

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 1:12-cv-11908-FDS

* * * * *

EURIE A. STAMPS, JR. AND NORMA *
BUSHFAN STAMPS, Co-Administrators *
of the Estate of Eurie A. Stamps, *
Sr., *

Plaintiffs *

vs. *

THE TOWN OF FRAMINGHAM, AND PAUL *
K. DUNCAN, individually and in *
his Capacity as a Police Officer *
of the Framingham Police *
Department, *

Defendants *

* * * * *

VIDEOTAPED DEPOSITION OF CRAIG W. DAVIS

Kreindler & Kreindler LLP

277 Dartmouth Street

Boston, Massachusetts

October 3, 2013 10:09 a.m.

Maryellen Coughlin, RPR/CRR

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: Christopher Coughlin

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1 I N D E X

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3 WITNESS: CRAIG W. DAVIS

4 EXAMINATION: Page

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6

7 EXHIBITS FOR IDENTIFICATION:

8 No. Description Page

9 37 1/6/11 Interview of Deputy Chief 19
10 Craig Davis (STAMPS 000364 - 386)

11 38 Copy of 1/4/11 text message 23
12 (STAMPS 003982)

13 39 Criminal record search (STAMPS 33
14 000528 - 546)

15 40 Town of Framingham Policy on SWAT 76
16 Team #100-23

17 41 Town of Framingham Policy on Use 80
18 of Force #100-4

19 42 Supreme Court Decision Graham Vs. 82
20 Connor

21 43 Notes prepared by Deputy Chief 88
22 Craig Davis

23 44 List of SWAT activations from 94
24 12/06 to 12/2/10

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 October 3, 2013, and the time is 10:11
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., 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 No. 1:12-cv-11908.

18 The deponent is Deputy Chief Craig
19 Davis. Will counsel please identify yourselves
20 for the record.

21 MR. MUSACCHIO: Yes, my name is
22 Joseph Musacchio, and I represent the plaintiff
23 Eurie Stamps, Jr., the administrator --
24 co-administrator of the Estate of Eurie Stamps,

1 Sr.

2 MR. KESTEN: My name is Leonard
3 Kesten and I represent the defendants.

4 THE VIDEOGRAPHER: Thank you. Will
5 all others present please state your names?

6 MS. GRAZIANO: My name is Christina
7 Graziano. I'm a law clerk for the plaintiff.

8 MS. SHARP: Lucille Sharp,
9 paralegal with the plaintiffs.

10 THE VIDEOGRAPHER: Thank you. The
11 court reporter is Maryellen Coughlin, and she
12 will now swear in the witness.

13

14 CRAIG W. DAVIS,
15 having been first duly sworn, was examined
16 and testified as follows:

17

18 EXAMINATION

19 BY MR. MUSACCHIO:

20 Q. Good morning, Mr. Davis.

21 A. Good morning.

22 Q. Could you please just state your
23 name for the record?

24 A. Sure. It's Craig Davis.

1 Q. And what is your present address?

2 A. My work address or home address.

3 Q. Home address?

4 A. [REDACTED]

5 [REDACTED]

6 Q. And where are you presently
7 employed?

8 A. The Town of Framingham Police
9 Department.

10 Q. And what is your position at the
11 police department?

12 A. Deputy police chief.

13 Q. And how long have you been deputy
14 police chief for the Town of Framingham?

15 A. For approximately 12 years.

16 Q. And how long have you been a police
17 officer or any other type of law enforcement
18 personnel employed by the Town of Framingham?

19 A. For approximately 28 years.

20 Q. And prior to being deputy chief for
21 the past 12 years, what was your position with
22 the Framingham Police Department?

23 A. Police captain.

24 Q. And how long were you police

1 captain?

2 A. Six months.

3 Q. And prior to that?

4 A. A police Lieutenant.

5 Q. And how long were you a police

6 Lieutenant?

7 A. Approximately five years.

8 Q. And this was all with the

9 Framingham Police Department?

10 A. Yes, it is.

11 Q. And prior to being a police

12 lieutenant, what was your position with the

13 police department in Framingham?

14 A. Police Sergeant.

15 Q. And how long were you a police

16 sergeant, approximately?

17 A. Approximately six years.

18 Q. And prior to that?

19 A. A patrol officer, detective.

20 Q. And for how long were you a patrol

21 officer or a detective?

22 A. I believe five years.

23 Q. And all that totals 28 years with

24 the Framingham Police Department, correct?

1 A. That's correct.

2 Q. Just one simple rule for the
3 benefit of the stenographer. Even though you
4 know what the answer to my question is going to
5 be before I finish it and you want to answer it,
6 let me finish my question before you answer so
7 she doesn't have to -- 'cause she has to take
8 down everything that's being said.

9 A. Sure.

10 Q. It just makes it easier for her,
11 okay.

12 Before being affiliated with the
13 Framingham Police Department, were you a police
14 officer in any other law enforcement agency?

15 A. Yes, I was.

16 Q. And what agency was that and what
17 position did you hold?

18 A. I was an inspector with the United
19 States Custom Service for two years, and prior to
20 that I was a summer police officer for the Town
21 of Situate for approximately five months.

22 Q. Can you briefly describe for me
23 your educational background?

24 A. I have a bachelor of science degree

1 in criminal justice from Northeastern University
2 in Boston. I have a graduate degree in public
3 administration from Framingham State University,
4 Framingham.

5 Q. And where did you go to high
6 school?

7 A. Framingham North High School.

8 Q. Now, in addition to being deputy
9 chief, you're the commanding officer of the SWAT
10 team; is that correct?

11 A. That's correct.

12 Q. And what are your duties and
13 responsibilities as a commanding officer of the
14 SWAT team?

15 A. The selection of personnel, the
16 procurement of equipment, the determination of
17 missions, the overall structure and command and
18 control of the SWAT team, personnel selection.

19 Q. And how long have you been
20 commander of the SWAT team?

21 A. For approximately 13 years.

22 Q. And is that the entire term of the
23 existence of the Framingham SWAT team?

24 A. Yes, it is.

1 Q. So since the inception of the
2 Framingham SWAT team, you have been its
3 commanding officer?

4 A. Yes.

5 Q. Are you involved in any actual
6 day-to-day training of the SWAT team?

7 A. Currently?

8 Q. Currently.

9 A. No.

10 Q. What about back on January 5, 2011?

11 A. No.

12 Q. At some point you were, though?

13 A. Yes.

14 Q. For what years were you involved in
15 the training of the SWAT team?

16 A. From its inception, year 2000, to
17 approximately 2008 or '09.

18 Q. Now, when you were involved with
19 the training of the SWAT team, did you have any
20 written training materials that you used?

21 A. Yes.

22 Q. Okay. Can you describe what those
23 training materials were?

24 A. Some of those training materials

1 were manuals from courses that I had attended.

2 Q. And those manuals -- calling your
3 attention to January 5, 2011, during the time
4 that the SWAT team was being trained prior to
5 that day, were there written manuals that were
6 being used to assist in the training of the team?

7 A. For the day-to-day training?

8 Q. Yes.

9 A. I can't answer that.

10 Q. So when were -- so what time period
11 were the manuals, these training manuals that you
12 refer to, these written materials, when were
13 they -- what period of time were they used in the
14 training of the SWAT team?

15 A. I had training manuals from courses
16 I had attended, and I don't remember the dates at
17 the moment, but that was sort of the backbone of
18 the curriculum that I had used. I had also used
19 written materials from the National Tactical
20 Officers Association, a national group. There
21 are guidelines, training guidelines.

22 Q. But you can't recall the years in
23 which those materials were used?

24 A. No.

1 Q. And do you know whether or not
2 those materials were being used prior to January
3 5th -- let's say in the year prior to January 5,
4 2011?

5 A. I can't say that the actual
6 materials were used as a written document, but
7 the guidelines and philosophies that stemmed from
8 those training courses and stemmed from those
9 written documents and training manuals were being
10 implemented.

11 Q. And were those written documents
12 physically present at the Framingham Police
13 Department?

14 A. Yes.

15 Q. And those documents that you
16 referred to are different than the police
17 protocols that relate to, for example, search and
18 seizure or the SWAT team or weapons and firearms,
19 the police protocols? Do you understand what I
20 mean when I say the Framingham police protocols?

21 A. Yes, I do.

22 Q. And those training materials that
23 you referred to were different than those
24 protocols; is that right?

1 A. That's correct. Can I clarify?
2 Protocols, you mean policies and procedures?

3 Q. Yes.

4 A. Yes.

5 Q. And I'll show you some of them
6 today.

7 Were you aware that the plaintiffs
8 in this case requested all training manuals and
9 written procedures that were used in the training
10 of the SWAT team at the Framingham Police
11 Department?

12 A. I had supplied anything that was
13 requested of me through counsel.

14 Q. Are you aware that we have not
15 received any of those training materials, the
16 written materials that you just referred to?

17 A. No, I'm not.

18 Q. Do you recall being asked to
19 produce them?

20 MR. KESTEN: Don't answer that.

21 MR. MUSACCHIO: I'm sorry.

22 MR. KESTEN: Don't answer that.

23 MR. MUSACCHIO: Okay.

24 MR. KESTEN: Attorney/client. It's

1 attorney/client.

2 Q. (By Mr. Musacchio) Now, Lieutenant
3 Downing, his relationship to the SWAT team. He
4 was called a team leader; is that correct?

5 A. He was the executive officer.

6 Q. Can you describe the duties and
7 responsibilities of the executive officer of the
8 SWAT team?

9 A. Yeah, he had taken over the
10 day-to-day training responsibilities. He was
11 instrumental in formulating the tactile operation
12 plans during the missions; the oversight and
13 direct supervision of personnel.

14 Q. And what does the team leader mean
15 to you, does that mean anything in terms of
16 relationship to the SWAT team?

17 A. Yeah, the team leader is the person
18 that puts the tactile operation plan into effect,
19 but they're also involved with the day-to-day
20 operations, the supervision and the training
21 aspects of the team.

22 So we have a team leader and then
23 sort of a senior team leader, which Lieutenant
24 Downing would be, but his title is really

1 executive officer of the team, but it's
2 interchangeable with senior team leader.

3 Q. And as of January 5, 2011, he was
4 the primary person responsible for the training
5 of the SWAT team; is that correct?

