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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 BRIAN SIMONEAU
19 Kreindler & Kreindler LLP
20 277 Dartmouth Street
21 Boston, Massachusetts
22 September 26, 2013 10:09 a.m.
23
24 Maryellen Coughlin, RPR/CRR

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1 APPEARANCES:
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1 FURTHER APPEARANCES:

2

3 Also Present: Lucille Sharp, Paralegal
4 Christina Graziano, Law Clerk

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6 Videographer: Wesley Hicks

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I N D E X

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3 WITNESS: BRIAN SIMONEAU

4

5 EXAMINATION: Page

6 BY MR. MUSACCHIO 6

7

8 EXHIBITS FOR IDENTIFICATION:

9 No. Description Page

10 33 5/3/11 e-mail to Mr. Ijames from 12

11 Mr. Simoneau (STAMPS 000593 - 594)

12 34 Steve Ijames's report 15

13 35 Internal Affairs Report (STAMPS 47

14 000786 - 809)

15 36 Policy on Search and Seizure 100-1 53

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P R O C E E D I N G S

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3 THE VIDEOGRAPHER: We are now on
4 the record. My name is Wesley Hicks. I'm a
5 videographer for Golkow Technologies. Today's
6 date is September 26, 2013, and the time is 10:09
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,
11 Co-Administrators of the Estate of Eurie A.
12 Stamps, Sr. versus the Town of Framingham and
13 Paul K. Duncan, individually and in his capacity
14 as a police officer for the Framingham Police
15 Department for the United States District Court
16 of Massachusetts, Case NO. 1:12-cv-11908-FDS.
17 The deponent is Brian Simoneau.

18 Counsel please voice identify
19 yourselves.

20 MR. MUSACCHIO: My name is Joseph
21 Musacchio and I represent the plaintiff Eurie
22 Stamps, Jr. on behalf of the Estate of Eurie
23 Stamps, Sr.

24 MR. FUGATE: My name is Anthony

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1 Fugate. I represent Norma Stamps in her capacity
2 as co-administrator to the Estate of Eurie
3 Stamps.

4 MR. DONOHUE: Tom Donohue for the
5 defendants.

6 THE VIDEOGRAPHER: And also with
7 us?

8 MS. SHARP: Lucille Sharp,
9 paralegal.

10 THE VIDEOGRAPHER: The court
11 reporter is Maryellen Coughlin and will now swear
12 the witness.

13
14 BRIAN SIMONEAU,
15 having been first duly sworn, was examined
16 and testified as follows:

17
18 MR. DONOHUE: Same stipulations as
19 previous depositions?

20 MR. MUSACCHIO: Same stipulations.

21
22 EXAMINATION

23 BY MR. MUSACCHIO:

24 Q. Good morning, sir.

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1 A. Hi. Good morning.

2 Q. Could you please state your name
3 for the record?

4 A. Yes, my name is Brian Simoneau.

5 Q. And what is your address,
6 Mr. Simoneau?

7 A. [REDACTED]
8 [REDACTED].

9 Q. And where are you presently
10 employed, sir?

11 A. The Town of Framingham Police
12 Department.

13 Q. And what position do you hold with
14 the town?

15 A. I'm the assistant to the police
16 chief.

17 Q. And can you just briefly explain to
18 me what your duties and responsibilities are as
19 the assistant to the chief?

20 A. I assist the chief with the daily
21 running of the police department.

22 Q. Are you a police officer yourself?

23 A. Yes, I'm sworn as a special police
24 officer.

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1 Q. And what duties and
2 responsibilities do you have as a special police
3 officer?

4 A. I have all the powers and duties of
5 a regular police officer. My assignment doesn't
6 presently involve primarily doing police work,
7 but I have police powers should I need them.

8 Q. And are you -- have you received
9 training as a police officer?

10 A. I have.

11 Q. Have you gone to the police
12 academy?

13 A. I have.

14 Q. And do you participate in training
15 at the Framingham Police Department as well?

16 A. I deliver in-service training at
17 the police department as an instructor. I don't
18 take many of the courses that a street police
19 officer would take, but to some extent, I do.

20 Q. Are you involved in any training of
21 other Framingham Police Department officers?

22 A. Yes.

23 Q. And can you explain to me just
24 briefly what you're involved in with training?

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1 A. I teach legal updates.

2 Q. Do you provide any training to
3 Framingham police officers regarding, you know,
4 day-to-day techniques and procedures in the
5 performance of their duties?

6 A. No.

7 Q. Could you briefly provide me your
8 educational background, please?

9 A. I received a bachelor's degree
10 from -- well, I graduated from Hudson High
11 School. I received a bachelor's degree in
12 sociology from Framingham State College I want to
13 say in '92 or '93, and I received my law degree
14 in 2001 from the Massachusetts School of Law in
15 Andover.

16 Q. And what year was that?

17 A. 2001, I believe.

18 Q. Are you licensed to practice law in
19 Massachusetts?

20 A. I am.

21 Q. You hold a bar card with a bar
22 number?

23 A. I do.

24 Q. Now, sir, you're aware that on

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1 January 5, 2011, Eurie Stamps, Sr. was shot and
2 killed by a bullet fired from the gun of Officer
3 Duncan; is that correct?

4 A. Yes.

5 Q. And you're also aware that this
6 shooting occurred during the execution of a
7 search warrant on January 5, 2011, at 26 Fountain
8 Street in Framingham, Mass.?

9 A. Yes.

10 Q. Now, prior to coming here today,
11 did you review any documents in preparation of
12 your deposition?

13 A. Yes.

14 Q. What did you review?

15 A. I met with Attorney Donohue and he
16 showed me various documents regarding -- that
17 were produced in the course of discovery in this
18 case.

19 Q. Do you remember what those
20 documents were?

21 A. There was a memorandum. There was
22 the policy on SWAT or firearms. I believe it was
23 the firearms policy, a new one and an older one.
24 And there were some other things that I don't

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1 remember off the top of my head.

2 Q. This memorandum that you mentioned,
3 was that the memorandum that discussed a meeting
4 that occurred on September 21, 2011?

5 A. Yes.

6 Q. You understand that approximately
7 four or five other officers have been deposed in
8 this case so far?

9 A. Yes, sir.
10 Q. Have you had any conversations with
11 any of those officers regarding their
12 depositions?
13 A. Yes, I have.
14 Q. Okay. And who did you have a
15 conversation with?
16 A. I don't recall specifically.
17 Q. Okay. Did you -- how many officers
18 did you have a conversation with?
19 A. Maybe two or three.
20 Q. And what was the nature of those
21 conversations?
22 A. Just regarding the scheduling and
23 the logistics and things of that nature.
24 Q. Did you have any conversations with

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1 anybody who has been deposed in this case from
2 the Framingham Police Department regarding the
3 substance of their deposition either before the
4 deposition or after the --
5 A. No.
6 Q. -- deposition?
7 A. No.
8 Q. Sir, just one simple ground rule,
9 and I violate this all the time myself, so don't
10 feel bad. I know you know what the answer to the
11 question is before I finish the question --
12 A. I'll wait for you to finish the
13 question.
14 Q. Yes. It just helps the
15 stenographer.
16 A. Sure, sure.
17 Q. Thanks.
18 Could you mark that as Exhibit 33,
19 please? I believe that's where we are; is that
20 correct?
21 (Exhibit No. 33 was marked
22 for identification.)
23 MR. MUSACCHIO: Just off the record
24 for a second.

