is
4 that correct?

5 A. Correct.

6 Q. Now, when Mr. Stamps was on the
7 ground, you walked passed him; is that correct?

8 A. Yes.

9 Q. Can you describe, you know, how you
10 did that? Did you have to step over him or on
11 him?

12 A. I stepped over him.

13 Q. Okay. So do you recall stepping
14 over his shoulders and his head to get into the
15 back hallway?

16 A. I don't recall what body parts we
17 did step over. We did have to step over.

18 Q. You did?

19 A. Yes.

20 Q. But it's fair to say since it --
21 now, when you told him to lie down, his head was
22 pointing towards the kitchen; is that correct?

23 A. Yes.

24 Q. And you testified that his head and

00056

1 shoulders were in such a position that it impeded
2 your entrance into the hallway; is that correct?

3 A. His body was impeding, yes.

4 Q. So is it fair to say that when
5 you -- if you had to step over him, what you were
6 stepping over was his head and shoulders,
7 essentially, to be able to get back into the
8 hallway?

9 A. Well, I don't know if it was his
10 head or his shoulder area that we did step over
11 or his arm. I don't recall exact -- his exact
12 body parts that we stepped over.

13 Q. Okay. You had to step over his
14 upper body --

15 A. That's correct.

16 Q. -- to get into the back hallway.
17 It could have been his head, his shoulders or his
18 upper arms.

19 A. Right, that's correct.

20 Q. Now, when you stepped over
21 Mr. Stamps, you turned your back to him; is that
22 correct?

23 A. Yes.

24 Q. And you made entry into the

00057

1 bathroom?

2 A. Yes.

3 Q. And Officer Sheehan did the same;

4 is that correct?

5 A. Officer Sheehan was behind me.

6 Q. Yes.

7 A. Right.

8 Q. And he event- -- both of you
9 eventually made your way into the bathroom; is
10 that correct?

11 A. Yes.

12 Q. So you both essentially turned your
13 back to Mr. Stamps?

14 A. Yes.

15 Q. And when you turned your back to
16 Mr. Stamps, did you have any idea whether there
17 were any other officers behind you that were
18 going to cover Mr. Stamps?

19 A. I knew there was officers behind
20 us. I don't know who, and what their intentions
21 were I do not know.

22 Q. So when you went into the back
23 bathroom, you made a decision to walk past
24 Mr. Stamps to find out who was back there, and I

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1 assume you considered the person -- if there was
2 a person in the bathroom, you considered that
3 person to be a threat?

4 A. That's correct.

5 Q. Now, did you consider Mr. Stamps to
6 be a threat any longer once you ordered him to
7 the ground and he complied?

8 A. Once I stepped over him and passed
9 him, always potentially a threat, but I believe
10 the other officers were there.

11 Q. So you believe other officers were
12 in the area?

13 A. That's correct.

14 Q. But you don't have a specific
15 memory of knowing whether other officers were in
16 fact covering Mr. Stamps when you made entry into
17 the bathroom; is that correct?

18 A. Correct.

19 Q. And you searched the bathroom with
20 Officer Sheehan; is that correct?

21 A. Yes.

22 Q. Could you describe what you did in
23 the bathroom?

24 A. I entered first, cleared the

00059

1 initial entry area, cleared the shower/tub area
2 and then eventually there was a little area in

3 this -- behind the tub/toilet area.

4 Q. And with this red marker, just so
5 we're clear on the record, could you just mark
6 where you left off on your path and your actual
7 path?

8 And what I'm interested in is where
9 you stepped to get past Mr. Stamps, was it to his
10 left or to his right.

11 Could you just mark this red line
12 and show your path into the back bathroom?

13 A. Yes.

14 Q. Thank you. And you discovered the
15 cat at some point; is that right?

16 A. Yes.

17 Q. All right. And while you were in
18 the bathroom and you found that there was a cat
19 back there, you heard a gunshot; is that correct?

20 A. Yes.

21 Q. And you knew it was a gunshot; is
22 that correct?

23 A. I believe it was a -- yes, I
24 believe it was a round going off.

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1 Q. In fact, you checked with Officer
2 Sheehan who was in the bathroom when the gunshot
3 went off to see if he was okay.