6 A. Yes.

7 Q. And what was Sergeant Vincent
8 Stuart's position with the SWAT team?

9 A. He was the team leader.

10 Q. And he was also involved in the
11 training of the SWAT team; is that correct?

12 A. Yes, he was.

13 Q. In terms of the command or the
14 hierarchy of the SWAT team, am I missing anybody
15 else who was other than just a member of the SWAT
16 team? Am I missing anybody that had any kind of
17 title?

18 A. We have assistant team leaders.
19 It's presently Ken Blass. And I don't recall who
20 was the assistant team leaders on that particular
21 date, but we do have assistant team leaders.

22 Q. And what are their duties and
23 responsibilities?

24 A. Their duties on a tactical

1 operation plan are the actual movements in and
2 around the structure. They can take a element of
3 the team -- by element of the team, I mean
4 generally we break the team up in different
5 segments. Maybe a half of a team will go to one
6 side of the house, another team will go to
7 another half. So each one of those elements has
8 a supervisor, a team leader. So the assistant
9 team leader, his responsibilities aren't as,
10 aren't as much as the full team leader.

11 Q. Okay. You understand that we're
12 here today to discuss your involvement in the
13 planning the execution of a search warrant at 26
14 Fountain Street on January 5, 2011?

15 A. Yes.

16 Q. And you understand that Eurie
17 Stamps was killed in his home during the
18 execution of that search warrant by a bullet
19 fired from the weapon of Officer Paul Duncan?

20 A. Yes.

21 Q. In preparation for your deposition,
22 did you review the transcript of the interview
23 you gave to the Massachusetts State Police on or
24 about January 6, 2011, concerning your

1 involvement in that search warrant?

2 A. Yes.

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

5 A. Yesterday.

6 Q. And had you reviewed it at any time
7 prior to that?

8 A. Yes.

9 Q. And when did you review it?

10 A. Shortly after it was documented.

11 Q. So after it was transcribed, you
12 received a copy of it and you read it?

13 A. Yes.

14 Q. And since the time that you first
15 read it, was the next time you saw it was
16 yesterday in preparation of your deposition? If
17 you know.

18 A. No, I don't know.

19 Q. You don't know. So it's possible
20 you may have reviewed it at other times prior to
21 reading it in preparation of your deposition and
22 other than the time that you first saw it when it
23 was transcribed?

24 A. Yes.

1 Q. And do you know what the occasions
2 were when you would have read it, why you would
3 have read it?

4 A. Just my own review.

5 Q. Did you review it in relationship
6 to any internal affairs report that was being
7 prepared?

8 A. I don't believe so.

9 MR. MUSACCHIO: Can we mark this as
10 Exhibit 37, please?

11 (Exhibit No. 37 was marked
12 for identification.)

13 Q. (By Mr. Musacchio) Mr. Davis, I'm
14 going to show you what's been marked as
15 Exhibit No. 37 and ask you if you can identify
16 this?

17 A. Yes.

18 Q. And what is that?

19 A. It appears to be a transcript of my
20 interview with I believe Detective Sullivan from
21 the state police, Detective Lieutenant Sullivan.

22 Q. And this interview was conducted
23 pursuant to the involvement of the Massachusetts
24 State Police in the homicide investigation

1 relating to the shooting of Mr. Stamps; is that
2 correct?

3 A. Yes.

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

7 A. Yes.

8 Q. What did you review?

9 A. I reviewed the After Action Report
10 that I had prepared after the events of that
11 evening. I had reviewed a report prepared by
12 Steven Ijames.

13 Q. Anything else?

14 A. No.

15 Q. Did you discuss your deposition
16 with Officer Paul Duncan prior to coming here
17 today?

18 A. No.

19 Q. He's still on the force; is that
20 correct?

21 A. That's correct.

22 Q. And what is his position on the
23 force today?

24 A. A patrol officer.

1 Q. Did you discuss your deposition
2 with any other law enforcement personnel employed
3 by the Town of Framingham?

4 A. Yes.

5 Q. Who did you discuss it with?

6 A. Lieutenant Robert Downing.

7 Q. And what was the nature of your --
8 what was the substance of your discussion with
9 Lieutenant Downing regarding your deposition here
10 today?

11 A. Just in general terms what to
12 expect.

13 Q. And what did he tell you?

14 A. He said expect to be here for about
15 two hours, be asked about my After Action Report,
16 and that was pretty much it.

17 Q. That was the extent of the
18 substance of the conversation?

19 A. Yes. And we talked about many
20 other things, not just this, but I spoke to him
21 on my drive over here this morning.

22 Q. Not about this deposition, though?

23 A. About many other things but to
24 include this deposition, yes.

1 Q. And what did you talk about on the
2 way over here today with Lieutenant Downing
3 regarding the deposition?

4 A. I asked him what I should expect.

5 Q. Okay. So that's the conversation
6 you had with him --

7 A. Yes.

8 Q. -- what you could expect, and he
9 told you that you could expect to be --

10 A. -- here about two hours, and that I
11 should review my After Action Report and that was
12 it.

13 Q. Did he discuss the substance of his
14 testimony with you at any time?

15 A. No.

16 Q. Okay. Did you talk -- other than
17 Lieutenant Downing, did you talk with any other
18 police officer regarding your deposition today or
19 any other personnel employed by the Framingham
20 Police Department?

21 A. No.

22 Q. Did you discuss your deposition
23 with any other employee of the Town of
24 Framingham?

1 A. No.

2 Q. Have you reviewed the transcript of
3 any other police officer that has been deposed in
4 this case?

5 A. No.

6 Q. Have you talked to any other
7 officer who has been deposed in this case about
8 their deposition other than what you told me
9 about Lieutenant Downing?

10 A. No.

11 Q. Now I'm going to call your
12 attention to January 4, 2011. At some point
13 during the evening did you receive a call from
14 Detective Phil Martinez about a possible search
15 warrant being executed at 26 Fountain Street and
16 the possible need of the SWAT team to assist in
17 the execution of that warrant?

18 A. Yes.

19 MR. MUSACCHIO: Can we mark this as
20 the next exhibit, please?

21 (Exhibit No. 38 was marked
22 for identification.)

23 Q. (By Mr. Musacchio) You can look at
24 that, the same thing.

1 Do you remember how Detective
2 Martinez contacted you initially?

3 A. By telephone. I was at my house.
4 He called me on my cell phone.

5 Q. And can you identify what
6 Exhibit 38 is?

7 A. It looks like a text from my phone,
8 my cell phone.

9 Q. And did you also text -- and who --
10 you were receiving texts and also sending texts;
11 is that correct?

12 A. Yes.

13 Q. And the date on this is January 4th
14 at 9:14 p.m.; is that correct?

15 A. Yes.

16 Q. And who were you having this text
17 conversation with?

18 A. I'm trying to read it.

19 Q. Why don't you try to read to me the
20 first text that appears on Exhibit 38, just read
21 it into the record.

22 A. "With dt's going to." Looks like
23 "search warrant at 26 Fountain Street - at least

24

-

1 about to call out team for 11 p.m. - okay with
2 you?"

3 Q. Do you know who sent you that text?
4 If you can remember.

5 MR. KESTEN: Can you read the phone
6 number?

7 THE WITNESS: No, I can't.

8 MR. KESTEN: [REDACTED]

9 THE WITNESS: Well, that's my phone
10 number.

11 MR. KESTEN: Oh.

12 THE WITNESS: I'm trying to
13 remember if that was a message that I had sent to
14 the chief or if I was sending that to Bob
15 Downing.

16 Q. So you think that's a message you
17 sent, not one that you received?

18 A. Right. If it was at 9 o'clock, I
19 was already meeting with the detectives. I
20 believe that's a message that I sent, and I'm
21 just trying to remember if that's a message that
22 I sent to the chief advising him that we would
23 need basically the SWAT called out.

24 Q. What are "dt's"?

1 A. Detectives.

2 Q. What are [REDACTED]?

3 A. Bop's?

4 Q. Yes.

5 A. Bop's is a board of probation
6 check, the board of probation record.

7 Q. And the next text that appears
8 here, "Sounds like you evaluated it. If you are
9 good with it so am I." Do you recall who sent
10 you that text?

11 A. That's why I believe that must be a
12 conversation I had or an exchange I had with the
13 chief.

14 Q. You can put that aside.

15 Now, after you received a call from
16 Detective Martinez, do you remember what time you
17 arrived at the police station on January 4, 2011?

18 A. I think it was a little after 9
19 o'clock, right around 9 o'clock.

20 Q. And when you arrived there, did you
21 meet with Detective Martinez?

22 A. Yes.

23 Q. Now, did he brief you on why he
24 felt the SWAT team was needed?

1 A. Yes.

2 Q. And what did he tell you?

3 A. He told me that they had just
4 purchased cocaine, crack cocaine, at 26 Fountain
5 Street. They made an undercover purchase. He
6 had a couple of his detectives that were already
7 maintaining surveillance on the house, and
8 that -- he showed me the pictures of the people
9 that he was targeting for that drug -- for the
10 drug search warrant that he and another
11 detective, Dinis Avila, were in the process of
12 preparing.

13 Dinis Avila was at a computer
14 writing the affidavit for the search warrant.
15 Phil Martinez was informing me of the
16 circumstances.

17 So he was showing me the pictures
18 of who the three suspects, the main suspects, the
19 main targets of the search warrant were or who
20 was believed to -- going to believe to be in that
21 house, and he also had their [REDACTED]
22 or their [REDACTED] checks attached to
23 those photographs.

24 I reviewed those, the [REDACTED]

1 [REDACTED]. I listened to his, his version
2 of why he was requesting tactical support, and I
3 conferred that, you know, it was a situation that
4 required tactical support.

5 Q. And why was it a situation that
6 required tactical support?

7 A. You had -- at least two of the
8 three people, if I recall, had [REDACTED]

9 [REDACTED]
10 [REDACTED]

11 [REDACTED]
12 [REDACTED]
13 [REDACTED]

14 There was also -- one of the --
15 those three people was an [REDACTED]

16 [REDACTED]

17 [REDACTED], you know, prior to
18 that, to that event.