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1 (Discussion off the record.)
2 Q. (By Mr. Musacchio) Sir, I'm going
3 to show you what's been marked as Exhibit 33.
4 It's an e-mail from you to I believe Steven
5 Ijames I believe you pronounce his name. I'm
6 going to show you that and ask you if you
7 recognize that e-mail?
8 A. I do.
9 Q. And the first line states,
10 "Mr. Ijames in response to the death of Mr. Eurie

11 Stamps during the service of a search warrant, I
12 am writing to request that you undertake a review
13 of the Framingham Police Department SWAT team to
14 answer the following questions." Did I read that
15 correctly?

16 A. You did.

17 Q. And who was Steven Ijames?

18 A. Steve Ijames is a -- he retired as
19 the commander of the Springfield, Missouri SWAT
20 team I believe. He's an expert in SWAT
21 basically. He retired as either a major or a
22 deputy chief of the Springfield, Missouri police
23 department, and he's sort of a preeminent expert
24 on use of force, SWAT, tactics and things of that

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1 nature.

2 Q. And who made the decision to hire
3 him in re- -- no, no. He was hired in
4 relationship specifically to the Stamps shooting;
5 is that correct?

6 A. Yes.

7 Q. And who made the decision to hire
8 him?

9 A. I made the recommendation, but
10 ultimately it was a joint decision made by the
11 members of the command staff, the chief, probably
12 town counsel, I would assume. I'm not really
13 directly certain as to exactly who hired him, but
14 it was more of a consensus, you know, that type
15 of thing. I know the chief had a major role in
16 that decision.

17 Q. And what was the reason for hiring
18 him?

19 A. I wanted an outside person to
20 review the SWAT team and to review the incident
21 that occurred that resulted in the death of
22 Mr. Stamps and to give us an objective sort of
23 report or an objective analysis on the incident.

24 Q. Okay. Is it fair to say that you

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1 were the primary liaison person or contact person
2 between the Framingham Police Department and
3 Mr. Ijames?

4 A. Yes, I was.

5 Q. Did you have any direct
6 face-to-face conversations with him?

7 A. No.

8 Q. Now, in the e-mail, which is
9 Exhibit 33, you asked him a series of questions;
10 isn't that correct?

11 A. Yes.

12 Q. And the e-mail was sent to him on

13 May 3, 2011; is that correct?

14 A. Yes.

15 MR. MUSACCHIO: Would you mark this
16 as Exhibit 34, please.

17 (Exhibit No. 34 was marked
18 for identification.)

19 Q. (By Mr. Musacchio) Now, sir, can
20 you just briefly peruse Exhibit 34, and then when
21 you're ready, can you identify for me what that
22 document is?

23 A. This is a report from Steve Ijames,
24 the SWAT expert.

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1 Q. And it's dated August 8, 2011; is
2 that correct?

3 A. That's correct.

4 Q. And is the first page his cover
5 letter?

6 A. Yes, it is.

7 Q. That came with the report; is that
8 correct?

9 A. It did.

10 Q. If you can look at the cover
11 letter, sir. The third paragraph down it states,
12 "My opinions in this matter are offered in
13 response to interviews with agency training and
14 SWAT command staff." Did I read that correctly?

15 A. Yes.

16 Q. Do you know who Mr. Ijames
17 interviewed?

18 A. I know he spoke with Sergeant
19 Robert Downing. I know he spoke with Deputy
20 Chief Craig Davis. I believe he spoke with
21 Sergeant Vincent Stuart.

22 Q. And do you know whether those
23 discussions were in person or by telephone?

24 A. They were by telephone.

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1 Q. If you could turn to Page 6 of the
2 Ijames report?

3 A. Yes.

4 Q. Under heading number 5 which
5 states, "Was a lack of training a cause or a
6 contributing cause to the death of Mr. Stamps?"
7 Do you see that?

8 A. I do.

9 Q. And I'm going to quote the first
10 sentence under Heading 5. "It is my opinion that
11 the training Officer Duncan received as it
12 relates to threat assessment and the status of
13 the M-4 rifle safety/selector were contributing
14 causes in the death of Mr. Stamps." Did I read

15 that correctly?

16 A. Yes.

17 Q. Can you turn to Page 7, please.

18 Last sentence -- second to the last sentence in
19 the first paragraph where it says "The policy."

20 A. Yes.

21 Q. And it states, "The policy under
22 Section 6 (a) requires officers to 'handle all
23 weapons in accordance to their training,' and
24 under (d), 'keep their fingers outside the

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1 trigger guard until ready to engage and fire on a
2 target." Did I read that correctly?

3 A. Yes.

4 Q. Sir, I'm going to show you what's
5 been previously marked in this litigation as
6 Exhibit No. 4, and I want to call your attention
7 to Subsection 6, "Weapons Handling," and ask you
8 to read -- well, I'll read it. It states,
9 "Officers shall keep their fingers outside of the
10 trigger guard until ready to engage in fire on a
11 target." Can you just take a look at that? Did
12 I read that correctly?

13 A. Yes, you did.

14 Q. So is that the policy that
15 Mr. Ijames is referring to when he says "under
16 Section 6"?

17 A. Yes.

18 Q. And then Mr. Ijames goes on to
19 state in his report --

20 MR. DONOHUE: Where are you?

21 MR. MUSACCHIO: I'm on the last
22 sentence of the first paragraph.

23 MR. DONOHUE: Which page?

24 MR. MUSACCHIO: Page 7.

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1 MR. DONOHUE: Thank you.

2 Q. "The policy does not address the
3 two issues that directly contributed to the
4 unintended discharge by Officer Duncan; threat
5 definition and assessment, status of the
6 safety/selector lever in response to No. 1." Did
7 I read that correctly?

8 A. You did.

9 Q. And I'm going to continue to read
10 on. The next paragraph, "The agency led M-4
11 rifle instructor told me that officers are
12 trained to keep the rifle safety/selector on safe
13 until they perceive a 'threat,' and Lieutenant
14 Hill noted in his internal affairs report that:
15 'Room clearing training has consisted of teaching
16 officers to have the safety in the off mode (semi

17 auto) when they are the first to enter a room and
18 when they perceive a possible threat. Other
19 officers and I were instructed in this manner
20 during refresher training with the M-4 on
21 5/18/2011." Did I read that correctly?

22 A. You did.

23 Q. Who was the agency led M-4 rifle
24 instructor?

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1 A. I believe it's the lead M-4 rifle
2 instructor and that is Sergeant Vincent Stuart.

3 Q. Now I'm going to continue to read
4 on into the record from Ijames report the next
5 paragraph down beginning with "as noted."

6 "As noted above this issue -- this
7 issue is not addressed in the weapons policy, so
8 training would have provided the only guidance,
9 direction, and agency influence concerning threat
10 assessment and then in response, safety-selector
11 manipulation at 26 Fountain Street." Did I read
12 that correctly?

13 A. You did.

14 Q. I'm going to continue on. "The
15 training as described empowers the individual
16 officer to decide when a threat is perceived or
17 possible, and correspondingly decide when to
18 remove the weapon from safe. The inherent
19 problem with this is absent specific training on
20 how a threat is defined and differentiated
21 between perceived and possible, officers will
22 self define and differentiate in their own unique
23 and diverse ways." Did I read that correctly?

24 A. You did.

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1 Q. "Consequently, they will vary in
2 their decisions when to go or remain 'off' safe
3 and such variation in my opinion is problematic."
4 Did I read that correctly?

5 A. Yes, you did.

6 MR. DONOHUE: I think you said
7 "consequently." It's "correspondingly."

8 MR. MUSACCHIO: Correspondingly.
9 I'm sorry.

10 And then the report goes on to
11 state verbatim Officer Duncan's explanation in
12 his interview with the state police as to how the
13 event occurred; is that correct.