4 A. Yes.

5 Q. And, obviously, you checked to make
6 sure you were okay, too.

7 A. Yes.

8 Q. So you knew it was a gunshot?

9 A. Yes.

10 Q. Okay. After you heard the gunshot,
11 what did you do next?

12 A. I was still in this general area.
13 I turned around to Officer Sheehan, made sure he
14 was okay, and as you stated, along with myself.
15 And I knew there was still an unknown further
16 person or whatever was back here making noise,
17 and I checked that area to clear that, make sure
18 that was -- there was no other threats in this
19 area, and then I -- we turned around and began to
20 make -- exit out of the bathroom area.

21 Q. And that all occurred after you
22 heard the shot?

23 A. Yes.

24 Q. And where did Officer Sheehan go,

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1 do you know?

2 A. I believe he went to -- he exited
3 the bathroom and went to assist Officer Langmeyer
4 in the back rear bedroom.

5 Q. And was it your understanding that
6 Officer Langmeyer had made entry into the back
7 bedroom to secure the individual that was in
8 there; is that correct?

9 A. Yes.

10 Q. And when you left the bedroom, you
11 observed Mr. Stamps on the floor?

12 A. I'm sorry.

13 Q. When you left the -- I'm sorry.
14 When you left the bathroom, did you
15 observe Mr. Stamps on the floor?

16 A. Yes.

17 Q. And he was in the same location
18 that he was in when you left him and went into
19 the bathroom?

20 A. Yes.

21 Q. How soon after you heard the shot
22 did you exit the bathroom and enter into the
23 hallway and see Mr. Stamps?

24 A. I would say it was seconds.

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1 Q. And did you observe Officer Duncan?
2 When you left the bathroom, saw Mr. Stamps on the
3 floor, at that point did you observe Officer
4 Duncan in any way?

5 A. No, I did not.

6 Q. We now know today that Officer
7 Duncan -- let's put it this way, we know today
8 that the bullet that struck Mr. Stamps was from
9 the gun of Officer Duncan; is that correct?

10 A. Yes.

11 Q. And when you saw Mr. Stamps, did
12 you see blood?

13 A. Not initially, no.

14 Q. Eventually you did, though; is that
15 correct?

16 A. Yes.

17 Q. So you knew Mr. Stamps had been
18 shot; is that correct?

19 A. I knew he was injured. I didn't
20 know --

21 Q. You knew he was injured.

22 A. Right, I didn't know --

23 Q. You knew he was injured and he was
24 bleeding?

00063

1 A. Right, correct.

2 Q. And when did it -- when did you
3 make the connection between his injury and his
4 bleeding and the fact that he was shot with a gun
5 from Officer Duncan?

6 A. I believe I just assumed that that

7 may have happened, but I was not definitely sure.

8 Q. All right. So your assumption was
9 that he had been shot?

10 A. I was operating on the assumption,
11 yes, sir.

12 Q. Let me just make sure. Your
13 assumption was when you first saw Mr. Stamps that
14 he actually -- and you saw the blood that he had
15 been shot; is that correct?

16 A. Correct.

17 Q. What's the distance between the
18 bathroom threshold and where Mr. Stamps was
19 lying, approximately?

20 A. I don't know.

21 Q. All right. Well, while you were in
22 the bathroom and after the gun -- after you heard
23 the gunshot, did you hear anyone say, I fell, I
24 fell down, I tripped or anything like that?

00064

1 A. I didn't hear anything.

2 Q. You didn't hear any voices from any
3 officers?

4 A. Not that I recall, no.

5 Q. Now, at some point after you came
6 out of the bathroom, you saw Mr. Stamps bleeding
7 on the floor, you made entry into the back
8 bedroom; is that correct? Do you recall that?