19 There was, according to Detective
20 Martinez, a continual flow of people coming and
21 going out of that house for a very short period
22 of time, indicating to him that it was most
23 likely due to the drug trade that was suspected
24 going on at that house.

1 And an additional problem to the
2 house was just where it was situated on the
3 street. So the approach to it would sort of lend
4 itself to a compromise approach because it was in
5 such a visible area. The approaches were so
6 visible to that structure. And then you had the
7 additional element of potential compromise
8 because of the amount of foot traffic coming and
9 going from the house.

10 So when you look at a composite of
11 all of those factors, I determined that it was --
12 tactical support was needed for that search
13 warrant.

14 Q. And that was your decision,
15 correct?

16 A. Yes.

17 Q. Now, during the planning stages of
18 the execution of the search warrant --

19 A. Yeah.

20 Q. -- during the evening of January
21 4th, you received information on possible
22 occupants of the home that were not suspects of
23 any crime; is that correct?

24 A. That's correct.

1 Q. And that was standard practice to
2 determine that?

3 A. Yes.

4 Q. And is it preferable for the
5 officers entering the home to be fully aware of
6 who they might encounter, whether they be
7 innocent bystanders who are not dangerous or not
8 suspects of a crime and those who may be
9 dangerous and who are suspects of a crime?

10 A. Yes, as much information that we
11 can provide the officers, that we like to -- you
12 know, we do that.

13 Q. Yeah. The officers want to know
14 who may be dangerous in the home so that the
15 officers can take appropriate actions to protect
16 themselves?

17 A. Correct.

18 Q. And the officers want to know who
19 is not dangerous who also may be in the home as
20 innocent bystanders, so that the officers know
21 who they are so the officers may be able to
22 properly protect those people's rights; is that
23 correct?

24 A. Correct.

1 Q. And also to protect -- to keep them
2 safe as well; is that correct?

3 A. Correct.

4 Q. Basically by informing the officers
5 of who's in the house that's dangerous, who's in
6 the house that's a suspect of a crime and who may
7 be in the house who is not a suspect and is not
8 dangerous, it eliminates the element of surprise;
9 isn't that correct?

10 A. Well --

11 Q. To some extent?

12 A. To some extent. But we also do it
13 because in case there's people with special needs
14 in the house such as small children and elderly.
15 We don't want to do anything to compromise their
16 health.

17 Q. So you want to know who's in the
18 house that's an innocent by- -- who may be an
19 innocent bystander, not involved in criminal
20 activity, essentially to protect them from any
21 possible harm during the execution of the search
22 warrant; is that correct?

23 A. It's correct that we want to know
24 anybody in that house.

1 Q. And particularly you want to know
2 about innocent bystanders because you want to
3 make sure their rights are protected; is that
4 correct?

5 A. Well, it's correct. It's not
6 always easy to determine who's an innocent
7 bystander.

8 Q. Understood, understood. But in
9 terms of information you want to convey to the
10 police officers, you want to try to give them the
11 best information you have about who is -- who may
12 be a non-suspect who is an innocent by- -- who's
13 in the house but is not suspected of any crime
14 and who's not dangerous; is that correct?

15 A. We don't know who's dangerous and
16 who isn't until we get into the structure. The
17 purpose of determining who's in there is some
18 people are greater threats than others and other
19 people have special needs, as I mentioned, small
20 children, infants in cribs, elderly. Those are
21 our special population groups that we really need
22 to be a little more cognizant of.

23 Q. But during the planning process,
24 you clearly try to identify prior to the

1 execution of the warrant who you have reason to
2 believe is a suspect of a crime and who may be
3 dangerous, correct?

4 A. Yes.

5 Q. And during the planning process,
6 you try to find information about who may be in
7 the home that you don't have reason to believe is
8 dangerous or committed a crime; is that correct?

9 A. Correct.

10 MR. MUSACCHIO: Can you mark this
11 as Exhibit 39, please.

12 (Exhibit No. 39 was marked
13 for identification.)

14 Q. (By Mr. Musacchio) Mr. Davis, I'm
15 going to show you what's been marked as
16 Exhibit 39 and represent to you that that is the
17 criminal record search that was done, printed out
18 on the evening of January 4, 2011. Did I
19 identify it correctly?

20 A. Yes.

21 Q. And there was a criminal record
22 search done for Eurie Stamps; is that correct?

23 A. Yes.

24 Q. That's because you knew he was a

1 resident of the apartment; is that correct?

2 A. I believe so.

3 Q. And there's also a criminal record
4 of an individual named Joseph Bushfan; is that
5 correct?

6 A. That's correct.

7 Q. And there's a criminal record of
8 Dwayne Barrett; is that correct?

9 A. Correct.

10 Q. And the last suspect was Deandre
11 Nwaford; is that correct?

12 A. Yes.

13 Q. So not only did you gather -- not
14 only did you try to get the background
15 information about the individuals who were in the
16 home or may be in the home, you actually verified
17 that by doing a probation record check; is that
18 correct?

19 A. That's correct.

20 Q. Now, Mr. Stamps was not a suspect
21 of any criminal activity on January 4, 2011; is
22 that correct?

23 A. That's correct.

24 Q. He had no [REDACTED]

1 [REDACTED]; is that correct?

2 A. That's correct.

3 MR. MUSACCHIO: Can I see
4 Exhibit 12?

5 I'm going to show you what's been
6 marked as Exhibit 12 and ask you to identify it.

7 A. It's my After Action Report.

8 Q. And can I just see that back for
9 one second. Unfortunately, I don't have copies
10 of this.

11 I'm going to call your attention to
12 Page 2 of the report, if you can just look at it
13 with me.

14 "Suspects [REDACTED]
15 believed to be inside the apartment selling
16 cocaine." And three individuals are listed; is
17 that correct?

18 A. That's correct.

19 Q. And their [REDACTED]
20 appear -- a summary of their [REDACTED]
21 appear next to their names; is that correct?

22 A. That's correct.

23 Q. And then it says, "Additional to
24 the above suspects, these persons were believed

1 to be within the premises," and it says Eurie
2 Stamps, and it gives his date of birth of 1942;
3 is that correct?

4 A. That's correct.

5 Q. And it states that he [REDACTED]
6 [REDACTED]; is that correct?

7 A. That's correct.

8 Q. Okay. And if you look on Page 2,
9 you wrote that -- if you read along with me here,
10 it says that Eurie Stamps was 68 years old; is
11 that correct?

12 A. Correct.

13 Q. Now, were you present during the
14 planning or the pre-execution briefing that
15 occurred with the entire SWAT team?

16 A. Yes.

17 Q. Okay. And was that information
18 conveyed to the SWAT team, that Eurie Stamps --
19 Eurie Stamps, Sr. is possibly a resident of the
20 apartment of 26 Fountain Street?

21 A. Yes.

22 Q. And were the police officers on the
23 SWAT team told specifically that Eurie Stamps was
24 a 68-year old elderly gentleman?

1 MR. KESTEN: It's not that old.

2 MR. MUSACCHIO: Sorry, Lenny.

3 MR. KESTEN: Definition changes.

4 Q. (By Mr. Musacchio) Let me rephrase
5 that.

6 Were the police officers told that
7 Eurie Stamps was 68 years old?

8 A. I believe so, and the reason why I
9 say that is we had other information that there
10 were -- the aunt and uncle were in the house and
11 they were believed to be in their 40s. So we had
12 two different descriptions of Eurie Stamps. One
13 was from his board of probation check, and the
14 other was information from detectives that there
15 possibly could be two people in there in their
16 40's.

17 Q. And were the police officers told
18 that Eurie Stamps's [REDACTED]
19 [REDACTED]?

20 A. Yes.

21 Q. And that he had [REDACTED] -- and
22 they were also told of the [REDACTED]
23 [REDACTED] of the search
24 warrant had; is that correct?

1 A. Yes. Yes, it is.

2 Q. Do you understand in the context of
3 the execution of a search warrant the concept of
4 a seizure of a person?

5 A. Yes, I do.

6 Q. And would you agree with me that a
7 seizure of a person occurs during the execution
8 of a search warrant when that person is no longer
9 free to move about?

10 A. Yes.

11 Q. Now, let's just take the situation
12 of the execution of the search warrant at 26
13 Fountain Street. Going into that home -- prior
14 to going into that home, the SWAT team knew that
15 there were potentially three individuals that
16 could be in the home that were selling crack
17 cocaine and [REDACTED]

18 [REDACTED] is that correct?

19 A. That's correct.

20 Q. And they were also aware that there
21 were possibly three other people in the home who
22 did [REDACTED] who were
23 not suspects in any kind of criminal activity
24 who -- and that they may be present in the home

1 as well; is that correct?

2 A. That's correct, and there was also
3 information that other people may have been in
4 that house also at any given moment due to the
5 increased level of foot traffic.

6 Q. Sure. I understand that. So --
7 but you agree with me that all persons who are
8 present during the execution of a search warrant
9 may be lawfully and properly detained or seized
10 during the execution of the warrant; is that
11 correct?

12 A. Yes.

13 Q. And there's various methods that
14 the police can use to seize a person during the
15 execution of a search warrant. One of the things
16 they can do is they can give a verbal command to
17 them to not move; is that correct?

18 A. That's correct.

19 Q. And that's a show of force, isn't
20 it?

21 A. Yes.

22 Q. Another thing they can do to seize
23 a person present during the execution of a search
24 warrant is to point their weapon at them and tell

1 them not to move; is that correct?

2 A. That's correct.

3 Q. And that's a slightly elevated use
4 of force to seize somebody; is that correct?

5 A. Yes.

6 Q. An officer may also physically pat
7 search a person present during the execution of a
8 search warrant if they have reason to believe
9 that they are armed and dangerous; is that
10 correct?

11 A. That's correct.

12 Q. And that's another, again,
13 heightened level of force that a police officer
14 can use to further seize and detain a person; is
15 that correct?

16 A. An investigative detention force?

17 Q. Well, what I want to say is that
18 it's a more intrusive level of interaction with a
19 bystander or a suspect during the execution of a
20 search warrant; is that right?

21 A. Yes.

22 Q. You may seize them by command, you
23 may seize them by pointing a gun at them and
24 telling them not to move, correct?