14 A. Yes.

15 Q. And if you turn to the next page,
16 Page 9, I'm going to read into the record again.
17 And I'm talking about the first full paragraph.
18 Steven Ijames states, "Officer Duncan describes a

19 tense and uncertain situation, but one that is
20 encountered on practically every search warrant
21 in America today. A subject is located,
22 grounded, hands are visible and raised, he
23 appears submissive, he has not yet been searched,
24 handcuffed, or physically controlled, and there

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1 are a number of 'unknowns' as it relates to
2 potential danger." Did I read that correctly?

3 A. Yes.

4 Q. Mr. Ijames goes on to state, "What
5 should a reasonable, prudent, and properly
6 trained officer do in these circumstances? Based
7 on my knowledge, training, and experience, I
8 suggest that one of the following courses of
9 action would most likely be observed." Did I
10 read that correctly?

11 A. Yes.

12 Q. And the first course of action is,
13 No. 1, "The officer holds position, advises the
14 subject 'Police - search warrant'" -- I will read
15 that again.

16 "The officer holds position,
17 advises the subject 'Police - search warrant - do
18 not move,' weapon on or off safe (depending on
19 agency guidance, direction, policy/practice, and
20 training), weapon pointed off the subject at low
21 ready, and then he or she calls for cover/contact
22 backup. If the other team member -- members are
23 busy, verbal directions to the subject are
24 repeated, and the officer holds his or her

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1 position until someone is available to cover for
2 handcuffing and search." Did I read that
3 correctly?

4 A. Yes.

5 Q. Okay. And No. 2. Mr. Ijames
6 states the other option is to, "The officer holds
7 position, advises the subject 'Police - search
8 warrant - do not move,' weapon on or moved to
9 safe (depending on agency guidance, direction,
10 policy/practice, and training) and pointed off
11 the subject at low ready. The officer repeats
12 the verbal direction, advises the subject to
13 slowly place their hands behind their back. Upon
14 compliance the officer moves to a position of
15 control, secures the subject in handcuffs, and
16 then searches." Did I read that correctly?

17 A. Yes.

18 Q. Now, basically what's being
19 described there is the contact/cover rule; is
20 that correct?

21 A. Yes.
22 Q. And that's something that was
23 trained -- that all Framingham Police Department
24 SWAT team members received training in prior to

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1 January 5, 2011?

2 A. I don't know that.

3 Q. And that's because you're not
4 directly involved in actual hands-on training
5 with the SWAT team; is that correct?

6 A. That's correct, yes.

7 Q. Okay. I'm going to continue to
8 read from Mr. Ijames' report. The next
9 paragraph, "In the immediate case Officer Duncan
10 explained the reasons why he felt compelled to
11 act, and act in the manner that he did.
12 Regretfully, when he made the decision to go
13 'hands on' with the subject and began moving in
14 that direction, his training did not result in
15 him first placing the weapon on safe. Upon
16 reacting to the loss of balance and attempting to
17 counter, Duncan unconsciously pulled his rifle's
18 trigger which resulted in the death of
19 Mr. Stamps." Did I read that correctly.

20 A. You did.

21 Q. So is it fair to say based on what
22 Mr. Ijames states in his report that he was
23 critical of the training that Mr. Duncan received
24 in relationship to the shooting of Mr. Stamps; is

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1 that correct?

2 A. I think the report speaks for
3 itself. I'm not going to characterize his
4 report.

5 Q. All right. Well, he states in here
6 that, "It is my opinion that the training Officer
7 Duncan" --

8 MR. DONOHUE: Sorry, which page are
9 you on?

10 MR. MUSACCHIO: Page 6.

11 He states, "It is my opinion" --

12 MR. DONOHUE: Hold on, hold on.

13 You want us to read along, right?

14 MR. MUSACCHIO: Yeah, but I'm just
15 summarizing.

16 MR. DONOHUE: Okay. I just want to
17 read along with you.

18 MR. MUSACCHIO: Okay.

19 Mr. Ijames states, "It is my
20 opinion that the training Officer Duncan received
21 as it relates to threat assessment and the status
22 of the M-4 rifle safety-selector were

23 contributing causes in the death of Mr. Stamps."
24 Did I read that correctly.

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1 A. Yes.

2 Q. Okay. Now, at some point Officer
3 Stuart and Lieutenant Downing had an opportunity
4 to review Mr. Ijames's report; is that correct?

5 A. Yes.

6 Q. And is it fair to say that
7 Officer -- Sergeant Stuart took exception to some
8 of the things that were said by Mr. Ijames in his
9 report?

10 A. Yes.

11 Q. And he took exception to this idea
12 that Mr. -- the suggestion in the report or this
13 opinion in Ijames's report that Officer Duncan
14 did not receive adequate training in threat
15 assessment and this idea of the contact/cover
16 rule; is that correct?

17 A. Sergeant Stuart was concerned that
18 he was being criticized as a trainer in the
19 report.

20 Q. And did Lieutenant Downing see the
21 report as well?

22 A. Yes.

23 Q. And did he express concerns about
24 criticism being made regarding the training that

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1 Officer Duncan received?

2 A. I believe he did.

3 Q. And did they both read the report?

4 A. Yes.

5 Q. And did they express those
6 criticisms to you?

7 A. Yes.

8 Q. And did they express them to the
9 chief of police?

10 A. Yes.

11 Q. And what about Deputy Chief Craig
12 Davis?

13 A. Yes.

14 Q. Now, did you have any -- did you
15 have discussions yourself with Lieutenant Downing
16 regarding his concerns about the criticisms in
17 the report?

18 A. Outside of the meeting that was
19 held?

20 Q. Outside of the meeting.

21 A. I don't recall.

22 Q. What about Sergeant Stuart, before
23 the meeting occurred?

24 A. I don't remember.

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1 Q. Well, as a result of Sergeant
2 Stuart and Lieutenant Downing's concerns about
3 the criticisms of their training in the report, a
4 meeting was held; is that right?

5 A. Yes.

6 Q. And it was attended by you, Chief
7 Steven Carl --

8 A. Yes.

9 Q. -- Deputy Chief Craig Davis --

10 A. Yes.

11 Q. -- Lieutenant Downing --

12 A. Yes.

13 Q. -- and Sergeant Stuart; is that
14 correct?

15 A. Yes.

16 Q. And do you recall whether anybody
17 else was present?

18 A. I believe that's it.

19 Q. And who called for the meeting?

20 A. I believe Sergeant Stuart and
21 Lieutenant Downing did.

22 Q. And the meeting took place on
23 September 21, 2011?

24 A. Yes.

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1 Q. And where did it take place?

2 A. The police chief's conference room.

3 Q. Sir, I'm going to show you what's
4 been marked as Exhibit 11 in a previous
5 deposition, and I just want you to read through
6 Exhibit 11, please, to yourself.

7 A. Yes. I've read it.

8 Q. Now, Lieutenant Downing testified
9 in his deposition that Exhibit 11 is a report
10 that you wrote concerning what transpired at the
11 September 21, 2011, meeting with Lieutenant
12 Downing, Sergeant Stuart, Deputy Chief Davis and
13 Chief Carl. Do you agree with that?

14 A. Yes.

15 Q. So you wrote this document?

16 A. I did.

17 Q. Now, is Exhibit 11 a fair and
18 accurate depiction of what you actually wrote in
19 your report?

20 A. Yes.

21 Q. This is your report; is that
22 correct?

23 A. It is.

24 Q. Now, you've testified you were not

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1 involved in police training for the Framingham
2 Police Department and the SWAT team outside of
3 legal issues; is that correct?

4 A. Correct.

5 Q. You're not an expert on police
6 technique and procedures for detaining and
7 searching a person; is that correct?

8 A. I'm not.

9 Q. Was the purpose of Exhibit 11, the
10 report that you made after the December 21, 2011,
11 meeting, simply to memorialize what was said at
12 the meeting?