9 A. I made entry into the hallway area,
10 in this area.

11 Q. Okay. Did you go back into the
12 back bedroom at all?

13 A. Yes, eventually I did.

14 Q. And what was the purpose for going
15 back into the bedroom?

16 A. To assist Officer Langmeyer and
17 Officer Sheehan.

18 Q. And what did you observe when you
19 went into the bedroom?

20 A. Officer Langmeyer and Officer
21 Sheehan and another individual.

22 Q. Okay. Can you mark on here in the
23 bedroom in black, if you recall, where Officer
24 Sheehan was and where the other individual was?

00065

1 A. I don't recall their exact position
2 in the room.

3 Q. You don't recall their position?

4 A. I do not.

5 Q. Okay. And once you made your way
6 back into the -- well, let me ask you this, what
7 was the -- well, we know now that the individual
8 who was back in that bedroom was Devon Talbert.

9 I'll represent that to you. So just for ease of
10 questioning, I'll refer to him as Mr. Talbert,
11 okay?

12 A. Okay.

13 Q. Do you remember where -- what
14 position, not location but physical what position
15 Mr. Talbert was in when you went into the
16 bedroom? Was he standing, was he kneeling, was
17 he on the ground?

18 A. I don't recall.

19 Q. And do you recall what Officer
20 Langmeyer was doing, what his position was? Did
21 he have his weapon out, was he -- what was he
22 doing?

23 A. I don't know. I don't recall
24 exactly what he was . . .

00066

1 Q. Well, do you know that he was
2 covering and securing Mr. Talbert?

3 A. Yes.

4 Q. So how was he doing that?

5 A. He was -- I don't recall exactly
6 what he was doing, but he was standing in that
7 area.

8 Q. And did he have his weapon pointed
9 at Mr. Talbert?

10 A. I don't know.

11 Q. And what did you do back in the
12 bedroom area, did you further search it?

13 A. Yes, I did.

14 Q. Okay. But you don't remember
15 whether Officer Langmeyer had his gun pointed at
16 Mr. Talbert?

17 A. I do not.

18 Q. And after you searched the back
19 bedroom, what did you do next?

20 A. We eventually exited the apartment.

21 Q. Okay. And how did you exit?

22 A. Just out this way and back out
23 through the kitchen and out through the front
24 entry.

00067

1 Q. And at this point -- at what point
2 do you remember the paramedics being there and
3 the emergency personnel?

4 A. When I was arriving into the
5 hallway from the bathroom, they were arriving
6 into the kitchen area.

7 Q. Now, when you entered the house
8 initially and you made your entry into the
9 kitchen, what weapons did you have?

10 A. I had my 40 caliber issued sidearm,

11 and I also had a M-4 rifle.

12 Q. And what weapon was actually in
13 your hands?

14 A. I believe it was my sidearm. At
15 that time, my Sig Sauer, 40 caliber.

16 Q. And where was your rifle?

17 A. Slung over my back.

18 Q. So your primary weapon that you
19 were making entry with that was in your hand was
20 your sidearm?

21 A. Yes.

22 Q. And is that -- what are the -- does
23 that sidearm have a safety?

24 A. No, it does not.

00068

1 Q. And I assume your rifle was on
2 safety since it was slung over your shoulder?

3 A. Yes.

4 Q. Are you familiar with the
5 contact/cover rule?

6 A. Yes, I am.

7 Q. Before we get into that, I have one
8 other thing I want to show you. Can you mark
9 this as Exhibit 28, I believe.

10 (Exhibit No. 28 was marked
11 for identification.)

12 Q. (By Mr. Musacchio) Officer O'Toole,
13 I'm going to show you what's been marked as
14 Exhibit 28 which is a sketch of the entranceway
15 into 26 Fountain Street. It says "Command &
16 Support" on top. Do you recognize that document?
17 Did you ever see that before?

18 A. I don't recall seeing this.

19 Q. I'm going to represent to you that
20 this is the diagram or the sketch that was
21 prepared before the execution of the search
22 warrant, okay.

23 A. Okay.

24 Q. And you can see there's people

00069

1 identified, and I'm going to represent to you
2 that this area represents the hallway, the front
3 entry as marked on the diagram.