1 A. Correct.

2 Q. Okay. And you can also put
3 handcuffs on them as a further method of seizing
4 them; is that correct?

5 A. Correct.

6 Q. Now, would you agree with me that
7 the amount of force that may be lawfully used to
8 seize a criminal suspect with a violent history
9 during the execution of a search warrant might be
10 different than the amount of force used to detain
11 an innocent bystander present during the
12 execution of the search warrant; is that correct?

13 A. An investigative detention. If you
14 know the person is an innocent bystander, then
15 yes.

16 Q. Yeah. The amount of force --

17 MR. KESTEN: Can we -- we forgot to
18 do stipulations.

19 MR. MUSACCHIO: We'll have the
20 usual stipulations.

21 MR. KESTEN: Reserving all
22 objections, except as to form, as well as motions
23 to strike until the time of trial.

24 MR. MUSACCHIO: Yes, yes.

1 So the force that might be used to
2 detain or seize -- let me just preface this
3 question by saying that absent any other kinds of
4 conduct or movements or actions in the home,
5 okay, by anybody there. I mean, obviously if
6 somebody is running to a closet or running to a
7 cabinet, the level of suspicion about their
8 activities would be heightened, correct?

9 A. Correct.

10 Q. I'm just talking about the
11 situation that the officers knew about when they
12 entered 26 Fountain Street. The amount of force
13 they might use to detain Mr. Stamps and the aunt
14 and the uncle might be different than the amount
15 of force they use to seize, say, Mr. Dwayne
16 Barrett or Mr. Joseph Bushfan [REDACTED]
17 [REDACTED]; is that correct?

18 A. That's correct.

19 Q. And isn't that why it's important
20 for the police officers to know before they go in
21 to execution -- to execute the warrant the
22 criminal background and the violent history of
23 the people who may be in the home?

24 A. Yes.

1 Q. Now, during the planning meeting,
2 you and other officers were not -- strike that.

3 During the planning meeting, you
4 and the other officers who would be involved in
5 the execution of the warrant were not provided
6 with any information that Mr. Stamps was armed or
7 dangerous; is that correct?

8 A. That's correct.

9 Q. You were not provided with any
10 information that he was involved in selling of
11 drugs; is that correct?

12 A. That's correct.

13 Q. You had -- you were not provided
14 with any information that he was involved in any
15 criminal activity whatsoever; is that correct?

16 A. That's correct.

17 Q. And you had no information before
18 you entered into the apartment at 26 Fountain
19 Street that he posed any particular perceivable
20 threat or danger to the police; is that correct?

21 A. That's correct.

22 Q. Did you talk with Officer Duncan
23 post accident -- post shooting?

24 A. No.

1 Q. So after the shooting occurred on
2 January 5, 2011, did you ever have a conversation
3 that evening or in the following couple of days
4 with Officer Duncan about what happened?

5 A. No.

6 Q. And why not?

7 A. Officer Duncan was, as we all were,
8 being interviewed by state police detectives
9 under the direction of the Middlesex District
10 Attorney's office, so I didn't want to compromise
11 any of that process by conferring with anybody
12 else or speaking with Officer Duncan. And
13 Officer Duncan also was, if I recall correctly,
14 undergoing some stress counseling as a result of
15 the incident.

16 The conversation I had with Officer
17 Duncan is when I removed him from the SWAT team.
18 It was a fairly short conversation.

19 Q. On the evening of January -- the
20 early morning hours of January 5, 2011, after the
21 shooting occurred, did you learn how the shooting
22 actually took place?

23 A. On that evening?

24 Q. Yes.

1 A. Just that it was an accidental
2 discharge from Officer Duncan's gun.

3 Q. You didn't talk to Officer Duncan,
4 though, about what happened that evening?

5 A. No. Officer Duncan -- again, if my
6 memory serves me right, Officer Duncan was taken
7 to the hospital for stress. So he was
8 immediately taken there. I did not talk to him.
9 I remained on scene. And then it became, again,
10 the Middlesex District Attorney's office
11 investigation, so I had no conversation with
12 anybody.

13 Q. Who told you that it was an
14 accidental discharge?

15 A. Lieutenant Downing when he came out
16 of the structure. I was outside, and he told me.

17 Q. Do you know if Lieutenant Downing
18 had a conversation with Officer Duncan?

19 A. That I don't know.

20 Q. Now, after the shooting, in
21 sometime in May of 2011 the Framingham Police
22 Department retained Steven Ijames to conduct an
23 independent review of the shooting of Mr. Stamps;
24 is that correct?

1 A. That's correct.

2 Q. And Mr. Ijames provided the
3 Framingham Police Department with a report of his
4 conclusions; is that correct?

5 A. That's correct.

6 Q. And would you agree with me that
7 Mr. Ijames had some criticisms of the training
8 that Officer Duncan received?

9 A. Okay, that's correct.

10 Q. And he also had some criticisms of
11 the conduct of Officer Duncan; is that correct?

12 A. Correct.

13 Q. And Sergeant Stuart took exception
14 to the criticisms of the training that Mr. --
15 Officer Duncan received; is that correct?

16 A. Correct.

17 Q. And did he talk to you about -- did
18 he approach you and tell you why he took
19 exception to what Mr. Ijames said about the
20 training?

21 A. Yes.

22 Q. And what did he tell you?

23 A. He was upset. Again, as my memory
24 recalls, he was upset because -- Sergeant Stuart

1 is the one that handles, again, the day-to-day,
2 between he and Lieutenant Downing, the day-to-day
3 training of the SWAT team, and they have for
4 several years since I transitioned that
5 responsibility over to them.

6 So Sergeant Stuart incorporates the
7 level of the deficiencies that Ijames claims
8 that, you know, was critical of the training, and
9 Vinnie Stuart felt that that was inaccurate.

10 Q. Now, Mr. Ijames concluded that
11 Officer Duncan was not trained to keep his weapon
12 on safe until he perceived a defined threat. Is
13 that your memory of what the criticism was?

14 A. Yes.

15 Q. And what that means is that Officer
16 Duncan should have kept -- according to
17 Mr. Ijames, Officer Duncan should have been
18 trained to keep his weapon on safe until he
19 actually perceived a threat, right?

20 A. Right, correct.

21 Q. Now, after Ijames issued his
22 report, you met with Lieutenant Downing, Chief
23 Steven Carl, Sergeant Stuart and Brian Simoneau
24 to discuss the Ijames report; isn't that correct?

1 A. That's correct.

2 Q. And who called for that meeting?

3 A. Chief Carl.

4 Q. And that meeting occurred in

5 September of 2011, to your memory? I'll

6 represent to you that it did. It occurred on

7 September 21, 2011.

8 Why don't we mark the next

9 exhibit -- well, actually we don't need to mark

10 it. It's what been marked as Exhibit No. 11 in a

11 prior deposition.

12 Have you seen what's been marked as

13 Exhibit No. 11 before?

14 A. Yes.

15 Q. And is -- Mr. Simoneau has

16 testified that this is a --

17 MR. KESTEN: Simoneau.

18 Q. Simoneau has testified that

19 Exhibit 11 is his written report of his memory of

20 what occurred at that meeting on September 21st.

21 Do you have any reason to disagree with that?

22 A. I don't have any reason to disagree

23 with that, no.

24 Q. Have you seen this document before

1 today?

2 A. Yes.

3 Q. When was the first time you saw it?

4 A. I don't know.

5 Q. Was it shortly after the meeting on
6 September 21, 2011?

7 A. Yes.

8 Q. Can you just simply read through it
9 to refresh your memory. You don't have to read
10 it aloud. Just read it to yourself and let me
11 know when you're ready.

12 A. Okay.

13 Q. All set?

14 A. Yes.

15 Q. I'm going to call your attention to
16 the second full paragraph. It states, "The chief
17 concern of Downing and Stuart was that the Ijames
18 report attributes training regarding threat
19 assessment as it relates to the position of the
20 M-4 selector switch as a contributing cause of
21 the death." Did I read that correctly?

22 A. Yes.

23 Q. Is that your memory of what
24 Lieutenant Downing and Sergeant Stuart stated was

1 their chief concern at the meeting?

2 A. Yes.

3 Q. And the next sentence reads, "The
4 report states the training Officer Duncan
5 received as it relates to threat assessment and
6 the status of the M-4 rifle safety-selector were
7 contributing causes in the death of Mr. Stamps."
8 Did I read that correctly?

9 A. Yes.

10 Q. And is that your understanding of
11 what Mr. Ijames stated in his report?

12 A. Yes.

13 Q. "More specifically," and I'm
14 quoting again. "More specifically, the report
15 states that the training Officer Duncan received
16 resulted in him removing his weapon from safe in
17 the absence of a defined threat." Did I read
18 that correctly?

19 A. Yes.

20 Q. And the next paragraph starts,
21 "Sergeant Stuart and Lieutenant Downing claim
22 that officers are trained to keep their rifles on
23 safe unless the officer perceives a threat or is
24 actively clearing room/danger area." Did I read

1 that correctly?

2 A. Yes, you did.

3 Q. Is that your recollection of what
4 Lieutenant Downing and Sergeant Stuart stated at
5 the meeting?

6 A. Yes.

7 Q. That officers were in fact trained
8 to keep their weapon on safe until they perceived
9 a threat --

10 A. Yes.

11 Q. -- correct? And you agree with
12 that that officers were trained --

13 A. Yes.

14 Q. -- in that respect? Yes?

15 A. Yes.

16 Q. And the next sentence states, "This
17 means that Duncan should have had his weapon on
18 safe because neither of the above two conditions
19 existed." Now, did I read that correctly?

20 A. Yes.

21 Q. Who voiced that -- who stated that
22 at the meeting, that Officer Duncan should have
23 had his weapon on safe because he did not have a
24 perceived threat and was not actively clearing a

1 room, who said that?

2 A. It was either Sergeant Stuart or
3 Lieutenant Downing. They both felt very strongly
4 towards this because, again, they are the
5 day-to-day trainers of the SWAT team.

6 Q. Do you agree that Officer Duncan
7 should have had his weapon on safe because he did
8 not have a perceived threat and he wasn't
9 actively clearing rooms or danger areas when
10 Mr. Stamps was shot?

