

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

Civil Action No. 1:12-cv-11908

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

Plaintiffs,

v.

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 LT. ROBERT F. DOWNING

Thursday, August 1st, 2013

12:51 p.m.

Held At:

Kreindler & Kreindler LLP
277 Dartmouth Street
Boston, Massachusetts

REPORTED BY:

Maureen O'Connor Pollard, RPR, CLR, CSR

Lieutenant Robert F. Downing

Page 2

1 APPEARANCES:
 2
 3 FOR THE PLAINTIFF EURIE A. STAMPS, JR.:
 4 ANTHONY TARRICONE, ESQUIRE
 JOSEPH P. MUSACCHIO, ESQUIRE
 5 KREINDLER & KREINDLER LLP
 277 Dartmouth Street
 6 Boston, Massachusetts 02116
 617-424-9100
 7 atarricone@kreindler.com
 8
 9 FOR THE PLAINTIFF NORMA BUSHFAN STAMPS:
 10 ANTHONY W. FUGATE, ESQUIRE
 BARDOUILLE & FUGATE
 11 22 Broad Street
 Lynn, Massachusetts 01902-5023
 12 781-593-8888
 13
 14 FOR THE DEFENDANTS:
 15 THOMAS R. DONOHUE, ESQUIRE
 BRODY HARDOON PERKINS & KESTEN, LLP
 16 One Exeter Place
 699 Boylston Street
 17 Boston, Massachusetts 02116
 617-880-7100
 18 tdonohue@bhpklaw.com
 19
 Also Present: Lucille Sharp, Paralegal
 20
 Videographer: Christopher Coughlin
 21
 22
 23
 24

Page 3

1	INDEX	
2	EXAMINATION	PAGE
3	LT. ROBERT F. DOWNING	
4	BY MR. TARRICONE	6
5	EXHIBITS	
6	NO. DESCRIPTION	PAGE
7	10 1/7/11 Transcript of Interview of	
8	Robert Downing.....	4
9	10A Copy of photograph.....	4
10	10B Copy of photograph.....	4
11	11 Rebuttal statement, Bates STAMPS	
12	001882.....	16
13	12 1/5/11 After Action Report, Bates	
14	STAMPS 000521 through 529.....	35
15	13 Search Warrant.....	35
16	14 Color diagram.....	73
17		
18		
19		
20		
21		
22		
23		
24		

Page 4

1 PROCEEDINGS
 2
 3 (Whereupon, Exhibit Number 10, 1/7/11
 4 Transcript of Interview of Robert
 5 Downing, Number 10A, Copy of
 6 photograph, and Number 10B, Copy of
 7 photograph, were marked for
 8 identification.)
 9 (Off of video record.)
 10 MR. DONOHUE: Same stipulations as
 11 last time, just form objections, reserved to
 12 the time of trial?
 13 MR. TARRICONE: Yes.
 14 MR. DONOHUE: Now that I see that in
 15 writing, I guess should say we reserve all
 16 objections except as to the form of the
 17 question until the time of trial.
 18 (On video record.)
 19 THE VIDEOGRAPHER: We are now on the
 20 record. My name is Chris Coughlin, I'm a
 21 videographer for Golkow Technologies.
 22 Today's date is August 1st, 2013, and
 23 the time is 12:51 p.m.
 24 This video deposition is being held in

Page 5

1 Boston, Massachusetts, in the matter of
 2 Eurie A. Stamps, Jr. and Norma Bushfan
 3 Stamps, Co-Executors of the Estate of Eurie
 4 A. Stamps, Sr., versus the Town of
 5 Framingham and Paul K. Duncan, Individually
 6 and in his Capacity as a Police Officer of
 7 the Framingham Police Department,
 8 Defendants, in the United States District
 9 Court, District of Massachusetts, Civil
 10 Action Case Number 1:12-cv-11908-FDS.
 11 The deponent is Robert F. Downing.
 12 Would counsel please identify
 13 yourselves for the record.
 14 MR. TARRICONE: Anthony Tarricone from
 15 the Kreindler law firm representing the
 16 Stamps family.
 17 MR. DONOHUE: Tom Donohue from Brody
 18 Harpoon Perkins & Kesten. I represent the
 19 Defendants.
 20 MR. MUSACCHIO: Joseph Masacchio with
 21 the Kreindler law firm representing Eurie
 22 Stamps and his family.
 23 THE VIDEOGRAPHER: The court reporter
 24 is Maureen Pollard, and she will now swear

Lieutenant Robert F. Downing

Page 6

1 in the witness.
2
3 LT. ROBERT F. DOWNING,
4 having been first duly sworn, was examined and
5 testified as follows:
6 DIRECT EXAMINATION
7 BY MR. TARRICONE:
8 Q. Lieutenant Downing, would you please
9 state your full name?
10 A. Robert Fitzpatrick Downing.
11 Q. What town or city do you live in?
12 A. Town of Framingham.
13 Q. What is your date of birth?
14 A. March 4th, 1968.
15 Q. And are you a lieutenant in the
16 Framingham Police Department?
17 A. Yes, sir.
18 Q. How long have you been a lieutenant?
19 A. Approximately three years.
20 Q. So you would have become a lieutenant
21 in 2010?
22 A. I do believe so, yes, sir.
23 Q. Were you a sergeant before that?
24 A. Yes, sir.

Page 7

1 Q. How long were you a sergeant?
2 A. I do believe I became a sergeant in
3 2005.
4 Q. And before 2005, were you an officer
5 of the Framingham Police Department?
6 A. Yes, sir.
7 Q. When did you begin there?
8 A. 1995, September.
9 Q. So from '95 until about 2005 you were
10 an officer, and then promoted to sergeant?
11 A. Yes. Approximately, yes.
12 Q. Did you attend police academy?
13 A. Yes, sir.
14 Q. Where?
15 A. Norwood, Massachusetts.
16 Q. When was that?
17 A. September of 1995.
18 Q. Are you a high school graduate?
19 A. Yes, sir.
20 Q. Which high school, and what year?
21 A. Framingham High School, in 1987.
22 Q. Did you attend college?
23 A. Yes, I did, sir.
24 Q. Where?

Page 8

1 A. Westfield State College.
2 Q. Do you have a degree?
3 A. Yes, sir.
4 Q. What is the degree?
5 A. I got a degree -- I got my bachelor's
6 degree and a master's degree.
7 Q. In what subjects?
8 A. Criminal justice, and I got a minor in
9 psych and soc.
10 Q. For both bachelor's and --
11 A. Just bachelor's.
12 Q. And your master's degree is what?
13 A. Criminal justice.
14 Q. Is that also from Westfield?
15 A. Yes, sir.
16 Q. What year did you complete your
17 bachelor's degree?
18 A. 1991.
19 Q. And what year did you complete your
20 master's?
21 A. I'm not positive. I do believe it
22 was -- I don't know. To be honest with you, I
23 don't -- I want to say -- I'm not positive on
24 that.

Page 9

1 Q. Was that after you had already entered
2 the workforce, the master's?
3 A. Yes, I was already on the job when I
4 sought the master's.
5 Q. What role, if any, do you have today
6 with respect to the Framingham Police
7 Department's SWAT team?
8 A. Right now today, sir?
9 Q. Yes.
10 A. The XO, the second in charge.
11 Q. What's the term you used?
12 A. XO.
13 Q. What does that mean?
14 A. Executive officer.
15 Q. Executive officer?
16 A. It's like being a vice-president.
17 Q. That's second in charge behind whom?
18 A. Deputy Davis.
19 Q. He's --
20 A. The commander, sir.
21 Q. He's the commander.
22 And for how long have you had that
23 position?
24 A. I got that position in July of 2010.

Lieutenant Robert F. Downing

Page 10	Page 12
<p>1 Q. Before July of 2010, what position did 2 you have in the SWAT team? 3 A. I was a team leader. 4 Q. When did you begin serving as team 5 leader? 6 A. I don't recall that date, sir. 7 Q. Was it a number of years before you 8 became -- 9 A. Yes. 10 Q. -- the second in command? 11 A. Say again? 12 Q. Was it a number of years before you 13 became second in command? 14 A. Yes, sir. 15 Q. In January of 2011, you were the 16 executive -- what's the term, executive officer? 17 A. Yes, sir. 18 Q. That was the position you had then? 19 A. Yes, sir. 20 Q. In the years that you were a team 21 leader -- is that the term? 22 A. Yes, sir. 23 Q. -- team leader and then executive 24 officer, did you have responsibility for</p>	<p>1 A. Before 2011, like I said, I was a team 2 leader, I wouldn't do -- I don't believe I was 3 doing the monthlies like I do now. 4 Q. I saw in the documents a number of 5 monthly reports that seemed to have your name on 6 them. What were those? 7 A. It would be helpful if you show them. 8 Do you have them, sir? 9 Q. We'll wait -- while we're waiting for 10 that, I'm going to continue questioning, if you 11 don't mind. 12 A. Yes, sir. 13 Q. Before today, have you given testimony 14 in any civil proceedings, either in a deposition 15 or in a trial? 16 A. No, no. The only thing I've done is, 17 like I said, something that looks like this 18 document right here. 19 Q. You're pointing to the transcript of 20 your statement? 21 A. Yes. 22 Q. You've never -- 23 MR. DONOHUE: It's not his statement, 24 though.</p>
Page 11	Page 13
<p>1 training members of the SWAT team? 2 A. Actually two different positions, sir. 3 I mean team leader -- the XO and the commander 4 basically come up with the training, and I kind 5 of myself execute the training. But now that 6 I'm the XO, I'm kind of more involved in the 7 training plan. 8 Q. So as a team leader, you would do the 9 hands-on training of the officers? 10 A. Yes, sir. 11 Q. And I noticed in some of the documents 12 that have been provided by the town that there 13 are memos that you wrote concerning training 14 sessions, sometimes on a monthly basis, and some 15 other documents as well concerning what was 16 taught and who attended and that sort of thing. 17 Was that part of your responsibility? 18 A. Yes, I guess the term "concerning," I 19 mean it's actually basically when you do 20 training, you document what we did. 21 Q. Okay. And what responsibility did you 22 have for documenting training over the years? 23 A. Which years? 24 Q. Until -- before 2011.</p>	<p>1 BY MR. TARRICONE: 2 Q. The one you're pointing to is -- 3 A. Sorry. Something that looks like 4 that, that's really the talking with the 5 lieutenant with the state police. 6 MR. DONOHUE: I'm sorry, that is his 7 statement. 8 MR. TARRICONE: I just want to make 9 sure. 10 BY MR. TARRICONE: 11 Q. Well, have you ever given a deposition 12 before today, that is with a court reporter, 13 either with a camera, on video or not on video, 14 that you recall? 15 A. No. Like I said, the only thing I've 16 received and done is this document right here, 17 sir. 18 Q. I'm not talking about this case. I'm 19 talking in any case. 20 A. Oh, I apologize. 21 Q. In any civil case -- 22 A. No, sir. 23 Q. -- ever, you've never given testimony? 24 A. No, sir.</p>