4 A. Okay. I'm sorry, where?

5 Q. That this area that's sketched in
6 Exhibit 28 represents the front entryway into 26
7 Fountain Street, okay.

8 A. Okay.

9 Q. And you can see that what's written
10 on Exhibit 28 is -- you see inside the box on top
11 it says "Downing, Sheehan and O'Toole." Do you
12 see that?

13 A. Yes.
14 Q. Okay. And then underneath it
15 there's three names. I can't make out that name
16 in the middle, but below that it says "Stuart,
17 Duncan and Sebastian." Do you see that?
18 A. Yes.
19 Q. Does that refresh your recollection
20 as to whether Officer -- Lieutenant Downing was a
21 part of the team that entered the kitchen with
22 you and Officer Sheehan?
23 A. No, it does not.
24 Q. Does it refresh your recollection

00070

1 that Lieutenant Downing was a part of -- in terms
2 of the planning, was a part of the three-man team
3 that was going to make entry into the kitchen?

4 A. No, it does not.
5 MR. DONOHUE: Joe, is now a good
6 time for a break?

7 MR. MUSACCHIO: Sure. We have
8 another maybe 10 minutes.

9 MR. DONOHUE: Okay.

10 THE VIDEOGRAPHER: Going off the
11 record the time is 11:13.

12 (A break was taken.)

13 THE VIDEOGRAPHER: Back on the
14 record the time is 11:18.

15 Q. (By Mr. Musacchio) Officer O'Toole,
16 we left off talking about the con- -- I mentioned
17 the contact/cover rule to you; is that correct?

18 A. Yes.

19 Q. Can you describe to me what the
20 contact/cover rule or procedure, technique is?

21 A. It's when you have a suspect. You
22 get them down on the ground, preferably, and one
23 officer is covering them with his sidearm or
24 firearm drawn, covering the subject, while

00071

1 another officer comes in and secures the subject.

2 Q. And when you say the other officer
3 secures the subject, that's the other officer
4 will make some type of physical contact with the
5 suspect; is that correct?

6 A. Yes.

7 Q. And that physical contact could be
8 putting handcuffs on him or restraining him in
9 some way; is that correct?

10 A. Yes.

11 Q. And is the purpose of the
12 contact/cover rule is that the officer who's
13 making physical contact, his weapon must be on
14 safety before he makes physical contact; is that

15 correct?
16 A. Safety or holstered.
17 Q. And what's your understanding of
18 the purpose of the contact/cover rule or
19 technique?
20 A. In order to not put yourself too
21 close to the subject and put yourself in
22 danger --
23 Q. And --
24 A. -- while the other officer secures

00072

1 them.
2 Q. So is one of the purposes of the
3 contact/cover rule is that the officer who's
4 making physical contact either holsters his gun
5 and puts it, or puts it on safety to avoid a
6 situation that during the physical contact
7 between the officer and the suspect there's no
8 chance that the firearm will discharge; is that
9 correct?
10 A. It's preferred, yes.
11 Q. Is that the purpose behind the
12 rule, one of the purposes?
13 A. Yes.
14 Q. Is to avoid having the weapon of
15 the officer who's making physical contact go off
16 when he's actually touching the suspect; is that
17 correct? The rule is designed to prevent that
18 from happening; is that correct?
19 A. I believe so.
20 Q. Now, is it also your understanding
21 that if an officer confronts a suspect, orders
22 him to the ground and there's no other officer to
23 assist him that before the officer makes physical
24 contact with the suspect to further restrain him

00073

1 by putting handcuffs on him or touching him in
2 any way that the officer should put his weapon on
3 safety before making contact?
4 A. It's preferred.
5 Q. That's the preferred procedure,
6 correct?
7 A. Can you state the question one more
8 time? I'm sorry.
9 Q. Yes. Let's take a scenario where
10 an officer confronts a suspect or a non-suspect
11 in the execution of a search warrant, properly
12 orders that person to the ground, that person is
13 lying on the ground. The officer then wants to
14 further restrain that person by putting handcuffs
15 on him or further restraining his hands in some
16 way and there's no other officer available to