13 A. Yes, and potentially to submit to
14 Steve Ijames for a further clarification or a
15 supplemental report or things of that nature.

16 Q. So you wanted to memorialize what
17 was being said by others at the meeting; is that
18 correct?

19 A. Yes.

20 Q. And you wanted to have something in
21 writing that you could submit to Mr. Ijames to
22 get further explanation on any issues that you
23 wanted to raise?

24 A. Yes.

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1 Q. Was the report -- was that ever
2 done?

3 A. No.

4 Q. And why not?

5 A. To the best of my recollection, I
6 had a phone conversation with Steve Ijames, and I
7 expressed the concerns of Downing and Stuart
8 outlined in this document, and he had subsequent
9 phone conversations with them regarding what he
10 wrote and explanations for what he wrote and
11 nothing more became of it.

12 Q. Do you have a -- do you know what
13 the substance of those conversations were?

14 A. I don't.

15 Q. And who did you submit this report
16 to? I assume you gave it to everybody that was
17 at the meeting?

18 A. No. I may have shown it to Deputy
19 Chief Davis, but it was a draft. It wasn't a
20 final report. It's not signed or dated or
21 anything of that nature. So this was more of a
22 draft working document. It wasn't finalized for
23 distribution.

24 Q. Do you recall ever finalizing it?

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1 A. No, I don't believe I did.

2 Q. And why not?

3 A. Because I believed the issue
4 regarding this -- the concerns of Stuart and
5 Downing were addressed by phone conversations
6 with Steve Ijames.

7 Q. Okay. I want to go through some
8 portions of Exhibit 11, which is your report, and
9 it's the third full paragraph, and it says,
10 "Sergeant Stuart and Lieutenant Downing claim
11 that officers are trained to keep their rifles on
12 safe unless the officer perceives a threat or he
13 is actively clearing room/danger area." Did I
14 read that correctly?

15 A. Yes.

16 Q. This next sentence says, "This
17 means that Duncan should have had his weapon on
18 safe because neither of the two conditions
19 existed." Now, that wasn't your opinion, was it?

20 A. Yes, it was.

21 Q. That was your opinion?

22 A. Yes.

23 Q. Did Officer Stuart share that
24 opinion?

00033

1 A. I don't remember.

2 Q. Did officer -- did Lieutenant
3 Downing share that opinion?

4 A. I don't remember.

5 Q. Okay. So when you wrote, "This
6 means that Duncan should have had his weapon on
7 safe because neither of the above two conditions
8 existed," was that something that was said to
9 you?

10 A. No, this is something that I'm
11 saying. Based on my knowledge of what happened,
12 based on my review of the Ijames report, based on
13 what was said at that meeting, that was my
14 opinion, that none of those two conditions
15 existed at the time.

16 Q. Okay. And you based on -- your
17 opinion based on what you heard during the
18 meeting; your understanding of what Duncan
19 explains how the accident happened?

20 A. Sort of the totality of all the
21 facts and circumstances that I knew up to this
22 point.

23 Q. And based on your knowledge of the
24 protocols and procedures of the Framingham Police

00034

1 Department?

2 A. Based on my knowledge of Sergeant
3 Stuart and Lieutenant Downing claiming that
4 officers are trained to keep their weapons on

5 safe until one of two things exist, either they
6 perceive a threat or they're actively engaged in
7 clearing a room.

8 Q. Okay. And it was your opinion that
9 you stated here that he, the officer -- that
10 Mr. Duncan did not perceive an actual threat?

11 A. Right.

12 Q. It was your opinion he was not
13 actively clearing any rooms at the time he
14 encountered and eventually shot Mr. Stamps?

15 A. That was my opinion, yes.

16 Q. Did you express that opinion at the
17 meeting?

18 A. I'm not sure. It was two years
19 ago, and I don't know. I can't say -- as I sit
20 here today, I don't know if I did or not.

21 Q. Well, you don't recall anybody
22 disagreeing with you or challenging you on that
23 opinion, do you, at the meeting?

24 A. I don't recall if I expressed it,

00035

1 and I don't recall if anyone challenged it.

2 Q. Okay. I'm going to continue to
3 read on. The last paragraph, "According to
4 Downing and Stuart, Officer Duncan received
5 training regarding the principals of contact and
6 cover. This foundational concept is taught as
7 part of the Patrol Rifle Course, SWAT training
8 courses and in the Applied Patrol Procedures
9 section of every basic police academy in
10 Massachusetts." Did I read that correctly?

11 A. You did.

12 Q. Who provided that information at
13 the meeting?

14 A. Sergeant Stuart and Downing
15 informed us that that was taught in SWAT classes,
16 that that was taught as part of basic SWAT
17 courses, and I know, having attended the police
18 academy and also just in my general duties, I
19 know that contact and cover is taught in the
20 basic police academy. So that it was taught in
21 the basic police academy is based on my personal
22 firsthand knowledge, and that it was taught as
23 part of SWAT is based on knowledge provided by or
24 information provided by Stuart and Downing, and

00036

1 that it was taught as part of the Patrol Rifle
2 Course is information provided by Stuart and
3 Downing as well, and also Lieutenant Mike Hill, I
4 believe.

5 Q. And that training all occurred,
6 obviously, before January 5, 2011?

7 A. Yes, it did.

8 Q. Okay. I'm going to read on, where
9 it says "Under the contact/cover."

10 A. Hold on. I need to just maybe
11 change my answer. I believe that there was a
12 Patrol Rifle Course that took place after the
13 fact that Lieutenant Hill attended, and that may
14 be where he was getting his knowledge from.

15 Q. Okay. We'll talk about that a
16 little later.

17 The paragraph goes on to read,
18 "Under the contact/cover concept, the officer who
19 is engaging in hands-on contact and with a
20 suspect will not have his weapon off safe." Did
21 I read that correctly?

22 A. Yes.

23 Q. "Instead the weapon will be slung
24 with the selector in the safe position while the

00037

1 contact officer has physical contact with the
2 suspect. During the physical contact, the
3 contact officer is covered by the cover officer."
4 Did I read that correctly?

5 A. Yes.

6 Q. And did that information -- who
7 provided that information at the meeting?

8 A. This comes from the Ijames report
9 where he talks about those two options, and I
10 believe the first option was to sort of do it
11 this way.

12 Q. Okay. Then it goes on to state,
13 "According to both Downing and Stuart, Officer
14 Duncan's training instructed him to place his
15 weapon on safe and sling it prior to assuming the
16 role of the contact officer." Did I read that
17 correctly?

18 A. You did.

19 Q. And who provided that information?

20 A. Both Downing and Stuart.

21 Q. And then the last sentence says,
22 "Further, if Officer Duncan perceived Stamps" --
23 strike that. I'll read it again.

24 "Further, if Officer Duncan

00038

1 perceived Stamps as having posed a threat, he
2 should have maintained his position as a cover
3 officer and waited until another contact operator
4 was available to search and/or secure Stamps."
5 Did I read that correctly?

6 A. Yes.

7 Q. Now, who provided that -- who
8 provided that information that he should have

9 maintained his position as a cover officer?
10 A. Downing and Stuart.
11 Q. So that was an opinion of Downing
12 and Stuart; is that correct?
13 A. It was, yes.
14 Q. So at the meeting Downing and
15 Stuart expressed the opinion that what Officer
16 Duncan should have done in that situation was to
17 maintain his position as a cover officer and wait
18 until another police officer was available to
19 actually physically make contact with Mr. Stamps;
20 is that correct?
21 MR. DONOHUE: Objection.
22 A. Yes.
23 Q. And you memorialized that opinion
24 in this document; is that correct?