11 A. Yes.

12 Q. Are you familiar with the
13 contact/cover procedure?

14 A. Yes.

15 Q. Now, the contact/cover procedure or
16 technique is used when a person is detained or
17 seized and the police officers want to make
18 physical contact with that person; is that
19 correct?

20 A. That's correct.

21 Q. And that physical contact might
22 either be to further restrain him physically or
23 to put handcuffs on him, for example, right?

24 A. Yes.

1 Q. And the contact/cover procedure
2 involves two officers; is that right?

3 A. That's right.

4 Q. Now, under the procedure, when it's
5 executed properly, one officer covers a person
6 with a weapon in the low-ready position while
7 another person makes contact with a person to
8 further restrain him; is that correct?

9 A. That's correct.

10 Q. Now, if the officer making contact
11 also has a weapon on him, under the procedure, if
12 it's a rifle, he puts the rifle on safe and
13 slings it over his shoulder; is that correct?

14 A. That's correct.

15 Q. If the contact officer has a
16 sidearm or pistol, he puts it on safe or holsters
17 it; is that correct?

18 A. Holsters it, yes.

19 Q. Holsters it. Now, the purpose of
20 this procedure or one of the purposes of the
21 procedure is to ensure that the officer making
22 hands-on contact with the suspect or the person
23 being seized does not accidentally discharge his
24 weapon; is that right?

1 A. That's correct.

2 Q. It also protects the police
3 officers from having the suspect potentially grab
4 at the weapon and take it from them; is that
5 correct?

6 A. Yes.

7 Q. And the procedure is designed to
8 protect the safety of the person being physically
9 restrained; is that correct?

10 A. Yes.

11 Q. Now, when there's only a single
12 officer present and you can't do the
13 contact/cover, is it the proper procedure for the
14 officer making physical contact with the person
15 who's seized to put his weapon on safety or to
16 holster it before making physical contact with
17 the person who's seized? Is that correct?

18 A. That's correct.

19 Q. Now, if you go back to Exhibit 11,
20 the report of the September 21st meeting, the
21 last paragraph, it states, "According to Downing
22 and Stuart, Officer Duncan received training
23 regarding the principles of contact and cover."
24 Did I read that correctly?

1 A. Yes, you did.

2 Q. Do you agree with that statement
3 that Officer Duncan received training in the
4 principles of contact and cover prior to the
5 shooting?

6 A. Yes.

7 Q. "This fundamental concept is taught
8 as part of the patrol rifle course, SWAT training
9 courses and in the Applied Patrol Procedure
10 section of every basic police academy in
11 Massachusetts." Did I read that correctly?

12 A. Yes, you did.

13 Q. And do you agree with that?

14 A. Yes, I do.

15 Q. And who was providing this
16 information at the meeting? Who's verbalizing
17 this at the meeting?

18 A. Lieutenant Downing and Sergeant
19 Stuart.

20 Q. Then it states, "Under the contact/
21 cover concept the officer who is engaging in
22 hands-on contact with a suspect will not have his
23 weapon off safe." Did I read that correctly?

24 A. Yes, you did, and I just wanted to

1 add that I voiced that opinion also in the
2 preceding comment.

3 Q. Okay. And who voiced the -- who
4 made the statement about the contact/cover
5 concept with the weapon being on -- the suspect
6 will not have his weapon -- contact with the
7 suspect will not have his weapon off safe, who
8 expressed that?

9 A. You know, again, this is -- it
10 could have been all of us. It could have been
11 Stuart, Downing individually. I don't have a
12 recollection of who the individuals, but we all
13 agree with that concept. We all could have said
14 that.

15 Q. And the next sentence reads,
16 "Instead, the weapon will be slung with the
17 selector in the safe position while the contact
18 officer has physical contact with the suspect."
19 Did I read that correctly?

20 A. Yes.

21 Q. And do you agree with that
22 statement?

23 A. Yes.

24 Q. "During the physical contact, the

1 contact officer is covered by the cover officer."

2 Do you agree with that statement?

3 A. Yes.

4 Q. Now, the next sentence reads,

5 "According to both Downing and Stuart, Officer

6 Duncan's training instructed him to place his

7 weapon on safe and sling it prior to assuming the

8 role of the contact officer." Did I read that

9 correctly?

10 A. Yes, you did.

11 Q. Do you agree with that statement?

12 A. Yes.

13 Q. The last sentence reads, "Further,

14 if Officer Duncan perceives Stamps as having

15 posed a threat, he should have maintained his

16 position as cover officer and waited until

17 another contact operator was available to search

18 and/or seize -- and/or secure Stamps." Did I

19 read that correctly?

20 A. Yes, you did.

21 Q. And do you agree with that

22 statement?

23 A. Yes.

24 Q. And who expressed that statement,

1 that if Officer Duncan perceives Stamps has a
2 threat he should have maintained his position as
3 a cover officer and waited 'til another officer
4 to make contact with Mr. Stamps?

5 A. Again, Lieutenant Downing, Sergeant
6 Stuart and myself would have voiced that.

7 Q. Now, Officers O'Riley and Sebastian
8 testified that they were in the kitchen with
9 Officer Duncan when his gun discharged, are you
10 aware of that?

11 A. I'm aware of it. I wasn't there,
12 but I'm aware of it.

13 Q. You are aware as a fact that
14 Officer Riley and Officer Sebastian were in the
15 kitchen when Duncan's gun discharged?

16 A. I'd have to review the report to
17 see where everybody was.

18 Q. Well, you don't have any reason to
19 doubt Officer Riley's and Officer Sebastian's
20 testimony in this case that they were in the
21 kitchen when Duncan's gun discharged?

22 A. No, I do not.

23 Q. Lieutenant Downing has testified in
24 this case in his deposition that if Duncan asked

1 for someone to act as the cover or contact
2 person, he would have ordered someone to assist
3 Officer Duncan or would have done it himself.

4 A. Yes.

5 Q. You're aware that he testified to
6 that?

7 A. No.

8 Q. You don't have any reason to
9 disagree with him on that, do you?

10 A. No, I do not.

11 Q. Now, each -- Officer Sebastian,
12 Officer Riley and Officer Downing have testified
13 that Duncan never asked for any assistance from
14 the three of them even though they were standing
15 near him in the kitchen. Do you have any reason
16 to doubt that testimony?

17 A. No, I do not.

18 Q. Now, based on Officer Duncan's
19 account of what occurred and how his gun was
20 discharged, he did not place his rifle on safe
21 and sling it over his shoulder before attempting
22 to restrain Mr. Stamps; isn't that correct?

23 A. That's correct.

24 Q. He did not seek the assistance of

1 another officer to act as a contact officer;
2 isn't that correct?

3 A. That's correct.

4 Q. Now, Duncan was removed from the
5 SWAT team after the shooting of Mr. Stamps; is
6 that correct?

7 A. That's correct.

8 Q. And who made that decision?

9 A. I did.

10 Q. Can you describe the process you
11 went through before making that decision, what
12 you reviewed, who you talked to, any interviews
13 that you may have conducted?

14 A. I don't recall specifically.

15 Q. But you must have done some type of
16 investigation to make that determination; isn't
17 that correct?

18 A. Yes.

19 Q. And when was he removed from the
20 SWAT team?

21 A. Shortly after this incident, but I
22 don't recall the date.

23 Q. Was it within a month?

24 A. I would say, yes.

1 Q. So within the several weeks
2 following the incident, you would have gathered
3 some information --

4 A. Yes.

5 Q. -- about what occurred?

6 A. Yes, sir.

7 Q. Okay. And do you remember what you
8 did, what information you gathered, what you may
9 have read or looked at?

10 A. I don't remember specifically.

11 Q. But he was discharged from the SWAT
12 team for his failing to follow procedures that
13 evening; is that correct?

14 Why don't you tell me the specific
15 reason he was discharged and what failures that
16 he committed or omissions that he made relating
17 to the Stamps' shooting that warranted and
18 resulted in his being discharged from the SWAT
19 team?

20 A. He was discharged from the SWAT
21 team primarily because of the accidental
22 discharge, the unintentional discharge that
23 occurred from his weapon.

24 In my estimation, I didn't need to

1 review any documents; I didn't need to interview
2 anybody. I just felt that he would not be an
3 effective operator moving from that point
4 forward. I didn't want to place him in that
5 situation of having him in another SWAT
6 operation. I didn't want to place our SWAT team
7 in that situation either. So I can't say it was
8 attributed to a specific failing. It was more
9 that -- it was more of a confidence issue that he
10 had this tragic accident on his watch and he
11 couldn't continue with the team.

12 Q. Well, we do know that it was
13 concluded that his failure to put his weapon on
14 safe -- strike that.

15 The failure to have his weapon on
16 safe until he perceived a threat was something
17 that you, Lieutenant Downing and Sergeant Stuart
18 faulted him for at the September 21st meeting; is
19 that correct?

20 A. That's correct.

21 Q. As a violation of police technique
22 and protocol; is that correct?

23 A. Correct.

24 Q. You also faulted Officer Duncan for

1 his failure to execute the contact/cover rule
2 that evening; isn't that correct?

3 A. That is correct.

4 Q. In other words, he failed to follow
5 that procedure that he was trained to follow; is
6 that correct?

7 A. That's correct.

8 Q. You also faulted him for failing to
9 put his weapon on safe and sling his rifle over
10 his shoulder before he made any attempt to make
11 any physical contact with Mr. Stamps; isn't that
12 correct?

13 A. That's correct.

14 Q. And that was a violation of his
15 police training and the practices and standards
16 of the Framingham Police Department; is that
17 correct?

18 A. That is correct.

19 Q. Are you testifying here today that
20 those failures did not have anything to do with
21 why he was discharged from his duties as a SWAT
22 team member?

23 A. No. They obviously have an impact
24 in the composite of information that I took in

1 when I decided to discharge him from the team,
2 but I am saying that my immediate reaction was
3 that I knew that he would not be an effective
4 operator moving forward, so in my estimation I
5 had no other option than to remove him from the
6 team independent of even what you had just
7 mentioned.

8 Q. If you had -- I understand this is
9 somewhat of a hypothetical.

10 If you had based on your assessment
11 of Officer Duncan, what you learned about him
12 after this event, what effect that it may have
13 had on him emotionally, if you had learned that
14 he still had the ability to operate as a SWAT
15 team member from an emotional perspective, from a
16 confidence level perspective, would he have still
17 been discharged from the SWAT team for his
18 deviations from established training and
19 procedures?