17 assist him to execute the contact/cover rule.
18 Are you with me so far?
19 A. Yes.
20 Q. In that circumstance, is it the
21 preferred practice for a police officer who is
22 going to make -- who's alone making contact with
23 a suspect or a non-suspect to put their gun on
24 safety or to holster it before making physical

00074

1 contact with that person?
2 A. Yes.
3 Q. And again, the reason that's the
4 preferred practice is because it avoids a
5 situation that during the physical contact
6 between the individual -- between the police
7 officer and individual there's no chance that the
8 firearm will discharge; is that correct?
9 MR. DONOHUE: Objection.
10 A. Or that the subject will take your
11 firearm from you. In those types of
12 circumstances, yes.
13 Q. Correct. It avoids a situation of
14 the firearm discharging during that physical
15 contact; is that correct?
16 A. One of the reasons, yes.
17 Q. Yeah. Now, were you taught the
18 contact/cover rule prior to January 5, 2011, in
19 your police training?
20 A. Yes.
21 Q. Were you taught that by the
22 Framingham Police Department as part of its SWAT
23 team training?
24 A. I don't recall at what point we

00075

1 were trained in that with the SWAT team, but I do
2 recall being trained in it.
3 Q. As part of the SWAT team training?
4 A. Yes.
5 Q. And that was before January 5,
6 2011; is that correct?
7 A. I don't recall the exact time that
8 the training occurred.
9 Q. Okay. But do you recall prior to
10 January 5, 2011, the SWAT team being trained on
11 the contact/cover rule?
12 A. I don't recall when the SWAT team
13 was trained on the contact and cover rule. I
14 know I'd been trained on the contact and cover
15 rule previous to that.
16 Q. So do you have a specific memory
17 that before the execution of the search warrant
18 at 26 Fountain Street that the SWAT team had

19 received training in the contact/cover rule?
20 A. I don't know the exact date. I
21 recall being trained in the contact and cover by
22 the SWAT team. I just don't recall the exact
23 date. I'm sorry.
24 Q. I don't need the exact date.

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1 A. I'm sorry. I don't recall if it
2 was before or after that date.
3 Q. January 5, 2011 --
4 A. Correct.
5 Q. -- you don't recall whether it was
6 before or after?
7 A. That's correct.
8 Q. As your training as a Framingham
9 police officer, put aside the SWAT team, were you
10 trained in the contact/cover technique prior to
11 January 5, 2011?
12 A. I was trained in the basic police
13 academy. I don't recall any other specific time
14 that I was trained in that. I just don't recall.
15 Q. But it was part of your basic
16 training, so to speak, to become a police officer
17 at the police academy; is that correct?
18 A. Yes.
19 Q. And as you sit here today, you
20 don't have any memory of the Framingham Police
21 Department providing training to you on the
22 contact/cover rule?
23 A. I do, but I don't know --
24 Q. But you don't know whether it

00077

1 was --
2 A. Right, I don't know the exact date
3 or whether it was before or after that incident
4 of the search warrant.
5 Q. Okay. Now, after Mr. Stamps was
6 shot on January 5, 2011, do you remember specific
7 training that you received at the Framingham
8 Police Department regarding what occurred that
9 evening when Officer Duncan's weapon fired and
10 killed Mr. Stamps?
11 A. I don't believe we went
12 specifically over, you know, that scenario. Are
13 we still referring to contact and cover?
14 Q. I just wanted to -- let me ask the
15 first question. Do you remember any specific
16 training after January 5, 2011, that you received
17 from the Framingham Police Department that made
18 specific reference to the Eurie Stamps's
19 shooting?
20 A. I don't recall that.

21 Q. Do you remember specific training
22 after January 5, 2011, in which the contact/cover
23 rule was being trained to you as a member of the
24 Framingham Police Department?

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1 A. I recall being trained, but I don't
2 know if it was before or after that.

3 Q. So as you sit here today, you don't
4 recall receiving any training in which the
5 officer providing the training said to the SWAT
6 team or to anybody at the Framingham Police
7 Department let's go over the contact/cover rule
8 and discussed it in the context of what happened
9 between Officer Duncan and Eurie Stamps?