00039

1 A. I did.
2 Q. Now, after the September 21, 2011,
3 meeting, can you describe for me what further
4 involvement you had with the investigation into
5 the shooting of Mr. Stamps?
6 A. I believe I had a phone call with
7 Steve Ijames sort of relaying to him the concerns
8 expressed at the meeting, and that resulted in I
9 believe him calling Stuart and Downing or further
10 conversation between Stuart and Downing.
11 I had discussions with Chief Carl
12 regarding the position of the M-4 safety/selecter
13 switch and what the department policy would be
14 relative to that after the shooting.
15 There was a committee that was
16 formed. It was a citizens committee. It
17 consisted of various community leaders and so
18 forth, and they reviewed the incident. I
19 participated in the formation of that committee,
20 some committee meetings, things of that nature.
21 I revised the policy on -- the
22 firearms policy to include direction on the
23 safety/selecter switch. I had conversations with
24 Deputy Chief Davis regarding the safety/selecter

00040

1 switch issue.
2 Q. Let's talk about the safety/select
3 change in the policy. The new policy that was
4 not in the old policy now states that an officer
5 does not take his weapon off safe until he is
6 ready to shoot; is that correct?
7 A. Yes.
8 Q. And can you explain how that's
9 different than the old policy?
10 A. I'd have to see the old policy and

11 see what that says.

12 Q. And this is in the Firearms and
13 Weapons?

14 A. Yes.

15 Q. I'm going to show you what's been
16 previously marked as Exhibit 4, which is the old
17 policy on firearms and weapons, No. 50-4, and ask
18 you where in here it addresses the issue of when
19 an officer takes his weapon off safe --

20 MR. DONOHUE: Object to the form.

21 Q. -- if it does address it at all.

22 A. So in this policy, which is the --
23 well, I'll call it the old policy. There's
24 nothing in here that specifically says when an

00041

1 M-4 rifle should be on or off safe.

2 Q. Were Framingham police officers
3 trained of when their weapons should be on or off
4 safe even though it wasn't stated in the policy?

5 A. I believe there was training on
6 that.

7 Q. And what was that training, if you
8 recall?

9 A. I think the training was that
10 officers should keep their weapon on safe unless
11 they're actively clearing a room or they perceive
12 a threat.

13 Q. And the new policy changed that by
14 saying that it's not enough simply to perceive a
15 threat, you have to keep your weapon on safe
16 until you're ready to fire; is that correct?

17 A. That's correct, yes.

18 Q. I'm going to show you what's been
19 marked previously as Exhibit 5, which is the new
20 firearms and weapon policy, last revision
21 10/4/2012, and I want you to read into the record
22 under Subsection C "low ready" and where it says
23 "on safe" and "off safe."

24 A. It says, "The 'Low Ready' is the

00042

1 standard carry position while the patrol rifle is
2 operational. The 'Low Ready' is also the default
3 carry position. The weapon's stock is seated" --

4 Q. Could I just stop you for a second.
5 Could you just read a little slower just for the
6 benefit of the stenographer.

7 A. "The weapon's stock is seated in
8 shoulder; muzzle down; 1. On safe; finger off
9 trigger, and along lower receiver; two hands on
10 weapon. 2. Off safe; officer perceives a
11 threat, weapon comes onto target, only when the
12 officer is ready to shoot does the weapon come

13 off safe; eyes align sights; acquire proper sight
14 picture. After firing, or when the decision to
15 not -- when the decision not to fire is made, the
16 weapon is placed back on safe."

17 Q. Thank you. Was this change in the
18 policy that you just ready a result of the
19 Officer Duncan shooting of Mr. Stamps?

20 A. Not directly.

21 Q. How was it done indirectly?

22 A. It was as a result of a report from
23 Steve Ijames which resulted from the death of
24 Mr. Stamps.

00043

1 Q. So it was the Ijames report in
2 conjunction with what happened with Officer
3 Duncan and Mr. Stamps that led to this change?

4 A. Yes.

5 Q. And is it fair to say that this
6 statement -- that this policy that an officer
7 doesn't take his weapon off safe until he's ready
8 to shoot was different than how the officers were
9 trained prior to January 5, 2011?

10 A. Yes.

11 Q. Now, if you look at Exhibit No. 5,
12 again the policy on weapons and firearms, the new
13 policy, if you look at Page 6 there's a complete
14 definition of the contact/cover rule; is that
15 correct?

16 A. Yes.

17 Q. And that wasn't in the old policy;
18 is that correct?

19 A. Let me --

20 Q. Yeah, you can take a look.

21 MR. DONOHUE: I'm going to take a
22 quick break while he's looking. Let me grab a
23 tissue.

24 THE VIDEOGRAPHER: Going off the

00044

1 record the time is 10:56 a.m.

2 (A break was taken.)

3 THE VIDEOGRAPHER: We're back on
4 the record at 11:08 a.m.

5 Q. (By Mr. Musacchio) Now, sir, the
6 contact/cover rule that -- in the policy, the new
7 firearms and weapons policy that was enacted
8 after January 5, 2011, that rule was not in the
9 old weapons and firearms policy; is that correct?

10 A. That is correct.

11 Q. And although it was taught to
12 officers prior to January 5, 2011, it was not in
13 the policy on firearms and weapons; is that
14 correct?

15 A. That's correct.
16 Q. Were you involved in the
17 decision-making process as to these changes to
18 the policy on firearms and weapons?
19 A. I was.
20 Q. And can you explain to me the
21 reason the contact/cover rule was added to the
22 policy?
23 A. I can't. I don't -- I didn't add
24 that to the policy. I believe Deputy Davis might

00045

1 have.
2 Q. But do you have an understanding of
3 what the reason was?
4 A. I assume to clearly articulate the
5 training and the policy.
6 Q. Do you know whether it was added in
7 response to what Mr. Ijames stated in his report
8 and based on what occurred on January 5th
9 regarding the shooting of Mr. Stamps?
10 A. I don't know 'cause I didn't add
11 it.
12 Q. I'm sorry.
13 A. I didn't add that, so, you know, I
14 don't know it.
15 Q. But you were involved with the
16 decision on the off safety --
17 A. Yes.
18 Q. -- issue?
19 A. Yes.
20 Q. You were directly involved in that?
21 A. I was.
22 Q. Now, the meeting occurred on
23 September 21, 2011 -- is that correct? --
24 A. Yes.

00046

1 Q. -- the meeting we've been
2 discussing --
3 A. Yes.
4 Q. -- with Stuart and Downing and the
5 chief and the deputy chief, right?
6 A. Yes.
7 Q. And Lieutenant Michael Hill was
8 involving in doing an internal review of
9 narcotics investigation and officer involved
10 shooting at 26 Fountain Street on January 5,
11 2011; is that correct?
12 A. Yes.
13 Q. And who's Lieutenant Michael Hill
14 and what is his -- what are his primary
15 responsibilities, if you know?
16 A. His primary responsibility

17 currently is fishing and relaxing because he's
18 retired.

19 Q. Back on May 31, 2011.

20 A. He was the commander of the Bureau
21 of Internal Affairs, so he was in charge with
22 conducting internal affairs and professional
23 standards investigations.

24 Q. Was he aware of the -- the Ijames

00047

1 report was August of 2011; is that right?

2 A. I think so.

3 Q. Okay. And this report is May of
4 two thousand -- let me just mark this as an
5 exhibit.

6 (Exhibit No. 35 was marked
7 for identification.)

8 Q. (By Mr. Musacchio) Sir, I present
9 to you what's been marked as Exhibit 35. Can you
10 describe what that document is?