20 A. Yes.

21 Q. You're familiar with the Policy On
22 Firearms and Weapons No. 50-4 that is used by the
23 Framingham Police Department; is that correct?

24 A. That's correct.

1 Q. And after the Stamps shooting,
2 there were certain changes that were made to the
3 firearms and weapons policy; is that correct?

4 A. That's correct.

5 Q. Mr. Davis, I'm going to show you
6 what's been marked in a previous deposition as
7 Exhibit No. 5 and ask you if you recognize that
8 document?

9 A. Yes, I do.

10 Q. And what is it?

11 A. The Framingham Police Department
12 Policy on Firearms and Weapons.

13 Q. And this contains -- did I ask you
14 this question. I'll ask it again.

15 After the Stamps' shooting, there
16 were certain changes made to the Policy on
17 Firearms and Weapons; is that correct?

18 A. That's correct.

19 Q. And this document has those changes
20 in it; is that correct?

21 A. That's correct.

22 Q. Do you know how soon after the
23 Stamps' shooting these changes were made to the
24 Policy on Firearms and Weapons?

1 A. It would have been after we
2 received the report back from Steve Ijames.

3 Q. Okay. Would that have been -- if
4 you look on it, it says effective date and
5 revised dates, and it has a date of February 2,
6 2012. Is that the date that the policy changes
7 were put in here?

8 A. There were policies changes on
9 those dates, on all of those dates listed, yes.

10 Q. Can you go to page 5. Under
11 Subsection c it says, "Low ready."

12 A. Yes.

13 Q. And if you look at heading No. 2
14 where it says "Off safe."

15 A. Mm-hmm.

16 Q. Can you read that, the two bullets
17 underneath it?

18 A. Under --

19 MR. KESTEN: Out loud?

20 MR. MUSACCHIO: Out loud.

21 A. "Officer perceives a threat, weapon
22 comes up onto target, only when the officer is
23 ready to shoot does the weapon come off safe;
24 eyes align sights; acquire proper site picture.

1 After firing, or when the decision not to fire is
2 made, the weapon is placed back on safe."

3 Q. Now, what you just read, that was
4 not in the policy that existed for the firearms
5 and weapons prior to January 5, 2011; is that
6 correct?

7 A. That's correct.

8 Q. So that was added in?

9 A. Yes.

10 Q. Explain why that was not in the
11 policy? Well, let me ask you this question
12 first, Lieutenant Downing testified that the "off
13 safe" that you just read, that an "Officer
14 perceives a threat, weapon comes up onto target,
15 only when the officer is ready to shoot does the
16 weapon come off safe." He stated that even
17 though that was not in the policy prior to
18 January 5, 2011, that officers were trained on
19 that prior to January 5th. Is that your
20 understanding?

21 A. Well, when the officer perceives a
22 threat, weapon comes up onto target. I think the
23 distinction was prior to this incident, prior to
24 the Stamps' shooting that we didn't have the

1 requirement or the restriction in there, "Officer
2 is ready to shoot, the weapon comes off safe."
3 It was when the officer perceives a threat, the
4 weapon comes off safe prior to, prior to this
5 incident.

6 Q. So what was added is the language
7 "only when the officer is ready to shoot does the
8 weapon come off safe;" is that correct?

9 A. That's correct.

10 Q. And the policy before says that the
11 weapon comes off safe when the officer perceives
12 a threat?

13 A. Correct.

14 Q. Okay. Do you have an understanding
15 whether prior to January 5, 2011, that officers
16 on the SWAT team were trained that only when the
17 officer is ready to shoot does the weapon come
18 off safe? Were they trained about that even
19 though it wasn't in the prior policy?

20 A. I thought the officers were trained
21 that the weapon comes off safe when there's a
22 perceived threat.

23 Q. Can you explain why that language
24 that we're focussing on, "only when the officer

1 is ready to shoot does the weapon come off safe,"
2 why that was not in the policy prior to
3 January 5, 2011?

4 A. I believe that was a recommendation
5 made by Steve Ijames in his review.

6 Q. So the reason that you added it in
7 was based on what Steve Ijames suggested the
8 policy should be?

9 A. That's correct.

10 Q. And that reason was directly
11 related to the Stamps shooting; is that correct?

12 A. It was related to his review of our
13 practices.

14 Q. Correct. And Mr. Ijames was asked
15 to review the training and the conduct of Officer
16 Duncan relating to the January 5th shooting of
17 Mr. Stamps; is that correct?

18 A. That's correct.

19 Q. So this change was made in direct
20 response to what Steven Ijames had recommended
21 regarding his review of Officer Duncan's conduct
22 on January 5, 2011; is that correct?

23 A. Correct.

24 Q. Can you look at Page 6 of the

1 Policy on Weapons and Firearms. Again, it's
2 Exhibit No. 5. On top under Subsection f there's
3 the contact/cover rule; is that correct?

4 A. That's correct.

5 Q. And that's basically the
6 contact/cover rule that we were previously
7 discussing; is that correct?

8 A. That's correct.

9 Q. Now, do you agree that all officers
10 were trained in the contact/cover rule prior to
11 January 5, 2011? Is that correct?

12 A. That's correct.

13 Q. And that includes everybody on the
14 SWAT team; is that correct?

15 A. That includes everybody in the
16 department, yes, sir.

17 Q. And you would agree with me that
18 the contact/cover rule was not a part of the
19 Policy on Firearms and Weapons prior to
20 January 5, 2011; is that correct?

21 A. That's correct.

22 Q. Can you explain to me why it was
23 the cover/contact technique or procedure was
24 trained to the police officers prior to

1 January 5, 2011, but was not a part of the
2 written protocol?

3 A. Well, I think as a practical matter
4 we don't put all of our training mechanisms in
5 the policies. They're incorporated in the
6 training but not necessarily brought into the
7 written policy. So even though that philosophy
8 or that tactic or technique is continually
9 trained to officers, it doesn't necessarily show
10 up in a policy, as is the many other things that
11 we train them. They don't necessarily transfer
12 or are documented in a policy.

13 Q. And Officer Duncan would have
14 received training in the contact/cover rule at
15 the police academy; is that correct?

16 A. Yes.

17 Q. During his SWAT training; is that
18 correct?

19 A. That's correct.

20 Q. This is all prior to January 5,
21 2011, right?

22 A. Yes.

23 Q. He would have received that
24 training as part of his training as a basic

1 patrolman for the Framingham Police Department,
2 correct?

3 A. Yes.

4 Q. It's a basic fundamental rule of
5 police practice; isn't that correct?

6 A. Yes, it is.

7 Q. Can you explain to me why it was
8 added into the written policy when it wasn't in
9 there before?

10 A. I believe it was just an added
11 measure of documentation that we wanted to
12 memorialize that's part of our training.

13 Q. Any other reason it was put in
14 there?

15 A. No, not that I know of.

16 Q. Let me go back to Exhibit 4. Do
17 you have that in front of you? Maybe I haven't
18 given it to you yet. No, here.

19 Can you identify Exhibit No. 4?

20 A. Town of Framingham Policy and
21 Procedure on Firearms and Weapons.

22 Q. And that was the procedure that was
23 in effect prior to the Stamps shooting; is that
24 correct?

1 A. This was revised 4/30/2011.

2 Q. Well, let me say, this was the --
3 Exhibit 5 is the new policy; is that correct?

4 A. That's correct.

5 Q. And Exhibit 4 is the policy that
6 would have been in effect at the time of the
7 Stamps shooting; isn't that correct?

8 A. April 2011.

9 Q. Okay. So there's some things in
10 here that may have not been in the policy on
11 January 5, 2011, but you agree with me that this
12 is an older policy than what Exhibit 5 is; is
13 that correct?

14 A. That's correct.

15 Q. Can you look at Page 6? Under the
16 subheading number 6 "Weapons Handling."

17 A. Yes.

18 Q. And it says, "Weapons Handling:
19 Officer shall," Subdivision d, "keep their finger
20 outside of the trigger guard until ready to
21 engage in fire on a target." Did I read that
22 correctly?

23 A. Yes, you did.

24 Q. Now, Officer Duncan received

1 training prior to January 5, 2011, to keep his
2 finger outside of the trigger guard until ready
3 to engage in fire at a target; is that correct?

4 A. That's correct.

5 Q. Again, that's a basic fundamental
6 rule of police training; isn't that correct?

7 A. Yes, it is.

8 Q. Why don't we take a five-minute
9 break.

10 MR. KESTEN: Okay.

11 THE VIDEOGRAPHER: Going off the
12 record the time is 11:29.

13 (A break was taken.)

14 THE VIDEOGRAPHER: We're back on
15 the record. The time is 11:50.

16 Q. (By Mr. Musacchio) Mr. Davis, after
17 the shooting incident involving Mr. Stamps, was
18 there training provided to the SWAT team that
19 re-emphasized the contact/cover rule?

20 A. It's incorporated in all of our
21 training.

22 Q. Do you have any knowledge of there
23 being specific training that was given to the
24 SWAT team or the Framingham police officers in

1 general that covered the contact/cover rule
2 because of what happened to Mr. Stamps?

3 A. Yes.

4 Q. Okay. And what was that training,
5 and can you tell me a little bit about it?

6 A. I believe Sergeant Stuart conducted
7 a training segment during our annual firearms
8 in-service training program, delivered to the
9 entire department, and he was discussing the
10 proper procedures. If you had a rifle, to make
11 sure that the rifle is on safe, goes on sling if
12 you're going to have any contact with anybody.

13 Q. Okay.

14 A. And so he re-emphasized the
15 positioning, the safe positioning of people. If
16 somebody is on the ground, to approach them
17 safely, how to handle your firearm or the rifle
18 and then the concept of contact/cover.

19 Q. And that training, that specific
20 training was provided because of what happened to
21 Mr. Stamps on January 5, 2011; is that right?

22 A. Yes.

23 (Discussion off the record.)

24 Q. (By Mr. Musacchio) Was the Stamps'

1 incident specifically discussed at that training?

2 A. I don't recall.

3 Q. Can you mark -- were you present at
4 that training?

5 A. Yes.

6 MR. MUSACCHIO: Can you mark this
7 as Exhibit 40, please?

8 (Exhibit No. 40 was marked
9 for identification.)