Page 14

1 Q. Either deposition or trial?
2 A. I've been to court, but no deposition.
3 This is my first.
4 Q. When you've been to court, has it ever
5 been in conjunction with a civil --
6 A. No.
7 Q. -- as opposed to a criminal trial?
8 A. No. I apologize. No, sir.
9 Q. So every time you've testified, it's
10 been in a criminal proceeding?
11 A. Yes, sir.
12 Q. Is that right?
13 Before today, did you review any
14 documents, or this morning, did you review any
15 documents to prepare to give testimony today at
16 this deposition?
17 A. Yes.
18 Q. What did you review?
19 A. This document right here, and --
20 Q. You're pointing to the transcript?
21 A. Can I pick it up?
22 Q. Yes, of course. Exhibit Number 10,
23 that's the transcript of the questions and
24 answers, your answers to questions from

Page 15

1 Lieutenant Forster?
2 A. Yes, sir.
3 Q. What was the date that you answered
4 those questions?
5 A. Can I look?
6 Q. Of course you can look.
7 A. It was the 7th of January, 2011.
8 Q. What else did you review, if anything?
9 A. I had pictures, like these pictures.
10 Q. Take a look at the Exhibits 10A and B.
11 Are those -- did you review those?
12 A. Yes, I do believe so. Mine wasn't in
13 color, but yes.
14 Q. And are Exhibits 10A and B copies of
15 photographs that you --
16 A. Signed.
17 Q. -- made markings on when you were
18 answering Lieutenant Forster's questions?
19 A. Yes, sir. Yes.
20 Q. Did you review anything else?
21 A. I reviewed a copy of Deputy Davis'
22 after action review, and a copy of a rebuttal by
23 myself and Sergeant Stuart on Ijames' report,
24 and that should be it, sir.

Page 16

1 MR. TARRICONE: Mark this, please.
2 (Whereupon, Exhibit Number 11,
3 Rebuttal statement, Bates STAMPS
4 001882, was marked for
5 identification.)
6 BY MR. TARRICONE:
7 Q. Do you have in front of you what's
8 been marked as Exhibit 11?
9 A. I do, sir.
10 Q. Is that what you just referred to as
11 the rebuttal?
12 A. Yes, sir.
13 Q. Did you review anything else?
14 A. I believe that's it, sir. Well, like
15 I said, I stated Deputy Davis' AAR report, after
16 action review. I don't know if you have that.
17 Q. I do. Thank you.
18 When did you first become team leader
19 of the SWAT team?
20 A. I don't know that date, sir, to be
21 honest with you.
22 Q. Was it in the mid 2000s?
23 A. I would say so, yes.
24 Q. And from that time up until the time

Page 17

1 you became executive officer, were you involved
2 in the hands-on training of SWAT team members?
3 A. Like I said, team leader basically
4 executes the plans as opposed to the
5 XO/commander. Kind of --
6 Q. So you would do the hands-on training?
7 A. As a team leader I did, yes.
8 Q. So somebody else was creating the
9 training plan, and then you would carry it out?
10 A. Yes, sir.
11 Q. Did anybody else have that
12 responsibility?
13 A. As a team leader?
14 Q. Yes.
15 A. Sergeant Stuart and I. But I mean
16 prior to this, there's been numerous team
17 leaders that come and go on the team also, sir.
18 Q. So during the time that you were team
19 leader, was Sergeant Stuart also a team leader?
20 A. Yes, he was one of them, yes.
21 Q. How many years back before 2011 do you
22 think you were both team leaders?
23 A. Together?
24 Q. Yes. Three, four, five? Give me your

Page 18

1 best estimate, I'm not -- this isn't a quiz.
2 A. I apologize.
3 Q. Just give me your best estimate.
4 A. Three or four years, sir.
5 Q. So did you and Sergeant Stuart conduct
6 the training together as a team?
7 A. Yes.
8 Q. Did that training include the use of
9 rifles?
10 A. Yes, yes.
11 Q. Including the M-4?
12 A. Yes.
13 Q. And the MP-5?
14 A. Yes.
15 Q. And when I say "the use of rifles," I
16 don't mean just target practice, but I mean the
17 procedures and protocols for handling a rifle
18 during certain procedures and operations.
19 A. Yes.
20 Q. So you were one of the instructors for
21 that?
22 A. Yes.
23 Q. Did you have occasion to train Officer
24 Duncan during that time?

Page 19

1 A. Yes.
2 Q. Did you also have occasion to train
3 Officer Riley?
4 A. Yes.
5 Q. In your position as executive officer,
6 do you have a role in deciding who should or
7 should not be on the SWAT team?
8 A. Yes. Well, as the XO, yes.
9 Q. And when did you become XO again?
10 A. July of 2010. Yes.
11 Q. So that would have been approximately
12 six months, five, six months before the --
13 A. Correct.
14 Q. -- execution of the search warrant
15 that's the subject of this case?
16 A. Yes.
17 Q. You understand that you're here today
18 giving testimony in a case that's pending in the
19 Federal Court, the United States District Court
20 here in Massachusetts?
21 A. Yes.
22 Q. You understand that?
23 A. Yes.
24 Q. You understand that even though we're

Page 20

1 in my law office, you are under oath and
2 testifying in a formal legal proceeding?
3 A. Yes.
4 Q. Before today, have you given testimony
5 under oath concerning this case?
6 A. What do you mean?
7 Q. Have you been sworn to tell the
8 truth --
9 A. Yes.
10 Q. -- in any other capacity in this case,
11 to give testimony concerning this case, that is
12 the incident that occurred on January 4th and
13 the early morning hours of January 5th, 2011 at
14 26 Fountain Street in Framingham, Massachusetts?
15 MR. DONOHUE: You mean other than
16 today?
17 MR. TARRICONE: Yes.
18 A. Break that down. I'm not really --
19 that's what I'm hung up.
20 BY MR. TARRICONE:
21 Q. Let me break it down. That was a long
22 question. I apologize.
23 A. Like I said, the only time I've really
24 talked about it at length is with that

Page 21

1 lieutenant right here.
2 Q. And that was at the police department?
3 A. Yes, in a conference room on the 7th
4 of January.
5 Q. And there was no court officer there
6 that gave you an oath at that time, was there?
7 A. No, no. Just -- I'm sorry, your
8 title?
9 Q. There was a stenographer --
10 A. Yes. I apologize.
11 Q. -- who took down the questions and
12 answers?
13 A. Yes, sir.
14 Q. And between that time and now, have
15 you given testimony under oath in any other
16 proceeding concerning the events of January 4th
17 and 5th, 2011 at 26 Fountain Street in
18 Framingham?
19 A. No. I mean, no, unless talking to --
20 Q. No, no.
21 MR. DONOHUE: No.
22 BY MR. TARRICONE:
23 Q. I think you understood the question.
24 A. I'm not trying to give you a hard

Page 22

1 time, I just want to make sure we're tracking.
2 Q. I understand.
3 When you answered questions for
4 Lieutenant Forster, was it reported on a video
5 camera?
6 A. I don't believe so. I believe it was
7 on just a tape recorder, sir.
8 Q. When was the first time you handled or
9 had anything to do with an M-4 rifle?
10 A. Myself?
11 Q. Yes.
12 A. In basic training of 1991.
13 Q. So quite a while ago?
14 A. Yes.
15 Q. When you say "basic training," do you
16 mean --
17 A. Army.
18 Q. -- military?
19 A. Military, yes. That's when I first
20 touched an M-16.
21 Q. How many years in the military did you
22 have occasion to use an M-4?
23 A. 22.
24 Q. Are you in the Guard now?

Page 23

1 A. I just retired.
2 Q. But during that 22 years, was the M-4
3 the weapon that was used for the --
4 A. Well, it transitioned. Again, it was
5 M-16, then A-1, A-2, M-4. It's the same
6 concept. It's just a shorter barrel really.
7 Q. It's a short barrel. Is it considered
8 an automatic or semi-automatic weapon?
9 A. It depends. You can make them both.
10 Q. The ones that you used in the
11 military, were those automatic?
12 A. Yes.
13 Q. In the police department, is the M-4
14 an automatic or semi-automatic?
15 A. It is semi.
16 Q. Is it fair to say you've had
17 considerable experience with the M-4?
18 A. Yes, sir.
19 Q. Did you train other officers in the
20 use and handling of the M-4?
21 A. Yes.
22 Q. Do you continue to do that today?
23 A. Yes.
24 Q. Did you play any role in the drafting

Page 24

1 of the weapons procedure that has been adopted
2 and amended from time to time by the Framingham
3 Police Department?
4 A. That's more Deputy Davis. Deputy
5 Davis is in the admin side of the house, so he
6 does basically all the policies and procedures
7 for the PD.
8 Q. In the training that you conducted
9 over the years, did that include making entry
10 into a building for the purposes of executing a
11 warrant, or for other reasons?
12 A. Yes.
13 Q. And did it include encountering
14 individuals during the course of an entry?
15 A. During an actual mission?
16 Q. Yes.
17 A. Yes, sir.
18 Q. So you were one of the people that
19 trained officers what the appropriate and proper
20 procedures were?
21 A. Yes.
22 Q. Okay. If you would, the last exhibit
23 that was put in front of you --
24 A. What number, sir?