11 A. This is Lieutenant Hill's report.

12 Q. This is an Internal Affairs Report
13 relating to the shooting of Mr. Stamps; is that
14 right?

15 A. Yes, sir.

16 Q. Have you seen that document before?

17 A. Yes, sir.

18 Q. So let's get the sequence of time
19 here. September 11th you have the meeting.
20 Let's go back.

21 So September 11th you had the
22 meeting, correct, to discuss --

23 A. September 21st.

24 Q. September 21st. And that was in

00048

1 relation to the August 8, 2011, Ijames report; is
2 that correct?

3 A. Yes.

4 Q. And the Internal Affairs Report is
5 date May 31, 2011, so that's obviously well
6 before the September meeting and the August
7 Ijames report; is that correct?

8 A. It sure is.

9 Q. Now, I'm going to represent to you
10 that there's no mention in the Internal Affairs
11 Report of any of the opinions that were formed by
12 Mr. Ijames. Is that consistent with your
13 knowledge?

14 A. Yes.

15 Q. Was the Internal Affairs Report
16 ever amended to express any of the opinions that
17 Mr. Ijames had about the incident?

18 A. No.

19 Q. Do you know why that didn't occur?
20 A. Yes.
21 Q. Why?
22 A. The Internal Affairs Report is
23 regarding violations of rules, regulations,
24 policies or procedures, and the Ijames report

00049

1 deals with different things.
2 Q. Well, the Ijames report discussed
3 that what Officer Duncan should have done was to
4 institute the contact/cover rule; isn't that
5 correct?
6 A. One of the things he could have
7 done.
8 Q. Yes, one of the things he could
9 have done. And that was part of the police
10 training that Mr. Duncan received prior to
11 January 5, 2011?
12 A. I'm sure that he received
13 contact/cover training in the basic recruit
14 academy, and I assume, based on what Stuart and
15 Downing say, that he received it as part of SWAT
16 training.
17 Q. Prior to January 5th?
18 A. Prior to January -- right, yes?
19 Q. So if he didn't institute the
20 contact/cover rule --
21 A. Right.
22 Q. -- that could be perceived as a
23 violation of a practice or policy or procedure of
24 the training; is that correct?

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1 A. It could be perceived as a
2 violation of training, not policy or procedure,
3 rule or regulation.
4 Q. Do you have any -- what is -- is
5 that -- what is the reason why Steven Ijames's
6 opinion about the failure to conclude -- strike
7 that.
8 What is the reason why Officer
9 Stuart's and Lieutenant Downing's opinion that
10 Officer Duncan should have used the contact/cover
11 procedure never made it into the -- an amendment
12 to the Internal Affairs Report?
13 A. Because the Internal Affairs
14 Report -- the internal affairs investigation is
15 conducted to identify a violation of rules, in
16 other words, the rules and regulations of the
17 Framingham Police Department or the policies and
18 procedures of the Framingham Police Department or
19 the law, and those are written documents that are
20 published and promulgated.

21 The Ijames's report in my opinion
22 discusses a violation of training, a violation of
23 how Duncan was trained and that's different
24 from -- it's outside the scope, I guess, of the

00051

1 internal affairs investigation.

2 Q. Well, was the purpose of the
3 internal affairs investigation to determine,
4 what, if anything, Officer Duncan did wrong?

5 A. The purpose of the internal affairs
6 investigation was to determine if there was any
7 violation of promulgated and published rules,
8 regulations, policies or procedures.

9 Q. Not training?

10 A. Not training.

11 Q. And who drew that sharp delineation
12 between policies and procedures that are written
13 and what an officer learns in training as a
14 distinction? Where does that come from?

15 A. I think it would come from what --
16 the department requirements for an internal
17 affairs investigation, the manifest purpose of an
18 internal affairs investigation. Um --

19 Q. So -- are you done?

20 A. Yes.

21 Q. So what you're saying is if the
22 contact/cover rule had been written into a
23 particular policy prior to January 5, 2011,
24 Officer Stuart's opinion, Officer Downing's

00052

1 opinion that Duncan deviated from that procedure
2 would have made its way into the Internal Affairs
3 Report?

4 MR. DONOHUE: Objection.

5 A. Yes.

6 Q. And the only reason it's not in the
7 Internal Affairs Report is 'cause it wasn't a
8 written procedure at the time?

9 A. It was not a policy, procedure,
10 rule or regulation, yes, at the time.

11 Q. It was something that was trained
12 to the officer but had never been written down?

13 MR. DONOHUE: Objection.

14 Q. Prior to January 5. I think you've
15 already testified to that.

16 A. I don't know whether it was written
17 down, but it wasn't a policy, procedure, rule or
18 regulation.

19 Q. Fair enough. But it was trained?

20 A. Yes.

21 Q. Just bare with me for a minute.

22 These are some new documents that I'm looking at

23 that I may want to ask some questions about, but
24 I may not.

00053

1 MR. DONOHUE: If you do, can I get
2 a copy of them?

3 MR. MUSACCHIO: Yeah.
4 (Discussion off the record.)

5 MS. MUSACCHIO: Can you mark this
6 as Exhibit 36?

7 (Exhibit No. 36 was marked
8 for identification.)

9 Q. (By Mr. Musacchio) Now, sir, I've
10 showed you what's been marked as Exhibit No. 36.
11 Do you have that with you?

12 A. Yes.

13 Q. And that's the policy on search and
14 seizure --

15 A. Yes.

16 Q. -- effective date July 1, 2003. So
17 this was the policy that was in effect on
18 January 5, 2011; is that correct?

19 A. Yes.

20 Q. If you could go to Page 9.
21 Actually, before Page 9. Let me -- oh, go to
22 Page 5. There's two headings on Page 5,
23 "Executing Search Warrants" and "Service of
24 Search Warrants," do you see that?

00054

1 A. I do.

2 Q. And if you go to Page 9, there's a
3 heading 8, "Search of Persons on Premises," and
4 am I correct that what these sections are about
5 is -- what that Section 8 is about, "Search of
6 Persons on the Premises," is search of persons on
7 the premises during the execution of a search
8 warrant; is that correct?

9 A. That is correct.

10 Q. And under heading "a" it states
11 that, "In order to ensure an orderly and safe
12 search, all persons present on the premises when
13 the police arrive may be detained and prevented
14 from moving about." Did I read that correctly?

15 A. Yes.

16 Q. And you agree with that, right,
17 that they can be detained from moving about?

18 A. Yes.

19 Q. And the law permits an officer to
20 do that, correct?

21 A. Yes.

22 Q. "However, at least one of the
23 occupants should be permitted to witness all
24 aspects of the search, if this is practical under

00055

1 the particular circumstances." Did I read that
2 correctly?

3 A. You did.

4 Q. And you agree with that, right?

5 A. Yes.

6 Q. Under Subsection b it states,
7 "Persons not named in or referred to in the
8 search warrant may not be searched unless either:
9 1. Probable cause exists in regard to the
10 individual to be searched (however mere presence
11 at a location where criminal activity has taken
12 place is not enough to constitute probable
13 cause)." Did I read that correctly?

14 A. You did.

15 Q. So is it your understanding of the
16 law and in the practice of the Framingham Police
17 Department that just because there's probable
18 cause to search an individual that does not give
19 probable cause to search any other person on the
20 premises; is that correct?

21 A. Yes.

22 Q. The policy also states, "Persons
23 not named in or referred to in the search warrant
24 may not be searched unless: 2. The officer has

00056

1 reasonable suspicion to believe that such person
2 is armed and then he/she may be frisked for
3 weapons." Did I read that correctly?