10 Q. (By Mr. Musacchio) Can you identify
11 Exhibit 40?

12 A. The Town of Framingham Police
13 Department's Policy on SWAT team.

14 Q. And was this the policy that was in
15 effect on January 5, 2011?

16 A. Yes.

17 Q. If you can look at Page 4 under
18 Subsection d, "Mission Planning." Would you
19 agree with me that this SWAT policy on mission
20 planning requires a written plan before the
21 execution of a search warrant?

22 A. Yes.

23 Q. And it lists here what the written
24 process will include, a format that will document

1 how the operation is to be conducted, commanded,
2 control, communicated -- communication and
3 support required?

4 A. Yes.

5 Q. Have you ever seen a written plan
6 for the execution of this search warrant at 26
7 Fountain Street?

8 A. Yes.

9 Q. Was it a written plan that was
10 prepared before the execution of the warrant?

11 A. Yes.

12 Q. Can you describe to me what that
13 written plan looked like? What was it, can you
14 describe it?

15 A. It's a plan that describes the
16 mission, the situation, the execution, the
17 assignments, any special considerations. It
18 describes individual assignments, the equipment
19 used, the approach routes.

20 Q. So it's your testimony that prior
21 to the execution of this search warrant a written
22 plan of execution was prepared by somebody at the
23 Framingham Police Department?

24 A. Yes.

1 Q. And you said you've seen that
2 document?

3 A. Yes.

4 Q. Give me one moment. Let me show
5 you what's been marked as Exhibit 28 previously
6 at another deposition.

7 Is that the written plan you're
8 talking about?

9 A. No. This is just a diagram of
10 assignments.

11 Q. Okay. All right. Do you recall
12 did you -- were you involved in gathering
13 documents relating to this case?

14 A. Yes.

15 Q. Did you have the written plan as
16 part of the documents that you gathered in this
17 case?

18 A. The written plan is developed
19 during the command briefing as part of the
20 command briefing process so that we all know what
21 the situation is, where we're going, who's going
22 where, who's driving what, who's carrying what.

23 Q. Was there an actual document that
24 was produced, or are you referring to all the

1 information that was being conveyed to the
2 officers at the planning meeting?

3 A. It's a composite of all the
4 information that was relayed to the officers at
5 the -- not the planning meeting but the briefing.

6 Q. The briefing.

7 A. The planning meeting is where the
8 operational plan is developed which is the
9 document that I'm describing.

10 Q. So you're saying that there's a
11 document out there that documents everything that
12 was being planned relating to the execution of
13 this search warrant?

14 A. Yes. It's our standard procedure
15 that we do that for every search warrant.

16 MR. MUSACCHIO: Lenny, I have never
17 seen that document. We have not received any
18 type of planning document that relates -- that
19 lists and discusses everything that was done in
20 preparation of the execution of the search
21 warrant.

22 The only thing that we have that
23 resembles that document is the After Action
24 Report, so I'll make a formal request that that

1 document be produced.

2 MR. KESTEN: Sure. No, I have not
3 been involved in the document production. I have
4 seen it.

5 MR. MUSACCHIO: You've seen it?

6 MR. KESTEN: Oh, yeah. I was
7 involved in this a long time ago. I got involved
8 in this before you got involved in it.

9 MR. MUSACCHIO: I understand. I
10 understand? But I've been --

11 MR. KESTEN: It's not a problem.

12 MR. MUSACCHIO: But we've been
13 relying on the documents you gave us, and the
14 only document that looked like a preplanning
15 document is the one I showed him as Exhibit 28,
16 so obviously we'll ask that you get that to us as
17 soon as possible.

18 Mark this as the next exhibit, 41.

19 (Exhibit No. 41 was marked
20 for identification.)

21 Q. (By Mr. Musacchio) Mr. Davis, can
22 you identify Exhibit 41, please?

23 A. The Town of Framingham Police
24 Department policy on the use of force.

1 Q. And that was the policy in effect
2 on January 5, 2011; is that correct?

3 A. That's correct.

4 Q. I want to call your attention to
5 the policy statement on the first page. The
6 second sentence reads, "The degree of force used,
7 must be objectively reasonable and necessary,
8 depending on the facts and circumstances known to
9 the officer at the time of the incident. The
10 degree of force an officer is required, and
11 therefore permitted, to use is dependent upon the
12 amount of resistance or threat to safety the
13 situation produces. All force used shall be
14 held" -- strike that. "All force used shall be
15 held to the reasonable officer's standard as
16 created in Graham versus Connor." Now, did I
17 read that correctly?

18 A. Yes.

19 Q. Okay. Now, you agree and
20 understand that the fourth amendment protects
21 citizens from the use of unreasonable or
22 excessive force committed by police officers?

23 A. Yes.

24 Q. And that's clearly established in

1 the law?

2 A. Yes, it is.

3 Q. And are you familiar with the
4 Graham versus Connor decision?

5 A. I'd have to review it.

6 Q. And are you aware that's a Supreme
7 Court of the United States decision?

8 A. Yes.

9 MR. MUSACCHIO: Can you mark this
10 as Exhibit 42?

11 (Exhibit No. 42 was marked
12 for identification.)

13 (Discussion off the record.)

14 Q. (By Mr. Musacchio) Mr. Davis, I'm
15 going to represent to you that Exhibit 42 is a
16 copy of the Supreme Court decision in Graham
17 versus Connor, 490 United States 386, 1989
18 decision, and I want to call your attention to
19 Page 7.

20 When I say Page 7, it would be in
21 the top right-hand corner. And I'm going to
22 point to you the paragraph right here, you see?
23 I'm going to read portions of that paragraph on
24 Page 7. Are you with me? Where it says, "Our

1 Fourth Amendment?"

2 A. Am I on a different page? Page 7?

3 Q. Oh, yeah. Oh, I see what you're
4 saying.

5 A. Oh, this page. Okay.

6 Q. No, no, no.

7 MR. FUGATE: Are you talking about
8 straight Page 7 or 7 of 12?

9 MR. KESTEN: What are we looking
10 for?

11 MR. MUSACCHIO: Hold on a second.

12 MR. KESTEN: A definition of the
13 Fourth Amendment? It doesn't say much. None of
14 them say much.

15 MR. MUSACCHIO: All right, let's
16 just go off the record for a second. I got to
17 figure this out.

18 THE VIDEOGRAPHER: Going off the
19 record the time is 12:04.

20 (A break was taken.)

21 THE VIDEOGRAPHER: Back on the
22 record the time is 12:06.

23 Q. (By Mr. Musacchio) Mr. Davis, in
24 the Graham decision I want to call your attention

1 to beginning right here on Page 396 where it
2 says, "Our Fourth Amendment."

3 A. Mm-hmm.

4 MR. MUSACCHIO: Right there, Lenny.

5 MR. KESTEN: Meaning Page 8?

6 MR. MUSACCHIO: Yeah.

7 And it states, "Our Fourth
8 Amendment jurisprudence has long recognized that
9 the right to make an arrest or investigatory stop
10 necessarily carries with it the right to use some
11 degree of physical coercion or threat thereof to
12 effect it." Did I read that correctly.

13 A. Yes.

14 Q. And you understand that to be the
15 law?

16 A. Yes.

17 Q. And then it goes on to state on the
18 next column, "Because the test of reasonableness
19 under the Fourth Amendment is not capable of
20 precise definition or mechanical application,
21 however, its proper application requires careful
22 attention to the facts and circumstances of each
23 particular case." Did I read that correctly?

24 A. Yes.

1 Q. And it goes on to say, "including
2 the severity of the crime at issue, whether the
3 subject poses an immediate threat to the safety
4 of the officers or others, and whether he is
5 actively resisting arrest or attempting to evade
6 arrest by flight." Did I read that correctly?

7 A. Yes.

8 Q. So is it your understanding of the
9 law that whether an officer's use of force is
10 reasonable or excessive is judged by an objective
11 standard? Is that correct?

12 A. Yes.

13 Q. And you would agree with me that an
14 officer violates the Fourth Amendment when his
15 conduct resulting in the use of excessive or
16 deadly force is objectively unreasonable?

17 A. Yes.

18 Q. And that's clearly established in
19 the law; is that correct?

20 A. That's correct.

21 Q. And that was clearly established in
22 the law prior to January 5, 2011; is that
23 correct?

24 A. That's correct.

1 Q. Given the circumstances presented
2 to Officer Duncan on January 5, 2011, regarding
3 his encounter with Mr. Stamps, his seizing of
4 Mr. Stamps did not objectively warrant the use of
5 deadly force; is that correct?

6 A. That's correct.

7 Q. And that was clearly established
8 under the law; is that correct?

9 A. That's correct.

10 Q. Now, Officer Duncan -- I'm sorry.
11 Lieutenant Downing has testified in this case
12 that when he entered 26 Fountain Street, made his
13 way into the front of the house and then made his
14 way down a hallway and then made his way into the
15 kitchen and actually entered the apartment that
16 he had his weapon on safe. That's what he
17 testified to, that's what he testified in his
18 deposition. You don't have any reason to doubt
19 his testimony, do you?

20 A. No, I don't.

21 Q. What was the policy and procedure
22 in place on January 5, 2011, on whether the
23 officers when they entered 26 Fountain Street
24 into the hallway and then actually made entry

1 into the apartment itself, what was the policy as
2 to whether their weapons should have been on safe
3 or on some other mode?

4 A. The officers' weapons should have
5 been on safe until he or she perceives a threat,
6 and then they come off safe.

7 Q. And you testified already that you
8 believe and you concluded that Officer Duncan
9 when he confronted Mr. Stamps he had not really
10 perceived a threat; is that correct?

11 A. Perception is, you know, subjective
12 to his --

13 Q. Okay. Well, your testimony will
14 stand for what you said already, okay?

15 A. Maybe it was the way you just
16 phrased it.

17 Q. Yeah, maybe, yeah, yeah.

18 Did the officers receive training
19 prior to January 5, 2011, that they were suppose
20 to have their weapon on safe until they perceived
21 an actual threat?

22 A. Yes.

23 MR. MUSACCHIO: Can we mark this as
24 the next exhibit, please. I think it's 43.

1 (Exhibit No. 43 was marked
2 for identification.)