Page 25

1 Q. Number 11.
2 A. Yes, sir.
3 Q. You used the term "rebuttal." And
4 it's a one page document, is that right?
5 A. Yes, sir.
6 Q. And you said you reviewed it before --
7 A. Yes, sir.
8 Q. -- coming in here today?
9 A. Yes, sir.
10 Q. Do you know who wrote this?
11 A. It was Brian Simoneau.
12 Q. So the "I," where it says "On
13 Wednesday, September 21, 2011, I attended," the
14 "I" is Brian Simoneau?
15 A. Yes, sir.
16 Q. What was his position at that time?
17 A. He's basically the chief's aide.
18 Q. Is he a police officer?
19 A. No. He's an attorney.
20 Q. So he's a civilian, if that's the
21 right term?
22 A. Yes. I do believe he's auxiliary or
23 something also, yes.
24 Q. And you were at this meeting?

Page 26

1 A. Yes, sir.
2 Q. Along with Chief Steven Carl, Deputy
3 Chief Craig Davis, and Sergeant Vincent Stuart?
4 A. Yes, sir.
5 Q. That's the Sergeant Stuart who was a
6 team leader along with you, is that right?
7 A. Yes.
8 Q. And did you have an opportunity to
9 review Exhibit 11 after Mr. Simoneau prepared
10 it?
11 A. No. The first time I saw this, sir,
12 is this morning.
13 Q. Really. Do you remember it, as you
14 look at it, do you remember the meeting?
15 A. Yes.
16 Q. Would you -- do you consider this an
17 accurate summary of the discussion that occurred
18 on September 21, 2011?
19 A. Yes, more accurate than the original
20 one, that's why we did a rebuttal, like I said,
21 sir.
22 Q. When you say "the original," are you
23 talking about James' report?
24 A. Yes, which I've never seen.

Page 27

1 Q. You've never seen that?
2 A. No.
3 Q. So explain to me how this meeting came
4 about, the meeting on September 21, 2011.
5 A. It basically came about, as I recall,
6 that, like I said, this Mr. Ijames was supposed
7 to review the team and the incident in January.
8 And it was my assumption that we were going to
9 have a sit-down meeting with him, or some type
10 of face-to-face.
11 And I don't remember the exact date,
12 but in the summertime, probably the summer of
13 2011, I was actually at Hershey Park with my
14 family, and I just received a phone call out of
15 the blue. And I just picked it up, and it was
16 this Mr. James. And he just, you know, asked me
17 a bunch of questions, a bunch of questions, and
18 then all of a sudden this report came up.
19 Q. Okay. On September 21, 2011, who
20 called this meeting that's summarized in Exhibit
21 11?
22 A. As I recall, I think -- I mean, again,
23 as I recall, I think Sergeant Stuart saw the
24 report and he wasn't happy with it, and we

Page 28

1 talked about it. So that's why I do believe it
2 was Sergeant Stuart and I who wanted to have
3 this meeting.
4 Q. Had you -- at the time of this
5 meeting, had you seen James' -- what's James'
6 name?
7 A. Ijames. That's all I know, sir. I
8 think it's Steven Ijames.
9 Q. Steven Ijames.
10 Had you seen his report?
11 A. I don't believe so, no. Because like
12 I said, it was all news to me. Because like I
13 said, I was kind of surprised that a report was
14 generated without a face-to-face.
15 Q. So you never had a face-to-face
16 meeting with him?
17 A. No.
18 Q. Did you feel that you had an
19 opportunity to give him adequate input for
20 this --
21 A. No, no.
22 Q. -- investigation he was conducting?
23 A. No, no.
24 Q. In fact, you were the team -- one of

Page 29

1 the team leaders that night on the scene,
2 weren't you?
3 A. Yes.
4 Q. On June 26th -- I mean January 26th?
5 A. I recall --
6 Q. Wait a minute. Excuse me. Let me
7 re-ask the question because I really messed it
8 up.
9 You were one of the team leaders on
10 the evening that the search warrant was executed
11 in January, 2011, is that right?
12 A. Yes, sir.
13 Q. Did you know that this Ijames was
14 going to be doing a -- his own review and
15 writing a report?
16 A. I did know, I did know about it, but
17 like I said, it would be like trying to do what
18 we're doing now over the telephone. I mean like
19 I said, I expected a face-to-face. Either it
20 was my assumption that myself and the team, team
21 leaders of the team would see him, or he'd come
22 to us, I mean thinking it would be cheaper for
23 him to come see us doing what we're doing now, a
24 face-to-face.

Lieutenant Robert F. Downing

Page 30

1 Q. So you never had that opportunity?
2 A. No, sir.
3 Q. Did Sergeant Stuart have that
4 opportunity?
5 A. No, sir.
6 Q. So far as you know, Steven Ijames did
7 not come to Framingham to interview people?
8 A. I don't -- I mean he didn't interview
9 myself or Sergeant Stuart.
10 Q. You never saw him?
11 A. Correct, sir. Like I said, it took
12 place in the parking lot of Hershey Park, my
13 conversation with him.
14 Q. How long were you on the phone with
15 him?
16 A. I don't recall. I mean like I said, I
17 just remember being in the park. And I don't --
18 like I said, I was outside for some reason and I
19 answered the phone. I mean I don't have -- I
20 mean 20, 30 minutes. To be honest with you, I
21 can't honestly...
22 Q. So the investigation or review of what
23 occurred that this Ijames, Steve Ijames
24 conducted was not what you expected was going to

Page 31

1 be done?
2 A. Correct.
3 Q. So you and Sergeant Stuart then called
4 this -- wanted to have a meeting to discuss --
5 A. To clarify.
6 Q. Okay. When you say "clarify," to
7 clarify what?
8 A. Just, again, I do believe Sergeant
9 Stuart did see, and I can't testify for Sergeant
10 Stuart, but he did see the report from Ijames,
11 and he wasn't too happy, and we talked about it.
12 So that's how this meeting came about.
13 Q. What aspect of Ijames' report and
14 conclusions were you and Sergeant Stuart
15 concerned about?
16 A. To be honest with you, like I said, I
17 don't even think I even saw the document, so I
18 don't remember. Like I said, I just -- I don't
19 recall, to be honest with you.
20 Q. Well, did you learn at some point in
21 time that Steven Ijames concluded that Officer
22 Duncan's training were contributing causes to
23 the death of Mr. Stamps?
24 A. I mean I -- to be honest with you, I

Page 32

1 would -- I don't remember, but I would say that
2 would be the meats and potatoes of it.
3 Q. In other words, this Steven Ijames was
4 critical of the training that you and Sergeant
5 Stuart had given Officer Duncan, and you
6 disagreed with that point of view?
7 A. Correct.
8 Q. And Sergeant Stuart also disagreed
9 with that point of view?
10 A. Yes, sir.
11 Q. And this Steven Ijames never even sat
12 down with you and Sergeant Stuart to discuss the
13 matter?
14 A. Correct, sir.
15 Q. Is that right?
16 A. Yes, sir.
17 Q. Did he have the benefit of seeing all
18 of your training materials?
19 A. To be honest with you, I don't know
20 that. I mean I don't -- I don't -- I don't
21 know.
22 Q. You don't know what he looked at?
23 A. I have no clue what he looked at.
24 That would make sense, though, but I don't know.

Page 33

1 Q. Have you, as of today, have you seen
2 his written report?
3 A. No.
4 Q. And just as a preliminary, before I
5 ask you more questions about Exhibit 11, on the
6 evening of January 4, 2011, the SWAT team
7 mission was to execute a search warrant at 26
8 Fountain Street, is that right?
9 A. Yes, sir.
10 Q. And in the planning for that
11 operation, you and the members of the SWAT team
12 knew that there were two young males who were
13 thought to be dealing drugs from that location,
14 is that right?
15 A. I do believe it was three.
16 Q. Well, the search warrant identifies
17 two individuals, one named Joseph Bushfan and
18 the other one named Dwayne Barrett. Do you
19 remember those names?
20 A. I recognize the names, yes.
21 Q. Who is the third person that you think
22 might have been the subject?
23 A. If you give me a copy of that AAR, I
24 could show you, that's what I saw this morning.

1 Deputy Davis' AAR report of the incident.
 2 Q. The AAR report has a third name, but
 3 that name does not -- I'll tell you the name in
 4 a second if I can find it.
 5 A. That's why I'm going by recollection
 6 that I saw three names.
 7 MR. DONOHUE: Devon Talbert?
 8 MR. TARRICONE: No. Let's mark it as
 9 an exhibit so there's no question. Let me
 10 have the -- the one called the after action.
 11 BY MR. TARRICONE:
 12 Q. Lieutenant Downing, is this the -- is
 13 that part of it?
 14 A. Let me see it, I can let you know.
 15 Q. Is that the after action report you're
 16 referring to (handing)?
 17 A. I do believe so, sir. And here are
 18 the three names I was talking about.
 19 Q. What are the three names?
 20 A. Dwayne Barrett, Deandre Nwaford, and
 21 Joseph Bushfan.
 22 Q. Okay. So let me see, if I could.
 23 We'll mark this as an exhibit in a moment.
 24 But the three names are Dwayne

1 Barrett, Deandre Nwaford, N-W-A-F-O-R-D, and
 2 Joseph Bushfan, is that right?
 3 A. Yes, sir.
 4 MR. TARRICONE: And let's also mark
 5 the -- first of all, let's mark this. This
 6 will be Exhibit Number 12.
 7 (Whereupon, Exhibit Number 12, 1/5/11
 8 After Action Report, Bates STAMPS
 9 000521 through 529, was marked for
 10 identification.)
 11 MR. TARRICONE: This will be
 12 Exhibit 13, this is the search warrant.
 13 (Whereupon, Exhibit Number 13, Search
 14 Warrant, was marked for
 15 identification.)
 16 BY MR. TARRICONE:
 17 Q. Did you ever see the search warrant in
 18 the planning phase of this SWAT team mission?
 19 A. I can't recall if I did or not, sir.
 20 I know it was being done as we got called in, as
 21 I recall.
 22 Q. That's 13?
 23 Would you look at Exhibit 13 and tell
 24 me if that third name, Deandre Nwaford,

1 N-W-A-F-O-R-D, is the subject of this search
 2 warrant?
 3 A. On the first page? Or can I go
 4 through it, sir?
 5 Q. Take a look at it.
 6 (Witness reviewing document.)
 7 A. And the next question would be?
 8 BY MR. TARRICONE:
 9 Q. The two individuals identified in the
 10 search warrant as the subjects of this search
 11 are, in fact, Joseph Bushfan and Dwayne Barrett,
 12 is that correct?
 13 A. Yes, sir.
 14 Q. Is there a third individual?
 15 A. No. But would it be on the attached
 16 Amendments A and B?
 17 Q. Take a look.
 18 A. It's not here, that's what I'm saying.
 19 It's says "amendment." No? If you know the
 20 answer, let me know. Like I said, I'm not
 21 trying to be difficult.
 22 I see the two names that you're asking
 23 for, Dwayne Barrett and Joseph Bushfan.
 24 Q. That's on the front page, right?