4 A. You did.

5 Q. And that's your -- do you agree
6 that that's what the law requires?

7 A. Yes.

8 Q. And that was the policy of the
9 Framingham Police Department at the time; is that
10 correct?

11 A. Yes.

12 Q. So in this circumstance when the
13 Framingham Police Department entered 26 Fountain
14 Street, they had probable cause to search the
15 targets of the search named in the warrant and
16 that's Mr. Bushfan and Mr. Dwayne Barrett; is
17 that correct?

18 A. Yes.

19 Q. The officer could search any person
20 who had -- in which the officer had, quote,
21 reasonable suspicion to believe that that person
22 is armed and dangerous; is that correct?

23 A. No.

24 Q. Why is that incorrect?

00057

1 A. They had the ability to frisk them
2 for weapons, that's different than a search in my
3 opinion.

4 Q. Okay, okay. So you agree that the
5 Framingham police officers who were in 26
6 Fountain Street if they had reasonable suspicion
7 to believe that a particular person is armed,
8 then they may do a frisk for weapons; is that
9 correct?

10 A. Yes.

11 Q. And that's consistent with the law
12 as you understand it?

13 A. Yes.

14 Q. And that's Framingham Police
15 Department procedure; is that correct?

16 A. Yes.

17 Q. Now, I want you to go back to
18 Lieutenant Michael Hill's Internal Affairs
19 Report.

20 A. Mm-hmm.

21 Q. And I want you to turn to Page 16.
22 By the way, did you review this Internal Affairs
23 Report after -- before it was issued?

24 A. No, I didn't.

00058

1 Q. Did you review it afterwards?

2 A. Yes.

3 Q. Okay. On Page 16, the last
4 paragraph, and they're talking -- and officer
5 Hill is talking specifically about the execution
6 of the search warrant on 26 Fountain Street, and
7 in the last paragraph he states, "The search
8 warrant did not authorize a search of all persons
9 present." That's correct, right?

10 A. Yes.

11 Q. I mean, when I say correct, that's
12 factually correct, right?

13 A. Yes.

14 Q. Okay. "The officers were in
15 compliance with the law and our policy to detain
16 those present and keep them from moving about."
17 You agree with that, right?

18 A. Yes.

19 Q. "Also, by case law and our Search
20 and Seizure Policy, they were authorized to pat
21 frisk people present for weapons for safety
22 reasons." Do you agree with that statement?

23 A. Yes.

24 Q. But the policy -- if you look back

00059

1 at the policy, Mr. Hill states in the report that
2 the officers were authorized to pat frisk people

3 present for weapons for safety reasons. The
4 policy doesn't state that, does it? The policy
5 states if the officer has reasonable suspicion to
6 believe that such person is armed they may
7 conduct a pat frisk; is that correct?

8 MR. DONOHUE: Objection.

9 A. That is correct.

10 Q. Okay. So it's incorrect to say
11 that the policy, search and seizure policy,
12 authorizes a pat frisk of persons simply because
13 they're present on the premises?

14 MR. DONOHUE: Objection.

15 A. So -- could I have the question
16 again?

17 Q. Okay. Lieutenant Hill states that,
18 "By case law and our Search and Seizure Policy,
19 the officers were authorized to pat frisk people
20 present for weapons and for safety reasons." He
21 fails to include in there that you need
22 reasonable suspicion to do that; is that correct?

23 A. Yes.

24 Q. Okay. And is it your understanding

00060

1 of the policy and practices of the Framingham
2 Police Department and the law that the mere fact
3 that somebody was present at the execution of the
4 search warrant at 26 Fountain Street does not
5 give an officer a -- does not permit the officer
6 to pat frisk them unless they have reasonable
7 suspicion that they're armed?

8 MR. DONOHUE: Objection.

9 A. Yes.

10 Q. So would you agree that Lieutenant
11 Hill's statement that they were authorized to pat
12 frisk people present for weapons for safety
13 reasons is not consistent with the policy?

14 A. I would disagree.

15 Q. Why?

16 A. Because I believe they had
17 reasonable suspicion.

18 Q. Okay. But I'm just talking about
19 that statement.

20 A. What was the statement again?

21 Q. The statement, "By case law and our
22 Search and Seizure Policy, they were authorized
23 to pat frisk people present for weapons for
24 safety reasons."

00061

1 Are you saying that they are
2 authorized to pat frisk somebody who they don't
3 have reasonable suspicion --

4 A. No.

5 Q. -- is carrying a weapon?
6 A. No.
7 Q. You're not saying that?
8 A. Right.
9 Q. The correct policy is that you can
10 only search somebody who's present at the scene
11 of a search warrant execution who is not named in
12 the search warrant only if there's reasonable
13 suspicion to believe that they're armed; is that
14 correct?

15 MR. DONOHUE: Objection.

16 A. Yes.

17 Q. Okay. Now, he then goes on to
18 state, [REDACTED] n

19 [REDACTED]
20 [REDACTED]
21 Is that factually correct to your
22 knowledge?

23 A. [REDACTED]
[REDACTED]

00062

1 [REDACTED] --

2 Q. Correct.

3 A. -- think that there was. I think
4 there was sufficient information. I believe that
5 to be true.

6 Q. Correct. Then he then goes on to
7 state, "I believe that the analysis that should
8 be applied is not whether or not there was
9 reasonable suspicion that a specific person in
10 the house may be carrying weapons, but rather it
11 should apply to the whole situation. Clearly if
12 Barrett or Bushfan had weapons in the house,
13 anyone there could have access to them." Do you
14 agree with that as a statement of policy and
15 procedure and law?

16 MR. DONOHUE: Objection.

17 A. Yes.

18 Q. So is it your testimony that the
19 Framingham Police Department permitted its
20 officers to pat frisk for weapons anybody present
21 at a search warrant if [REDACTED]
22 [REDACTED]
23 [REDACTED]

24 A. I believe that in this case under

00063

1 these circumstances with these facts that they
2 had the right to do a pat frisk.

3 Q. So it's your testimony that an
4 officer doesn't have to have reasonable suspicion
5 that Mr. Stamps was armed and dangerous as long
6 as they have reasonable suspicion or probable

7 cause to [REDACTED]

8 [REDACTED]
9 A. No, I believe they have to have
10 individual suspicion that the person who they're
11 searching may have a weapon.

12 Q. Correct. And the mere fact that
13 some other person [REDACTED]

14 [REDACTED]
15 [REDACTED]
16 [REDACTED] that doesn't give a police officer
17 authority to search every other person on the
18 premises for weapons, does it?

19 A. Not in and of itself.

20 Q. Not in and of itself. There could
21 be circumstances in which that might be
22 permitted?

23 A. Yes.

24 Q. But as a general policy of the

00064

1 Framingham Police Department, as I understand
2 your testimony, is that you have to have
3 reasonable suspicion that the particular person
4 that you're searching for weapons, there has to
5 be reasonable suspicion that they have a weapon?

6 A. Yes.

7 Q. And the mere fact that somebody
8 else [REDACTED]

9 [REDACTED]
10 [REDACTED] does not give
11 authority to the officer to search everybody else
12 on the premises for weapons; is that correct?

13 MR. DONOHUE: Objection.

14 A. In and of itself, no.

15 Q. In and of itself, no. It doesn't
16 give authority to do that?

17 A. Correct.

18 Q. So they don't have authority under
19 the plain language of the policy to search
20 everybody else, correct?

21 MR. DONOHUE: Objection.

22 A. Just simply based on the fact that
23 one person might have a weapon.

24 Q. Doesn't give them reasonable

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1 suspicion to search everybody on the premises; is
2 that correct?