3 Q. (By Mr. Musacchio) I'm going to
4 show you what's been marked as Exhibit No. 43,
5 Mr. Davis. Can you identify that document? If
6 you can't, you can't.

7 A. No, I can.

8 Q. Okay. What is that?

9 A. These are some notes that I had
10 prepared that evening.

11 Q. When?

12 A. On January 4, 2011.

13 Q. So prior to the shooting of
14 Mr. Stamps?

15 A. Yes.

16 Q. Okay. Is this the planning
17 document that you were referring to before?

18 A. No, these are just my notes. This
19 would have been incorporated in the planning
20 document.

21 Q. Because this document, if you look
22 on Page 2, Bate STAMPS 520, actually has
23 information including in here things that
24 occurred after the shooting; is that correct?

1 A. That's correct.

2 Q. So was this document prepared
3 before the shooting or after the shooting or was
4 it a continuing process?

5 A. It's a continuing process.

6 Q. Okay. But it's not the planning
7 document that you referred to before?

8 A. No.

9 Q. I'm going to ask you an open-ended
10 question and ask you can you describe for me your
11 activities in the actual execution of the warrant
12 after you left the police station. You went with
13 the SWAT team?

14 A. Yes, I did.

15 Q. And you were in a separate vehicle?

16 A. Yes.

17 Q. So from that point when you arrived
18 at 26 Fountain Street, can you just describe what
19 you did?

20 A. Yeah. When I arrived at 26
21 Fountain Street, I made sure that the road was
22 blocked off by two marked cruisers on either end
23 of Fountain Street so that we wouldn't have any
24 through traffic. I was the last vehicle in the

1 convoy. There were several vehicles in the
2 convoy.

3 So I pulled up, and my
4 responsibilities are command and control of the
5 team and communication and coordination with the
6 regular -- the patrol division and any other
7 elements, the tactical medics. So I'm sort of
8 the coordinator of all those parts.

9 When I pulled up, however, I
10 noticed one of our detectives was on the ground
11 struggling with somebody, so I left the command
12 post to go assist that detective. Once that was
13 done, I had heard the call for shots fired,
14 medic.

15 Q. And did you ever enter the house?

16 A. No.

17 Q. Now, prior to the execution of this
18 warrant, there was surveillance present at 26
19 Fountain Street; is that correct?

20 A. That's correct.

21 Q. Do you know who was involved in
22 that surveillance?

23 A. I believe Detective Jeff DeRosa and
24 Detective Matt Gutwill.

1 Q. And do you know how long they were
2 there surveilling 26 Fountain Street before the
3 execution of the warrant?

4 A. They were there for several hours.
5 When I first met with Detective Martinez, he
6 informed me that DeRosa and I believe Gutwill
7 were maintaining surveillance of the house.

8 Q. Did you have information as to what
9 they were observing?

10 A. They were observing the house
11 itself to see what kind of activity, people
12 coming and going from the house.

13 Q. And were you aware or were you told
14 of what activity they were witnessing that
15 evening?

16 A. If I recall correctly, they told me
17 that there was a large amount of people coming
18 and going, staying for a very short period of
19 time and then leaving the house.

20 Q. A large amount of people. Do you
21 have any specifics in terms of numbers?

22 A. No, no. I mean, that's how it was
23 relayed to me, just a large amount of people
24 coming and going out of the house.

1 Q. Were you aware of who lived
2 upstairs at 26 Fountain Street?

3 A. No. We knew there was a second
4 apartment, but I had no idea who lived up there.

5 Q. Do you know whether there were a
6 group of -- there were people who were like
7 college age people that were there?

8 A. I had no idea.

9 Q. Did you have any idea that a lot of
10 people would be going up to the second floor
11 apartment fairly routinely to visit the kids that
12 were living up there?

13 A. No.

14 Q. So when you say there was a lot of
15 activity that was observed going into 26 Fountain
16 Street, all they did is saw people go in 26
17 Fountain Street, exit 26 Fountain Street, but
18 they didn't -- the surveilling officers didn't
19 know whether they were going to the first floor
20 or the second floor; is that correct?

21 A. That's correct.

22 Q. Now, you mentioned after the
23 shooting Officer Duncan received some
24 stress-related treatment; is that correct?

1 A. I believe so.

2 Q. Can you describe to me what that
3 was? I mean, let's break it down in terms of,
4 like, immediately after the event.

5 A. Mm-hmm.

6 Q. What is -- how is Mr. Duncan
7 being -- Officer Duncan being treated, what's
8 happening to him?

9 A. He was taken to the Metro West
10 Medical Center emergency room where he was
11 evaluated, assuming his -- well, I can't say. I
12 wasn't there. I don't want to assume. He was
13 taken for evaluation. I don't know what happened
14 after that, what treatment. The chief had
15 arranged some counseling for him, I believe, to
16 the best of my memory. I don't know what that
17 entailed.

18 Q. Do you know where it took place?

19 A. No, I do not.

20 Q. And you don't know any of the
21 details of what that counseling related to?

22 A. No.

23 Q. You do know it related to something
24 related to stress that may follow this type of

1 incident?

2 A. I'm assuming that, yes.

3 MR. MUSACCHIO: Can you mark this
4 as the next exhibit, 43 -- 44.

5 (Exhibit No. 44 was marked
6 for identification.)

7 Q. (By Mr. Musacchio) Can you identify
8 Exhibit 44?

9 A. This is a list of all of our SWAT
10 activations from December 2006 until December 2,
11 2010.

12 Q. Was the SWAT team activated prior
13 to December 16, 2006?

14 A. Yes.

15 Q. So this is not a complete list of
16 all the times the SWAT team has been activated;
17 is that right?

18 A. That's right.

19 Q. So from December 16, 2006, to
20 December 2, 2010, approximately four years, the
21 SWAT team was activated 16 times; is that right?

22 A. 13? 14.

23 Q. 14 times?

24 A. Yes.

1 Q. In any of these prior events, was
2 there any allegation made of any kind of use of
3 excessive force that you're aware of?

4 A. No.

5 Q. And how many of these approximately
6 14 events related to the actual execution of a
7 search warrant?

8 A. I believe they were all execution
9 of search warrants. I believe that's what this
10 list is, the search warrants requiring SWAT.

11 Q. So when it says, for example, on
12 December 8, 2008, "Suspect wanted for armed
13 robbery by handgun while disguised," is that a
14 search warrant for -- when we say search warrant,
15 are we talking about search warrants for people
16 or for tangible items?

17 A. It could be either or. It could be
18 an arrest warrant, a high risk warrant. So it
19 could be either an arrest warrant for an
20 individual or a search warrant for property.

21 Q. Okay. So if we go through them,
22 December 6, 2006, "Past possession of firearms,
23 A&B on a police officer," is that an arrest
24 warrant, or do we know?

1 A. I don't know, and some of this
2 could have been on the person's board of
3 probation check.

4 Q. "Cocaine dealer possessing two
5 scoped rifles, several handguns," April 4, 2007,
6 was that a search warrant?

7 A. Yes.

8 Q. November 22, '07, "Possession of
9 stolen shotgun from housebreak and handgun." I
10 assume that's a search warrant, too?

11 A. Yes.

12 Q. November 25, 2007, "Suspect with
13 two prior murder charges, carries a knife, stated
14 he will 'throw cops down stairs if they come for
15 him,'" is that an arrest warrant?

16 A. I believe that was a search warrant
17 also.

18 Q. "Search for suicidal male with
19 knife," September 10, 2008, was that a search
20 warrant?

21 A. No, it was not.

22 Q. So that's --

23 A. That was a search for a person.

24 Q. For a person. September 15, 2008,

1 "Suspect associated with Latin King gang. Access
2 to apartment is monitored via video cameras," was
3 that an arrest or search?

4 A. I don't know.

5 Q. You don't remember?

6 A. No.

7 Q. September 19th, "Suspect criminal
8 history including robbery, escape, cocaine
9 trafficking," was that a search warrant?

10 A. Search warrant.

11 Q. The next one was probably a search
12 warrant, too?

13 A. Yes.

14 Q. Okay. If you go to June 1, 2010,
15 "Multiple armed robbery suspect," was that an
16 arrest warrant?

17 A. Yes.

18 Q. October 22, 2010, "Armed robbery
19 suspect by handgun," is that an arrest or a
20 search?

21 A. I believe that was an arrest
22 warrant.

23 Q. Okay. The present chief is
24 Mr. Carol; is that correct?

1 A. Carl, C-A-R-L.

2 Q. Carl, Mr. Carl. And he's the
3 present chief. Is he planning to leave his
4 position as chief?

5 A. Tomorrow.

6 Q. Tomorrow. And who's going to be
7 the new chief?

8 A. The acting chief is Ken Ferguson.

9 Q. Is there a decision process going
10 on right now as to who's going to be the new
11 chief?

12 A. Yes.

13 Q. Are you a candidate for that
14 position?

15 A. No, I'm not.

16 Q. You're not, okay. And why is that?

17 A. On Monday I start a new career as
18 the police chief in the Town of Ashland.

19 Q. Oh, so you're leaving the
20 Framingham Police Department as of tomorrow?

21 A. Yes.

22 Q. And you're going to be the Chief of
23 Police in the Town of Ashland?

24 A. Yes.

1 Q. Congratulations.

2 A. Thank you.

3 MR. KESTEN: We'll see. It's an
4 open question.

5 Q. (By Mr. Musacchio) Is there a
6 particular name of the training course in which
7 the contact/cover rule is taught?

8 A. Patrol Procedures.

9 MR. MUSACCHIO: I have no further
10 questions.

11 THE VIDEOGRAPHER: This concludes
12 the October 3, 2013, deposition of Deputy Chief
13 Craig Davis. Going off the record the time is
14 12:24 p.m.

15 (Deposition concluded at 12:24 p.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 CRAIG
7 W. DAVIS, 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.

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24 MARYELLEN COUGHLIN, RPR/CRR

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Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made.

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

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

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ACKNOWLEDGMENT OF DEPONENT

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

CRAIG W. DAVIS

DATE

Subscribed and sworn
to before me this

_____ day of _____, 20____.

My commission expires: _____

Notary Public

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