1 A. Correct.
 2 Q. And you knew those, from the planning,
 3 that those were two young men in their twenties,
 4 is that right?
 5 A. Yes.
 6 Q. And did you also know in the planning
 7 phase of this mission that there was an elderly
 8 gentleman that lived at the home?
 9 A. Yes.
 10 Q. His name was Eurie Stamps?
 11 A. Yes, sir.
 12 Q. And he's the gentleman that was shot
 13 in the face during this mission, is that right?
 14 A. Yes, sir.
 15 Q. You knew before executing the mission
 16 that he was 68 years old, I believe, is that
 17 right?
 18 A. I don't remember his age.
 19 Q. You knew he was elderly?
 20 A. There was an older gentleman, yes.
 21 Q. And he was not the target of this
 22 search warrant, was he?
 23 A. Not that we knew. I mean no, he was
 24 just in the house.

Page 38

1 Q. And there was no information to
2 suggest that he was dangerous or armed before
3 you executed this search warrant, was there?
4 A. I don't recall, but I do believe part
5 of Deputy Davis' AAR -- may I look at that?
6 Q. Sure.
7 (Witness reviewing document.)
8 A. Yeah, I mean looking at his AAR, it
9 just says [REDACTED]
10 [REDACTED]
11 BY MR. TARRICONE:
12 Q. [REDACTED]
13 [REDACTED]
14 A. Yes. But again, to be honest with
15 you, I don't even know if I knew that that
16 night, to be honest with you.
17 Q. Okay. In any event, he was not a
18 target, and you had no information that night
19 that he was dangerous or armed?
20 A. No.
21 Q. Or a threat?
22 A. No, sir.
23 Q. Did all the SWAT team members know
24 that he was in the house?

Page 39

1 A. Yes, there was -- I mean, to be honest
2 with you, I'm not -- I can't attest to the
3 briefing that night because I don't remember.
4 I'm sure if it was part of the briefing. But
5 like I said, I, pretty much, yes, I would say
6 yes.
7 Q. And that would have included --
8 A. We generally -- all the information we
9 have we pass on. We don't hold back any
10 information.
11 Q. So that information would have been
12 imparted to Officer Duncan?
13 A. Yes.
14 Q. I read that the briefing in part was
15 conducted using a PowerPoint presentation. Do
16 you remember that?
17 A. I don't. I don't remember how it was
18 conducted, to be honest with you. Where did you
19 say you read that? I don't recall. I mean
20 we've done both, to be honest with you, we've
21 briefed it on the podium or we have done
22 PowerPoint.
23 Q. The documents provided to the
24 Plaintiffs in this litigation provided by the

Page 40

1 Town of Framingham indicate that a PowerPoint
2 presentation was made that evening. Is that
3 something that sometimes is done?
4 A. Yes, sometimes, yes, sir.
5 Q. Have you seen the PowerPoint
6 presentation since that evening?
7 A. I don't believe so. I mean like I
8 said, I'm going strictly by memory, but I think
9 there was -- I don't think it was a PowerPoint,
10 like I said, PowerPoint per se. I think it was
11 more of a layout from Officer Murtagh, he has
12 like layouts. I think that's what you might be
13 referring to.
14 Q. I'm referring to documents that say it
15 was a PowerPoint program. I'll put my hands on
16 it, and then we'll come back to it.
17 A. If I could see it I'll just.
18 Q. I know, I will -- hang on, let me take
19 a look now so we can do a more...
20 Is that in the after action report?
21 MR. MUSACCHIO: Yes. First page, last
22 line.
23 BY MR. TARRICONE:
24 Q. Exhibit 13?

Page 41

1 A. 13 is --
2 Q. I'm sorry, Exhibit 12. The last
3 sentence of the first page of that exhibit
4 states "Officer" -- Murtagh is that how you...
5 A. Murtagh.
6 Q. -- "Murtagh produced a PowerPoint
7 presentation based on these photographs."
8 A. Yes. So what I think he's referring
9 to is the briefing as a whole was not done on a
10 PowerPoint. Officer Murtagh is our intelligence
11 officer, and he generally -- before a mission
12 he'll go on-line, he can get information from
13 the town and give us a layout of the actual
14 layout. So I think that's what you're referring
15 to is not a PowerPoint of the whole
16 presentation, but a PowerPoint of the layout of
17 the apartment. Is that correct?
18 Q. Well, I'm just -- I'm only reading
19 what the document says.
20 A. Okay.
21 Q. You don't have a memory of what that
22 PowerPoint consisted of?
23 A. No. But like I said, we, due to time
24 constraints, we don't generally do a PowerPoint

Page 42

1 over the whole operation, because, like I said,
2 it's very time consuming. We basically either
3 do a drawing of the execution which explains
4 everything. And generally the PowerPoint, I do
5 believe, that's being referred to is Officer
6 Murtagh, like I say, he goes on-line and gets
7 the layout of where we're going.
8 Q. There's a reference here to "aerial
9 view maps, street view maps and interior photos
10 of 26 Fountain Street." Is that what he would
11 have been presenting?
12 A. Yes, sir.
13 Q. And also either in this document, I
14 guess on page -- same document, Exhibit 12, on
15 the third page, there's a reference to Eurie
16 Stamps as being 68 years old.
17 Do you see that?
18 A. I do, sir.
19 And also two paragraphs down, that's
20 where it actually clarifies, it says
21 "Additionally, an ICD projector was utilized to
22 project a PowerPoint presentation which was by
23 Officer Murtagh." That's what I do believe that
24 he's referring to right there. That's generally

Page 43

1 how it goes.
2 Q. Now, I also saw somewhere that there
3 were photographs available of Mr. Bushfan and
4 Mr. Barrett that were put up on the wall for
5 people to look at. Is that a common practice?
6 A. Yes. I mean we get the information
7 from detectives, and they come up with a
8 portfolio, per se, of who the targets would be.
9 Q. Okay. So --
10 A. But I haven't seen them recent.
11 Q. So back to the background information,
12 this was -- the mission was to be execution of a
13 search warrant relating to these two
14 individuals, Bushfan and Barrett, who were males
15 in their early twenties, is that right?
16 A. Yes.
17 Q. And the location was 26 Fountain
18 Street in Framingham, is that right?
19 A. Yes, sir.
20 Q. It was -- the plan was to conduct this
21 search using -- is it a knock and announce, is
22 that the term?
23 A. Yes, sir.
24 Q. Knock and announce procedure?

Page 44

1 A. Yes.
2 Q. Shortly after midnight?
3 A. Yes.
4 Q. So that would have been in the early
5 morning hours just after midnight on the 4th
6 going into the morning of the 5th?
7 A. As I recall, yes.
8 Q. January that is, 2011?
9 A. Yes, sir.
10 Q. And you were one of the team leaders,
11 second in command that evening, is that right?
12 A. Yes, sir.
13 Q. And at that point you were the
14 executive officer --
15 A. Yes, sir.
16 Q. -- of the SWAT team?
17 A. Yes, sir.
18 Q. And my understanding is that there
19 were some 20 SWAT team members, officers,
20 detectives, and medics involved in this
21 operation?
22 A. Yeah, I don't know the exact number.
23 But yeah, there was a group of Framingham
24 officers there, yes.

Page 45

1 Q. Group, I mean how many would you
2 estimate of all the different categories of
3 people who were there in some official capacity,
4 before the shooting occurred?
5 A. Total?
6 Q. Yes.
7 A. Good point. Let's see. I'd say
8 approximately 25 it should be. I don't remember
9 exact number. I mean around there.
10 Q. Okay. And during the -- and the plan,
11 as I take it, was for two stacks or two teams to
12 make entry into the house?
13 A. Yes, sir.
14 Q. With coverage from officers on the
15 four sides of the building?
16 A. Yes.
17 Q. Is that right?
18 A. Yeah. I mean yes.
19 Q. And the two teams, you were one of
20 those teams?
21 A. Yes, sir.
22 Q. And included in your team was also
23 Officer O'Toole and Officer Sheehan, is that
24 right?

Lieutenant Robert F. Downing

Page 46

1 A. Yes, sir.
2 Q. And you were to make entry through --
3 up the stairs, through the front door to the
4 house, through the common area, and directly
5 into the kitchen through the door that is facing
6 the front of the house from the kitchen, is that
7 right?
8 A. Yes.
9 Q. And the other stack or team, who was
10 the leader of that?
11 A. Sergeant Stuart.
12 Q. Sergeant Stuart was with Duncan and --
13 who was the third one?
14 A. Sebastian.
15 Q. Sebastian. They were to go in through
16 the door to the right as you enter the home?
17 A. Yes, sir.
18 Q. Into the living room?
19 A. Yes, sir.
20 Q. Now, back to Exhibit 11, the document
21 that you've described as the rebuttal, the
22 second paragraph states, quote, "The chief
23 concern of Downing and Stuart was that the
24 Ijames report attributes training regarding

Page 47

1 threat assessment, as it relates to the position
2 of the M-4 selector switch, as a contributing
3 cause of the death."
4 Do you see that?
5 A. Yes, sir.
6 Q. Did I read that correctly?
7 A. Yes, sir.
8 Q. And the death here refers to the death
9 of the 68 year old Eurie Stamps who was shot in
10 the face during the execution of this warrant,
11 is that right?
12 A. Yes, sir.
13 Q. And the reference to M-4 selector
14 switch, is that the safety? I refer to it as a
15 safety.
16 A. It's a selector switch, safety,
17 selector, it's the same, same answer.
18 Q. In other words, it has to be in --
19 what's the term you use, on, off, active, hot?
20 I've heard different terms.
21 A. It's all the same. It's all -- it's
22 all on, off. I mean I never use the term on,
23 off. It's either you're hot or you're not.
24 Q. Okay. So for the gun to be hot means

Page 48

1 that the safety is --
2 A. Not on.
3 Q. -- not on. It's in an off position?
4 A. Correct.
5 Q. And when the safety is in an on
6 position, the gun cannot be fired, is that
7 right?
8 A. Correct, sir.
9 Q. The paragraph goes on to state, quote,
10 "The report states, 'the training Officer Duncan
11 received as it relates to threat assessment and
12 the status of the M-4 rifle safety/selector were
13 contributing causes in the death of Mr. Stamps.'
14 More specifically, the report states that 'the
15 training Officer Duncan received resulted in him
16 removing his weapon from 'safe' in the absence
17 of a defined threat."
18 Do you see that?
19 A. Yes, sir.
20 Q. And at the time of this meeting, from
21 one source or another did you understand that to
22 be the conclusion that this Steven Ijames had
23 reached?
24 A. Yes.