10 A. I remember going over contact and
11 cover, but like I said, I don't know if it was
12 after or before that incident.

13 Q. Okay. And you don't remember
14 whether it was referenced -- it was trained in
15 the context of --

16 A. No, I do not recall.

17 Q. -- Eurie Stamps's shooting?

18 A. No.

19 Q. You can answer.

20 A. No, I do not recall that.

21 Q. Okay. Do you remember having any
22 discussion with anybody in the Framingham Police
23 Department regarding Officer Duncan's shooting of
24 Eurie Stamps after it occurred?

00079

1 A. Well, we did talk about it after.

2 Q. Did you have any discussion of --
3 do you recall any discussions in which the
4 subject matter was whether Officer Duncan did or
5 did not follow appropriate procedures?

6 A. No, I do not.

7 Q. Okay. What is your memory of your
8 discussions after the incident with anybody in
9 the Framingham Police Department regarding the
10 shooting of Eurie Stamps?

11 A. Just that Officer Duncan was
12 involved in that shooting and that it was an
13 accidental discharge of the firearm.

14 Q. So you don't remember any
15 conversations with anyone in which the conduct of
16 Officer Duncan was evaluated in any way?

17 A. I do not know.

18 Q. You don't remember any
19 conversations --

20 A. I don't remember --

21 Q. -- yourself?

22 A. -- no. About his conduct, no.

23 Q. Just one minute. I don't have any
24 other questions. Thank you, Officer.

00080

1 A. Okay. Thank you.

2 THE VIDEOGRAPHER: This concludes
3 the September 23, 2013, deposition of Officer
4 Timothy O'Toole. Going off the record this is
5 the end of Tape 1 of one tape used today, and the
6 time is 11:30 a.m.

7 (Deposition concluded at 11:30 a.m.)
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1 C E R T I F I C A T E

2 I, Maryellen Coughlin, a RPR/CRR and
3 Notary Public of the Commonwealth of
4 Massachusetts, do hereby certify that the
5 foregoing is a true and accurate transcript of
6 my stenographic notes of the deposition of
7 TIMOTHY O'TOOLE, who appeared before me,
8 satisfactorily identified himself, and was by me
9 duly sworn, taken at the place and on the date
10 hereinbefore set forth.

11 I further certify that I am neither
12 attorney nor counsel for, nor related to or
13 employed by any of the parties to the action in
14 which this deposition was taken, and further
15 that I am not a relative or employee of any
16 attorney or counsel employed in this case, nor
17 am I financially interested in this action.

18 THE FOREGOING CERTIFICATION OF THIS
19 TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF
20 THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT
21 CONTROL AND/OR DIRECTION OF THE CERTIFYING
22 REPORTER.
23

24 MARYELLEN COUGHLIN, CSR/RPR/CRR

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1 INSTRUCTIONS TO WITNESS

2
3
4 Please read your deposition over
5 carefully and make any necessary corrections.
6 You should state the reason in the appropriate
7 space on the errata sheet for any corrections
8 that are made.

9 After doing so, please sign the
10 errata sheet and date it. It will be attached to
11 your deposition.

12 It is imperative that you return
13 the original errata sheet to the deposing
14 attorney with thirty (30) days of receipt of the
15 deposition transcript by you. If you fail to do
16 so, the deposition transcript may be deemed to be
17 accurate and may be used in court.

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ERRATA

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2 ACKNOWLEDGMENT OF DEPONENT

3
4 I, _____, do
5 hereby certify that I have read the
6 foregoing pages, and that the same is
7 a correct transcription of the answers
8 given by me to the questions therein
9 propounded, except for the corrections or
10 changes in form or substance, if any,
11 noted in the attached Errata Sheet.

12
13
14 _____
15 SERGEANT TIMOTHY O'TOOLE DATE

16
17
18 Subscribed and sworn
19 to before me this
20 _____ day of _____, 20____.
21 My commission expires: _____

22 _____
23 Notary Public
24

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1 LAWYER'S NOTES

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