3 A. Not without additional facts and
4 circumstances.

5 Q. As to that particular person who's
6 being searched?

7 A. Not necessarily.

8 Q. Well, the mere fact that somebody

9 on the premises may have weapons does not provide
10 reasonable suspicion that the person being
11 searched has a weapon. Strike that.

12 Let's just -- we'll go back. You
13 agree with me that when an officer enters a
14 premises and [REDACTED]

17 A. Mm-hmm.

18 Q. And that say that there's two or
19 three other people on the premises when the
20 police execute the warrant. [REDACTED]

[REDACTED]
24 does not give the police officer under
your policies and procedures the right to search

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1 the other people on the premises unless the
2 police officers have reasonable suspicion that
3 they're carrying a weapon; is that correct?

4 A. No.

5 Q. Then what's your understanding of
6 what the policy means?

7 A. If they have reasonable suspicion
8 that the person may have access to a weapon or
9 there are weapons in the house that may be within
10 reach or accessible, then they would have
11 reasonable suspicion to search others.

12 Q. So it's your testimony that the
13 policy that the Framingham Police Department had
14 if they have reason to believe that there's
15 weapons in the premises --

16 A. Mm-hmm.

17 Q. -- b [REDACTED]

21 A. If they have a reasonable suspicion
22 that that person who they want to search and is
23 not named in the search warrant and has access to
24 a weapon or has some ability to arm himself or

00067

1 herself, then they would have reasonable
2 suspicion to conduct a frisk of that person.

3 Q. But the reasonable suspicion has to
4 relate to that individual person; is that
5 correct?

6 A. Yes.

7 Q. Okay. I think you mentioned the
8 name of a course in which the contact/cover rule
9 is taught. Do you remember what the name of that
10 course is?

11 A. It's called Applied Patrol
12 Procedures.
13 Q. And is that conducted by the
14 Framingham Police Department?
15 A. No.
16 Q. Who's that conducted by?
17 A. The Municipal Police Training
18 Committee -- Training Council.
19 Q. And did the Framingham Police
20 Department officers receive training from them?
21 A. It's received as part of the police
22 academy.
23 Q. Part of the police academy. So all
24 Framingham Police Department -- officers would

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1 have been taught the contact and cover rule at
2 the police academy; is that correct?
3 A. Yes, that's correct.
4 Q. And it's also part -- I think you
5 also mentioned it's part of the SWAT team
6 training as well?
7 A. I don't have personal firsthand
8 knowledge of that, but from what I hear and
9 understand, yes.
10 Q. Now, do you recall -- do you have
11 any knowledge of any specific training that
12 occurred after the Stamps shooting that related
13 specifically to that event?
14 A. Yes.
15 Q. Okay. Can you explain or describe
16 that for me, please?
17 A. When the policy was changed
18 regarding the selector switch and the rule was
19 implemented safe until ready to shoot, officers
20 received training regarding that change.
21 Q. What about the contact/cover rule?
22 A. Not to my knowledge.
23 Q. Now, Officer Duncan was disciplined
24 as a result of the shooting. He was removed from

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1 the SWAT team as a result of the shooting; is
2 that correct?
3 MR. DONOHUE: Objection.
4 A. He wasn't disciplined, that's
5 incorrect.
6 Q. Was he removed?
7 A. He was removed, that is correct.
8 Q. And do you have any understanding
9 of the reason he was removed?
10 A. Because of his involvement in this
11 incident.
12 Q. And what specifically about his

13 involvement in the incident that led to his
14 removal?

15 A. I don't know.

16 Q. Were you involved in that decision?

17 A. I was not.

18 Q. Who was?

19 A. Deputy Chief Davis and I believe
20 Chief Carl.

21 Q. Okay. What about Sergeant Downing,
22 would he have been involved? Lieutenant Downing.

23 A. I don't believe so.

24 Q. Now, you mentioned that you're a

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1 special, a special police officer?

2 A. That's correct.

3 Q. Now, your training that you receive
4 as a special police officer is different than
5 what the standard police officer receives in
6 Framingham, right?

7 A. I believe all the same courses and
8 all the same topics are covered. All the same
9 instruction is given regarding the various
10 aspects of the job.

11 Q. Is your actual -- do you go through
12 the whole police academy program?

13 A. I go through a police academy, but
14 the academy I attended, and this is going back 20
15 years, was, or even longer, was -- it's called
16 the Reserve Intermittent Police Academy which to
17 the best of my knowledge contains all the same
18 subject material as the regular police academy.
19 The only thing that's omitted is drill and
20 ceremony and marching and things of that nature.

21 Q. Now, in terms of your time at the
22 Framingham Police Department, was your training
23 as a special officer different than the training
24 that is received, you know, routinely by other

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1 officers?

2 MR. DONOHUE: Objection.

3 A. Other police officers or SWAT
4 officers?

5 Q. The regular standard patrol
6 officers.

7 A. Yes.

8 Q. Okay. How's it different?

9 A. They would have attended classes
10 on, for example, operating a breathalyzer or
11 using a LiDAR or a radar gun and certain -- those
12 types of things that were connected to duties
13 that they performed that I don't perform.

14 Q. All right. And what about other

15 aspects of patrol like search and seizure,
16 handling of weapons and things, do you receive
17 training that's different than what they receive
18 or less than what they receive?

19 A. The training on search and seizure
20 I give, so, 'cause it's a legal issue. Defensive
21 tactics, for example, they would receive
22 defensive tactics training that I wouldn't
23 receive.

24 Q. And what other training would they

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1 receive that you wouldn't receive?

2 A. They receive I believe training on
3 the ASP baton, the expandable baton, that I
4 wouldn't receive because I don't carry one.

5 Q. Standard surveillance practices,
6 things like that?

7 A. I don't believe we've had training
8 on surveillance practices.

9 Q. Just tell me everything that you
10 can recall that other officers receive but that
11 you would not receive for training in your
12 capacity as a special officer?

13 A. It's hard for me to answer that
14 'cause I'm not really sure of the training that
15 they receive because I don't receive it, so.
16 There may be trainings that they get that I'm not
17 aware of, so, you know.

18 My training is more or less like
19 the basic rudimentary requirements of a police
20 officer, more of the fundamental things, and they
21 may have more training on things that they do
22 that I don't do, such as running the breathalyzer
23 or a LiDAR gun or a radar gun or things like that
24 or a particular weapon that they might carry,

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1 like an ASP baton, that I don't carry.

2 My academy training was basic
3 police academy training, motor vehicle stops,
4 patrol procedures, the law, suicide prevention,
5 crisis intervention, dealing with mental illness,
6 defensive tactics, arrest procedures, things like
7 that. And the things that were omitted from my
8 reserve academy would be things such as drill and
9 ceremony, emergency vehicle driving. It doesn't
10 have like a running component, things of that
11 nature, but it's what's required by the training
12 council to be certified as a police officer.

13 So beyond that there's in-service
14 training that's given on different topics.
15 Sometimes I might attend in-service training
16 depending on the topic and sometimes I might not.

17 And again, it depends on sort of what the -- what
18 sort of the topic is. You know, that's sort of
19 the best answer I can give you, I guess.
20 Q. Okay. Fair enough. Tony?
21 I have no further questions. Thank
22 you for coming in.
23 MR. DONOHUE: Thanks for coming in.
24 THE VIDEOGRAPHER: This concludes

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1 the deposition of Brian E. Simoneau. The number
2 of tapes used was one. We are off the record at
3 11:44 a.m.
4 (Deposition concluded at 11:44 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 BRIAN
7 SIMONEAU, who appeared before me, satisfactorily
8 identified himself, and was by me duly sworn,
9 taken at the place and on the date hereinbefore
10 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, 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 BRIAN SIMONEAU 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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