Page 49

1 Q. And I take it from this document and
2 from what you said that you and Sergeant Stuart
3 disagreed with this opinion?
4 A. Correct. I don't remember Mr. Ijames
5 even asking that question, to be honest with
6 you.
7 Q. So when he talked to you when you were
8 on vacation with your family, he didn't even ask
9 you about this?
10 A. I don't believe so. Like I said, the
11 conversation was so cordial, it was like -- not
12 friends, but it was very laid back, to be honest
13 with you.
14 Q. So he really didn't get into the real
15 details of --
16 A. No, not really.
17 Q. -- of how Duncan was trained and what
18 he did or didn't do properly?
19 A. Correct. It was just basic
20 information.
21 Q. Okay. And that's the only time he
22 ever contacted you?
23 A. Yes, sir.
24 Q. Do you know if he had a similar

1 discussion with Sergeant Stuart?
 2 A. I know he did speak to Sergeant
 3 Stuart, but I can't attest to where he was. But
 4 it was an informal setting like myself.
 5 Q. Then the next paragraph of this
 6 Exhibit 12 states, quote, "Sergeant Stuart and
 7 Lieutenant Downing claim that officers are
 8 trained to keep their rifles 'on safe' unless
 9 the officer 'perceives a threat' or he is
 10 'actively clearing rooms/danger area.' This
 11 means that Duncan should have had his weapon 'on
 12 safe,' because neither of the above two
 13 conditions existed."
 14 A. Yes, that's what it says.
 15 Q. Have I read that correctly?
 16 A. Yes, sir.
 17 Q. And is that the essence of what you
 18 and Sergeant Stuart felt about [James]' --
 19 A. Yes.
 20 Q. -- opinion?
 21 A. Yes.
 22 Q. Explain to me, if you would, what --
 23 how you and Sergeant Stuart, who were
 24 responsible for training, had trained not only

1 Officer Duncan but other officers concerning the
 2 hot or not, I think is the term you used, safe
 3 on, safe off with the M-4 rifle during a mission
 4 such as the one that was conducted that evening.
 5 MR. DONOHUE: Object to the form.
 6 Go ahead.
 7 THE WITNESS: Go ahead what?
 8 MR. DONOHUE: Go ahead and answer, if
 9 you can.
 10 A. I can't --
 11 BY MR. TARRICONE:
 12 Q. I'm going to re-ask the question.
 13 A. I think --
 14 Q. Wait, wait. You know what, my
 15 question was bad, he objected, so I'm going to
 16 re-ask it. I'm going to break it down a little
 17 bit.
 18 A. Fine.
 19 Q. So just bear with me, you'll have a
 20 chance to answer.
 21 Lieutenant Downing, the paragraph here
 22 that I believe you testified accurately reflects
 23 how you and Sergeant Stuart viewed Steven James'
 24 conclusion -- first, have I said that correctly?

1 A. Yes.
 2 Q. Is this an accurate --
 3 A. Yes.
 4 Q. Recitation of how you viewed his
 5 conclusion?
 6 A. Yeah.
 7 Q. Your view, which you related in this
 8 meeting which Mr. Simoneau put in this
 9 paragraph, was that Duncan should have had his
 10 weapon on safe because neither of the two
 11 conditions existed at the time of the shooting,
 12 is that right?
 13 A. I mean I'm not sure, to be honest with
 14 you, because I really don't like that wording,
 15 because I can't attest to what Officer Duncan's
 16 perception is and, like I said, the keyword
 17 there is "perceives a threat." So I don't know
 18 what Officer Duncan perceived that evening.
 19 Q. What does that mean to you, "perceive
 20 a threat"?
 21 A. Again, I think that's objective. Like
 22 I said, you might perceive something different
 23 than I do. I mean, for example, go into a dark
 24 room might not bother you or it may bother me,

1 so everyone has different types of perceptions.
 2 So I'm not really -- I can't assess to what
 3 Officer Duncan perceived as a -- I don't even
 4 know what happened between him and Mr. Stamps so
 5 I can't really attest to what was going on in
 6 his head, if that makes sense to you.
 7 Q. Okay. Are you given any training
 8 about what constitutes a threat, or have you
 9 conducted training about what constitutes a
 10 threat?
 11 A. I mean we basically -- I mean we do,
 12 but not in terms of -- I mean I'm not sure how
 13 to go with that one. But I mean a threat would
 14 be -- I don't know, it could be numerous things.
 15 Like I said, it's all based upon your
 16 perception. There's a lot of latitude there, I
 17 would say, to be honest with you.
 18 Q. Now, regardless of whether he
 19 perceived a threat or not, isn't it true that
 20 when he decided -- if he decided that he was
 21 going to go hands-on with Mr. Stamps for
 22 whatever reason, that his gun should have been
 23 put on safe before he attempted that?
 24 A. Yes.

Page 54

1 Q. There's no question about that, is
2 there?
3 A. Yes. I mean, yeah, unless
4 something -- like I said, I wasn't there, I
5 didn't see it, unless something happened or his
6 perception. But in a normal circumstance, if
7 you could give me an example, I could probably
8 answer it better.
9 Q. Well, how about a 68 year old man on
10 his belly, having been ordered on his belly,
11 with his hands up as ordered and his face
12 looking up?
13 A. In that case, I would say the weapon
14 would be on safe.
15 Q. It should have been on safe?
16 A. Yes, sir.
17 Q. And the next paragraph here references
18 a principle called "contact and cover"?
19 A. Yes, sir.
20 Q. What is that?
21 A. It's -- like I said, I'm not being
22 sarcastic, but it's a basic principle that you
23 basically learn in police academy. It's
24 basically if you come upon a subject, suspect,

Page 55

1 or a bad guy, and there's two of you, it's just
2 a way you approach that subject in a safe
3 manner.
4 Q. So the procedure is for one officer to
5 engage another officer before making a physical
6 encounter with an individual?
7 A. Yeah, it's for one officer to engage
8 the suspect, and the other one to provide a
9 cover position in case that subject becomes
10 non-compliant.
11 Q. So if there is a second officer
12 available --
13 A. Correct.
14 Q. -- to assist, the first officer would
15 have his assistance before making -- attempting
16 physical contact with the subject?
17 A. Correct. If you're there by yourself,
18 you're the cover officer, you're not contact
19 officer.
20 Q. So when you say if you're there by
21 yourself, there's only one officer and you're
22 the cover officer.
23 A. If it's just you and I, and you're the
24 bad guy or the suspect, I would be the cover

Page 56

1 officer.
2 Q. In other words, you wouldn't try to go
3 hands-on with me, you'd just -- you'd wait until
4 you got help?
5 A. In your example, yes. But if you
6 became non-compliant or you started to come
7 after me in such a way, then that would change
8 the rules.
9 Q. Okay. There's nothing to suggest that
10 Mr. Stamps was non-compliant or came after
11 anybody, is there?
12 A. To be honest with you, I've seen no --
13 I haven't seen no paperwork that really
14 describes the whole Duncan -- I mean I haven't
15 seen nothing, so I can't really attest to that,
16 to be honest with you, I haven't seen nothing
17 that says that he was or was not.
18 Q. Okay. So you're not aware of him
19 being non-compliant?
20 A. Correct.
21 Q. And in this contact and cover, the
22 first officer to encounter an individual,
23 knowing that there are other officers in the
24 available, would be the cover officer, and that

Page 57

1 he would then wait for somebody else to come and
2 make the contact, is that what you meant by the
3 first officer is the contact?
4 A. Yes.
5 Q. I mean the cover?
6 A. Yes, and then you'd wait. Or as soon
7 as -- again, it's a little different in a SWAT
8 operation because you've got operators moving
9 about, so they're busy. In a typical patrol
10 situation you have backup instantly, if that
11 makes sense.
12 Q. During this mission, you said there
13 were some 25 people in the vicinity?
14 A. No. Negative. No, that's not how --
15 the question was, and I misunderstood, there was
16 25 people totally on the scene of -- on the
17 scene. But when a SWAT call, only the SWAT
18 operators go in. As soon as we clear it, then
19 people come in. But no -- not -- people just
20 can't rush and flush the house, because that's
21 why we're there.
22 Q. So you -- now let's go back to the
23 entry into the house. You went in through the
24 kitchen?

Page 58

1 A. I did.
2 Q. Right?
3 A. I did.
4 Q. And you then turned your attention to
5 the cellar door, is that right?
6 A. To my left, sir, yes.
7 Q. And the two officers who entered with
8 you went through the threshold door into the
9 hallway on the other side of the kitchen, is
10 that correct?
11 A. I mean through my readings today,
12 yeah. But like I said, so many things were
13 going on, I can't --
14 Q. You don't remember that?
15 A. Yeah, exactly.
16 Q. When you entered the kitchen, did you
17 see Mr. Stamps, the elderly man?
18 A. No, I did not.
19 Q. Did you see him at any time before he
20 was shot?
21 A. No. I don't believe so, no.
22 Q. Did you hear Officer O'Toole or
23 Officer Sheehan telling him to get on the
24 ground?

Page 59

1 A. To be honest with you, like I said --
2 stated before, it was just loud and chaotic, I
3 don't -- like I say, it was a lot of yelling
4 going on, and I was yelling things, and people,
5 because like I said, it was kind of --
6 Q. So you don't remember that?
7 A. I don't recall that, no, sir.
8 Q. At some point in time, did you know
9 that he had gotten on the ground on his belly
10 with his hands up?
11 A. Like I said, I don't recall even
12 seeing Officer Duncan and Mr. Stamps, to be
13 honest with you.
14 Q. Okay.
15 A. There was some reason why I was
16 fixated on that door because it's considered a
17 danger area, per se.
18 Q. Now, you were the second in command
19 for this?
20 A. Yes, sir.
21 Q. And you were the number one in command
22 inside the house?
23 A. Yes, sir.
24 Q. Is that right?

Page 60

1 A. Yes.
2 Q. Everybody had a job to do, is that
3 right?
4 A. Going into the mission, yes, sir.
5 Q. And you were coordinating what
6 everybody was doing?
7 A. I was. But again, I got tied down to
8 the door. I mean Sergeant Stuart also, I mean
9 him and I are both the -- I mean I am in charge
10 of the scene, but like I said, he's delegated a
11 lot of responsibility because, you know, he's a
12 good operator. So he was more mobile than I
13 was.
14 Q. And he made entry through the other
15 door, is that right?
16 A. Yes, sir.
17 Q. Exhibit, back to Exhibit 12 --
18 actually let me back up for a second.
19 Did you ever hear Officer Duncan call
20 for another officer to engage a contact and
21 cover?
22 A. Like I said, I don't even remember
23 seeing Officer Duncan and Mr. Stamps.
24 Q. You never heard him call for

Page 61

1 assistance then?
2 A. I just, like I said -- yeah, I
3 suppose, yes. Because, like I said, I don't
4 remember seeing Mr. Stamps and Mr. Duncan.
5 Q. My question is very specific.
6 Did you ever hear Officer Duncan call
7 for assistance?
8 A. State those words, no.
9 Q. If an officer encounters somebody and
10 decides that contact and cover is the
11 appropriate procedure, what would he say to get
12 another officer who is in the vicinity to help
13 him?
14 A. "I need another operator. I need
15 another body."
16 Q. Okay. And you never heard Duncan say
17 that?
18 A. No.
19 Q. Exhibit 12 goes on to state in that
20 last paragraph concerning contact --
21 A. What page?
22 MR. DONOHUE: Which page?
23 A. 12 or 11?
24 BY MR. TARRICONE:

Page 62

1 Q. I'm sorry, Exhibit 11.
2 A. Yes, sir.
3 Q. The rebuttal.
4 A. Yes, sir.
5 Q. The last paragraph of it goes on to
6 state concerning contact and cover, quote, "This
7 foundational concept is taught as part of the
8 patrol rifle course, SWAT training courses, and
9 in the 'applied patrol procedures' section of
10 every basic police academy in Massachusetts."
11 Do you stand by that statement?
12 A. "This foundational concept is taught
13 as part of the patrol rifle course, SWAT
14 training courses" -- I mean yes, like I said,
15 it's a basic concept that's taught from day one.
16 Q. And this paragraph goes on to state,
17 "Under the 'contact and cover' concept, the
18 officer who is engaging in 'hands-on' contact
19 with a suspect will not have his weapon 'off
20 safe."
21 Have I read that correctly?
22 A. Yes. That's what it states, yes.
23 Q. And that means that before an officer
24 attempts hands-on contact, he would have his --

Page 63

1 the safe would be on, the safety would be on,
2 and the rifle could not be fired, is that right?
3 A. Yes, sir.
4 Q. And is it also the case that he would
5 sling the weapon behind his back?
6 A. Yes, sir, if he was the contact
7 officer.
8 Q. That is correct. The officer who is
9 attempting to put hands on a --
10 A. Yes, sir.
11 Q. -- on a subject.
12 And then it states, "The weapon will
13 be slung, with the selector in the 'safe'
14 position, while the contact officer has physical
15 contact with the suspect."
16 Have I read that correctly?
17 A. Yes, sir.
18 Q. And that's the case, is it not,
19 whether he's acting alone or with somebody
20 covering?
21 A. State that again?
22 Q. Is it -- do you agree that an officer,
23 whether acting alone engaging a subject hands-on
24 for whatever reason or with somebody covering

Page 64

1 him, in either case when he's going to make
2 physical contact, he would have the rifle in the
3 safe position and around his back?
4 A. No. Because if -- no, because in that
5 scenario you're stating is if he's going -- if
6 he's by himself and he's making contact, there's
7 a reason. I mean he wouldn't have time to sling
8 the weapon and put it on safe, because there's a
9 reason why he wouldn't have done that, if he's
10 by himself. Am I making sense?
11 Q. No. But let me ask a few more
12 questions.
13 MR. DONOHUE: I think you're making
14 sense.
15 BY MR. TARRICONE:
16 Q. How many officers were in the home at
17 the time that the shot was fired?
18 A. I don't know the exact number. I
19 mean, like I said, there was officers from
20 different assignments.
21 Q. Well, there were the two stacks, three
22 and three, which is six.
23 A. I could say there was at least six
24 inside, sir.

Page 65

1 Q. And then Officer Riley and Officer
2 Sebastian had also come in, is that right?
3 A. I do remember officer Sebastian, yes,
4 sir.
5 Q. That would make eight?
6 A. That's correct.
7 Q. There were at least eight in the
8 house?
9 A. Yes, sir.
10 Q. Is that right?
11 And putting the weapon on safe is not
12 only for the protection of the police officer,
13 but also the protection of a subject, is that
14 right?
15 A. Putting the weapon on safe is for the
16 protection of everybody in that immediate area.
17 Q. Everyone in the area?
18 A. Correct.
19 Q. This paragraph goes on to state,
20 quote, "According to both Downing and Stuart,
21 Officer Duncan's training instructed him to
22 place his weapon on 'safe' and sling it prior to
23 assuming the role of the 'contact officer.'"
24 Have I read that correctly?

Page 66

1 A. Yes, sir.
2 Q. Do you stand by that statement?
3 A. Yes.
4 Q. Did Officer Duncan on that evening,
5 from your understanding, fail to comply with the
6 way he was trained and instructed by you,
7 Sergeant Stuart, and others who were responsible
8 for training the SWAT team?
9 A. Again, under your scenario, what you
10 gave me, I would say yes. But again, I stated
11 that I'm not -- I can't attest to what Officer
12 Duncan perceived was a threat at that time.
13 Q. Have you seen anything to suggest that
14 Mr. Stamps was in any position other than on his
15 belly with his hands above his head as
16 instructed?
17 A. I don't -- I haven't seen anything.
18 What you stated to me earlier is the first time.
19 I mean I really haven't seen any paperwork, I
20 really haven't seen any paperwork to say what
21 exactly went down there, to be honest with you.
22 So I don't have the facts of what the -- the
23 encounter right there.
24 Q. Did you conduct your own investigation

Page 67

1 as the executive officer of the SWAT team?
2 A. Did I have a personal one?
3 Q. Yes.
4 A. No.
5 Q. Did you conduct one in an official
6 capacity?
7 A. Official?
8 Q. Yes.
9 A. No.
10 Q. And then the last --
11 A. What do you mean by that? Just out of
12 curiosity.
13 Q. Did you as executive officer of the
14 SWAT team with or without your superior -- who
15 is your superior?
16 A. So you're basically asking if I just
17 did my own thing and just tried to find out the
18 facts?
19 Q. No, that's not what I'm asking.
20 I'm asking; did you participate in any
21 official investigation of Officer Duncan's
22 activities that evening in your capacity as
23 executive officer of the SWAT team?
24 A. No, no.

Page 68

1 Q. And then the last sentence of this
2 Exhibit 11 is that, quote, "Further, if Officer
3 Duncan perceived Stamps as having posed a
4 threat, he should have maintained his position
5 as a 'cover officer' and waited until another
6 (contact) operator was available to search
7 and/or secure Stamps."
8 Have I read that correctly?
9 A. You've read -- yeah, but again,
10 that's -- again that's -- again, the term
11 perceived and I really, I really haven't -- this
12 is the second time I've seen this, I read this
13 document.
14 Q. Let's look at the sentence carefully.
15 A. Correct.
16 Q. It states, "If Duncan perceives Stamps
17 as having posed a threat."
18 A. Correct.
19 Q. That's assuming that he had that
20 perception, valid or not, correct?
21 A. Yes, sir.
22 Q. In that instance, it goes on to say,
23 quote, "He should have maintained his position
24 as a 'cover officer' and waited until another

Page 69

1 (contact) operator was available to search
2 and/or secure Stamps."
3 A. Yes.
4 Q. That's what it says, right?
5 A. I understand what you read, yes.
6 Q. Do you stand by that?
7 A. No. Because again, I haven't seen
8 this document. Like I said, Mr. Simoneau wrote
9 that. I can't attest to what Mr. Duncan's
10 perception is a threat. Like I said, in the
11 perfect situation that you gave me, that would
12 not have been a threat. But like I said, I
13 don't know exactly what went down between
14 Mr. Stamps and Mr. Duncan.
15 Q. Assuming he does perceive an
16 individual as a threat --
17 A. Yes.
18 Q. -- for whatever reason, his statement
19 goes on to say in the event he perceives it as a
20 threat, he would be the cover officer. I think
21 you said the first officer is the cover
22 officer --
23 A. Correct.
24 Q. -- before, correct?

Page 70

1 A. Depending on how compliant the subject
2 is.
3 Q. Assuming a compliant subject --
4 A. Correct.
5 Q. -- and a perceived threat, valid or
6 not.
7 A. Well, that changes again.
8 Q. Assuming, just assume it's a perceived
9 threat.
10 A. Yes.
11 Q. He perceives a threat in his mind.
12 A. Correct.
13 Q. And assuming there are other officers
14 in the vicinity who can assist, that first
15 officer should remain the cover officer and wait
16 for another officer to make contact?
17 A. Yes, sir.
18 Q. Isn't that so?
19 A. Yes. Like I said, in the perfect
20 world of patrol. But in the SWAT world, you
21 don't have SWAT operators standing around
22 watching, they're actively looking for work, so
23 people are moving all about.
24 Q. In this -- how big was this kitchen?

Page 71

1 A. Maybe the size of this room, sir.
2 Q. I'm going to show you an exhibit.
3 Take a look at this drawing.
4 A. Yes, sir.
5 Q. This is Exhibit Number 2. That's a
6 diagram of this house.
7 Do you see the kitchen there?
8 A. I do, sir.
9 Q. And take a look also at the -- let me
10 see these photographs. Let me show you Exhibit
11 Number 9. Does that depict the kitchen?
12 A. Yes.
13 Q. And this kitchen was --
14 A. I'll orientate it just like that.
15 Q. Like 14-by-10 feet with furniture in
16 it, something along those lines, would you say?
17 A. Yeah, I mean that's what you have
18 right here. I assume this is to scale. Like I
19 say, it was pretty small.
20 Q. It's a small room.
21 And in that room, by the time Duncan
22 came in, you were there along with Officers
23 Riley and Sebastian in the room, right?
24 A. Like I said I saw -- I attested to

Page 72

1 Officer Sebastian. I don't recall seeing
2 Officer Riley.
3 Q. So if Officer Riley testified that he
4 was in the room before Sebastian, do you have
5 any reason to disagree with his testimony?
6 A. No, sir.
7 Q. Assuming the three of you were in
8 there and others were entering the house behind
9 them, there were people in this home, weren't
10 there?
11 A. General area, yes.
12 Q. Did you ever hear Officer Duncan call
13 for help?
14 A. Again, I stated I don't recall. Like
15 I said, I didn't see Mr. Duncan and Mr. Stamps,
16 but I don't recall the words "help" coming from
17 Mr. Duncan. But I do recall people saying "I
18 need bodies, I need bodies." Because there's a
19 lot going on.
20 MR. TARRICONE: Let's take a quick
21 break. Is that okay?
22 THE WITNESS: Yes, sir.
23 THE VIDEOGRAPHER: Going off the
24 record. The time is 1:59.

Page 73

1 (Whereupon, a recess was taken.)
2 (Whereupon, Exhibit Number 14, Color
3 diagram, was marked for
4 identification.)
5 THE VIDEOGRAPHER: Back on the record.
6 The time is 2:24.
7 BY MR. TARRICONE:
8 Q. Lieutenant Downing, when you were in
9 the kitchen after entering the home and you were
10 joined by Officer Riley and Officer Sebastian --
11 A. Yes.
12 Q. -- at any time before they arrived did
13 you hear Duncan say anything?
14 A. No.
15 Q. After they arrived, did you hear
16 Duncan say anything?
17 A. I don't recall.
18 Q. You have no memory of him saying
19 anything?
20 A. No.
21 Q. At that time with you and the other
22 two officers in the room, all in the vicinity of
23 the cellar door -- and by the way, I take it
24 they were assigned to cover the cellar, those

Page 74

1 two, Sebastian and Riley, is that right?
2 A. Yes.
3 Q. And you were number one in command
4 inside the home at that time, is that right?
5 A. Yes.
6 Q. If after they were in the room with
7 you Officer Duncan had called for assistance,
8 would you have ordered one of them to assist
9 him?
10 A. Yes.
11 Q. Or would you have done it yourself?
12 A. Yes.
13 Q. One or the other?
14 A. As I recall, that they arrived at me
15 after the incident.
16 Q. Say that again?
17 A. Those two arrived upon my location
18 after the incident.
19 Q. Your memory today is that those two
20 came into the room after the shooting occurred?
21 A. They arrived at the door after, yes, I
22 do believe so.
23 Q. After the shooting occurred?
24 A. Yes, sir.

Page 75

1 Q. That's your memory as you sit here
2 today?
3 A. Yes, sir.
4 Q. Have you read anybody else's
5 statements about what happened?
6 A. No. I think told you -- no.
7 Q. How clear is your memory as you sit
8 here today about what happened on January 4th
9 and the early morning of the 5th, 2011?
10 A. Fairly clear, I was there.
11 Q. And you know, don't you, that Officer
12 Sheehan and O'Toole had already left the kitchen
13 before the shooting occurred?
14 A. Yes.
15 Q. Do you know that?
16 A. Do I know, they were down -- they were
17 down-range.
18 Q. They had left the kitchen and were
19 back in the rooms in the back of the house?
20 A. Yes, sir.
21 Q. Is that right?
22 A. Yes, sir.
23 Q. And you know, don't you, that they had
24 already ordered Mr. Stamps on the ground and

Page 76

1 that he had complied? Do you know that?
2 A. Best of my understanding, yes.
3 Q. And that all occurred before the
4 shooting, didn't it?
5 A. Yes.
6 Q. And these other officers that entered
7 the home, Riley and Sebastian, came in
8 immediately after the two stacks, didn't they?
9 A. I do believe so, yes.
10 Q. And Officer Riley entered through the
11 same door that you entered into the kitchen?
12 A. I don't know that.
13 Q. Officer Riley testified this morning
14 that he entered the kitchen through the same
15 door that you entered, and when he entered the
16 kitchen you were there at the cellar door and
17 you ordered him to take the door.
18 A. Okay.
19 Q. Cover the door --
20 A. Okay.
21 Q. -- of the cellar?
22 A. Okay.
23 Q. Do you have any reason to disagree
24 with that?

Page 77

1 A. No, sir.
2 Q. He also said that this occurred before
3 the shooting.
4 A. Okay.
5 Q. Do you have any reason to disagree --
6 A. No, sir.
7 Q. -- with Officer Riley's testimony?
8 A. No, sir.
9 Q. And he also testified that Officer
10 Sebastian arrived before the shooting occurred.
11 Do you have any reason to disagree with that?
12 A. Correct, I recall Officer Sebastian.
13 Q. So those two were in the room with
14 you?
15 A. Yes, sir.
16 Q. Now back to my question. Had Officer
17 Duncan at any time asked for assistance and you
18 and two other officers were in that room, would
19 either you have assisted him or ordered one of
20 them to do so?
21 A. Yes.
22 Q. I put in front of you another copy of
23 that drawing that shows the home, the yellow and
24 red drawing. Right here. And it's been marked

Page 78

1 as Exhibit 14. That's the same drawing as
2 Exhibit 2, but it hasn't been marked up yet.
3 A. Yes, sir.
4 Q. And I'm going to ask you, using this
5 red pen, to mark with a number one the door that
6 you used to enter the home.
7 A. The house itself, sir?
8 Q. Yes, to enter the house.
9 A. (Labelling).
10 Q. Okay. And looking at Exhibit 10A --
11 do you have Exhibit 10A in front of you?
12 A. I do.
13 Q. Does that depict the home at 26
14 Fountain Street?
15 A. Yes, sir.
16 Q. And is that the door under the
17 vestibule there, that's the front entrance to
18 the home?
19 A. Correct, sir.
20 Q. That's the door that you entered that
21 you just indicated as number 1, is that right?
22 A. Yes, sir.
23 Q. And after entering that door, you were
24 in a common area?

Page 79

1 A. Yes, sir.
2 Q. Is that right?
3 A. Yes, sir.
4 Q. I'm going to show you Exhibit 7 from
5 this morning's deposition.
6 A. Yes, sir.
7 Q. Is that the view entering from the
8 front door of that common area hallway?
9 A. Yes, sir.
10 Q. As you recall it?
11 A. Yes, sir.
12 Q. And the door that you entered through
13 is in a closed position in Exhibit 7, is that
14 right?
15 A. Yes, sir.
16 Q. And I'm going to show you now Exhibit
17 Number 8, which shows the same view with that
18 door open, is that correct?
19 A. Yes, sir.
20 Q. And this photograph was taken after
21 the shooting as evidenced by the blood on the
22 floor; is that so?
23 A. Yes, sir.
24 Q. And is that the door you entered

Page 80

1 through?
2 A. Yes, sir.
3 Q. When you made entry into the home with
4 Officer Sheehan and O'Toole, was that door
5 locked or unlocked?
6 A. I don't recall.
7 Q. It's --
8 A. It was shut.
9 Q. It was closed?
10 A. Yes, sir.
11 Q. And it's not smashed here, is it? I
12 mean it looks like now it's in an open position
13 in photograph 8, Exhibit 8, is that right?
14 A. Yes, sir.
15 Q. I read somewhere that the door was not
16 locked.
17 A. I don't recall.
18 Q. Do you recall seeing a woman either on
19 the porch or coming out of the house before you
20 went onto the porch and through the front door?
21 A. Yes, sir.
22 Q. Do you know who that was?
23 A. No, I don't, sir. No, I don't know
24 her.

Page 81

1 Q. As part of your planning for this, we
2 talked earlier about 68 year old Eurie Stamps
3 being known to be at the home, living at the
4 home, do you recall also that his wife Norma
5 Bushfan Stamps was known to live at the
6 residence as well?
7 A. Yes.
8 Q. When you saw the woman on the porch or
9 in front of the house, is that as you were
10 entering, or before you entered, or exactly
11 when?
12 A. Prior to entering, sir, door number 1.
13 Q. When she came out, who --
14 A. She was already out.
15 Q. And what happened to her when she came
16 out?
17 A. I don't -- the team just went in, sir.
18 I don't know what happened to her, to be honest
19 with you.
20 Q. So you didn't have anything to do with
21 her?
22 A. No, sir.
23 Q. Before that occurred, were you aware
24 of an individual being seized down the street

Lieutenant Robert F. Downing

Page 82

1 near the gas station?
2 A. No, sir.
3 Q. You've since learned, I assume, that
4 Joseph Bushfan was observed and then seized by
5 other officers, I think Officer --
6 A. I knew there was an incident.
7 Q. Let me finish my question.
8 -- I believe it's Officer Gutwill and
9 Derosa, and that they had detained him down the
10 street. Did you know that?
11 A. Yeah. Not at the time, but --
12 Q. You know it now?
13 A. Correct, sir.
14 Q. Okay. At the time when you were about
15 to enter the home, did you know about anything
16 going on down the street?
17 A. No, sir.
18 Q. Nobody informed you over your radio?
19 A. No, sir.
20 Q. You were equipped with a radio, I
21 assume?
22 A. Yes, sir.
23 Q. As was everybody else on this mission?
24 A. Yes, sir.

Page 83

1 Q. All on a common frequency?
2 A. Common among the operators.
3 Q. Meaning everybody on this mission was
4 on the same frequency?
5 A. Yes.
6 Q. Is that right?
7 Do you know whether that frequency is
8 monitored at the station?
9 A. I don't believe so.
10 Q. Do you know whether it's recorded?
11 A. I do not know.
12 Q. You don't know one way or the other?
13 A. I don't know if it's recorded, sir.
14 Q. Okay. So you've marked number 1 on
15 Exhibit 14 where you made entry into the
16 building, is that right?
17 A. Yes, sir.
18 Q. And would you show which door you
19 entered to leave the common area and enter the
20 first floor apartment? Put a number 2.
21 A. (Labelling).
22 Q. Are you the one who made entry through
23 number 2?
24 A. I did make entry, yes.

Page 84

1 Q. Into that door where you've marked
2 number 2?
3 A. Yes, sir.
4 Q. Were you the first of the three?
5 A. I don't recall.
6 Q. Are you the person who announced,
7 knocked and announced before making entry?
8 A. No, sir.
9 Q. Who was that?
10 A. Sergeant Stuart.
11 Q. So he did that on the door to the
12 living room?
13 A. Yes, sir.
14 Q. Were all six of you, that is the two
15 teams, in that common area at the time that he
16 did the knock and announce?
17 A. We were in two separate areas.
18 Q. Well, you're all in this front entry
19 room, is that right?
20 A. Yes.
21 Q. All six of you, the two teams, came
22 through the door from outside the building into
23 the front entryway?
24 A. Yes.

Page 85

1 Q. So were all six of you in that room
2 when he did the knock and announce?
3 A. Yes.
4 Q. And I think you said earlier there
5 were officers covering all four sides of the
6 building?
7 A. Yes. There was coverage outside the
8 building, sir, yes.
9 Q. And what was the plan with respect to
10 using flashbangs?
11 A. I don't remember exact plans, sir. I
12 do believe -- I don't remember exactly, to be
13 honest with you.
14 Q. What I've read, I'm going to relate to
15 you and you tell me if it sounds correct, is
16 that two of the officers were equipped with
17 flashbangs, one at the living room window that's
18 closest to the front door, and the other one on
19 the B side of the house, the kitchen side, one
20 of those windows over there.
21 A. Yes, sir.
22 Q. Does that sound right?
23 A. That refreshes, yes.
24 Q. And if Officer Riley testified that

Page 86

1 the flashbang that was intended for the living
2 room was never activated because the officers
3 were through the door so quickly, it was too
4 late for him to use it, do you know that to be
5 the case?
6 A. I do believe that, yes, sir.
7 Q. There was a flashbang that was used in
8 the kitchen?
9 A. Yes, sir.
10 Q. Is that right?
11 A. Yes, sir.
12 Q. And that would have been before you
13 opened the door and entered, is that correct?
14 A. Yes.
15 Q. Is that the normal procedure?
16 A. Yes. Yes.
17 Q. So the flashbang is -- first explain
18 what a flashbang is, if you would.
19 A. It's a noise -- it's a diversionary
20 device to get the attention of the subjects
21 inside the house so the team can make a safe
22 entry.
23 Q. So it's employed before the entry into
24 the house?

Page 87

1 A. Generally, yes, sir.
2 Q. And is it an explosive device?
3 A. Yes, sir.
4 Q. Do you remember the flashbang going
5 off in the kitchen?
6 A. I do, sir, yes.
7 Q. So just so I understand the order of
8 things, would the knock and announce be first
9 before the flashbang? Give me the order from
10 the time of the knocking.
11 A. It would be the knock and announce,
12 the flashbang going off, then the entry.
13 Q. Do you remember those events this
14 evening?
15 A. I -- yes.
16 Q. What do you remember about the knock
17 and announce?
18 A. I remember Sergeant Stuart knock and
19 announcing loudly, because he's very loud, and
20 that that flashbang going off over here, and
21 then entry.
22 Q. Who gives the order for the flashbang?
23 A. It goes over the radio, "make entry,
24 make entry."

Page 88

1 Q. Did you give that order, or somebody
2 else?
3 A. I don't recall, sir.
4 Q. It would have to be somebody in that
5 front entry, I assume, so they would know about
6 the effect of the knock and announce?
7 A. Yes, sir.
8 Q. So somebody among the six of you then
9 gave the command to make entry?
10 A. Yes, sir.
11 Q. And at that point the flashbang was
12 detonated in the kitchen?
13 A. Yes, sir.
14 Q. And how long would you then wait
15 before going through the door into the kitchen?
16 A. You just wait for it to go off, sir,
17 then you make entry.
18 Q. So there's no time for the smoke to
19 clear or anything like that?
20 A. No, sir.
21 Q. So when you entered the kitchen, you
22 turned your attention to that cellar door?
23 A. Yes, sir.
24 Q. And would you mark that with a number

Page 89

1 3 in Exhibit 14, please?
2 A. (Labelling).
3 Q. And this -- was it pre-arranged that
4 somebody would be taking the cellar door?
5 A. I don't --
6 Q. Have responsibility for it?
7 A. I don't recall.
8 Q. Do you recall instructing Officer
9 Riley to take the door when he came in the
10 kitchen?
11 A. I don't. I just remember, like I
12 said, Officer Sebastian being there. I don't.
13 Is there any way I can talk to him for
14 like two seconds?
15 MR. DONOHUE: Sure. He answered the
16 question.
17 MR. TARRICONE: Sure.
18 THE VIDEOGRAPHER: Going off the
19 record. The time is 2:39.
20 (Whereupon, a recess was taken.)
21 THE VIDEOGRAPHER: Back on the record.
22 The time is 2:40.
23 MR. DONOHUE: The lieutenant thinks he
24 may have misspoken, and would like to clear

Lieutenant Robert F. Downing

Page 90	Page 92
<p>1 something up. 2 BY MR. TARRICONE: 3 Q. Okay. What is it that you'd like to 4 clear up? 5 A. I do believe I stated when the 6 incident happened with Mr. Duncan, that's when 7 we made entry down the stairs, after that noise. 8 I think I said the opposite earlier when you 9 asked that question, sir. 10 Q. Please repeat yourself. I didn't 11 catch that. 12 A. My memory is when that incident 13 happened with Mr. Duncan, the shot, that they 14 made entry downstairs. I think I said the 15 opposite way earlier. I think I told you 16 earlier that they went downstairs, then the 17 incident happened. 18 Q. I don't think you did, but now it's 19 clear for sure. 20 So let me just, just to be clear on 21 the record, Lieutenant Downing, Officers Riley 22 and Sebastian did not go through the cellar door 23 and go down to the cellar until after the 24 shooting occurred?</p>	<p>1 designations A and B, A being the front of the 2 house? 3 A. Yes, sir. 4 Q. B is the left side of the house facing 5 the house? 6 A. Yes, sir. 7 Q. And is the rear of the house C? 8 A. It would be Charlie, yes, sir. 9 Q. And D would be the right side of the 10 house facing the house? 11 A. Yes, sir. 12 Q. And at the window to the left of the 13 front door, you have a notation there. What is 14 that? The A team, Riley and Sibilio, is that 15 right? 16 A. That's the window, A-1, that's how we 17 mark the window, sir. 18 Q. You have written there Riley and 19 Sibilio? 20 A. Yes. 21 Q. What's the significance of that? 22 A. That's that flashbang. 23 Q. And at the upper left corner of the 24 photograph, B/C, it says Curtis and Reardon.</p>
Page 91	Page 93
<p>1 A. Correct. 2 Q. Okay. 3 A. Is that how I said it the first time? 4 Q. I think so. 5 A. I apologize. 6 Q. No problem. No problem. 7 I'm going to show you now Exhibit 10A, 8 which actually you have in front of you. 9 A. Can I get the cap to this? Because I 10 will eventually wear this pen. 11 Q. (Handing). 12 A. Thank you. 13 Q. Now, do you recognize Exhibit 10A as 14 one of the photographs that you used and made 15 markings on when you answered Lieutenant 16 Forster's questions on January 7th, 2011? 17 A. Yes, sir. 18 Q. And is that your handwriting? 19 A. Yes, sir. 20 Q. That's your signature at the bottom? 21 A. Yes, sir. 22 Q. I see here, and it's very difficult 23 for me to read, maybe you can read it better 24 than I can, but I think you have the letter</p>	<p>1 What's the significance of that? 2 A. They were providing security on the 3 Bravo/Charlie side. 4 Q. Was anybody covering the D side? 5 A. I don't -- I mean I don't know 6 offhand. 7 Q. And on the front of Exhibit 10A, that 8 is the forefront, there's some writing, I think 9 it says -- is it "entry" or "enter"? I'm having 10 trouble reading it. It's just beneath the car 11 that's depicted in front of the front door. 12 A. I do believe that's just an "A," sir. 13 Q. And then to the left of "A," does it 14 say "female"? 15 A. Yes, sir. 16 Q. And what is the significance of that? 17 A. I do believe, as I recall, that's the 18 female you talked about earlier, Mr. Stamps' 19 wife, was located there. 20 Q. So she was in front of the home near 21 this car that was in front of the front door? 22 A. Yes, sir. 23 Q. And then if you would, please, turn to 24 Exhibit 10, the statement, the transcript of the</p>

Page 94

1 questioning that you had with Lieutenant
2 Forster.
3 A. Yes, sir.
4 Q. Turn, if you would, please, to Page 19
5 of the statement which is Bates number 1349.
6 A. Which one, sir?
7 Q. Page 19 of the statement.
8 A. Yep.
9 Q. At the top in the middle of that first
10 paragraph at the top, you say "eventually, over
11 here, like I said, I don't even know -- like I
12 said, because I knew there was an officer right
13 here, but his back was towards me, so I didn't
14 know who it was. And again, I didn't know -- I
15 didn't know what the noise was. So I had no
16 clue what it was, whether a handgun or a
17 diversionary device."
18 Do you see that?
19 A. Yes.
20 Q. The reference to "the officer right
21 here"?
22 A. Yes. But can I read from this
23 beginning --
24 Q. Yes.

Page 95

1 MR. DONOHUE: Yes.
2 A. -- please?
3 (Witness reviewing document.)
4 A. Okay. I read it, sir.
5 BY MR. TARRICONE:
6 Q. When you used the words "right here,"
7 were you pointing to a place on the photograph,
8 one of the photographs?
9 A. To be honest with you, I don't --
10 Q. Take a look at Exhibit 10B, the
11 photograph of the kitchen.
12 A. Yes, sir.
13 Q. Was this also a photograph that you
14 marked when you were being questioned that day?
15 A. Yes, sir.
16 Q. And you've got some writing on this
17 document as well, do you not?
18 A. Yes, sir.
19 Q. And you've signed it at the bottom?
20 A. Yes, sir.
21 Q. I can't read what it says over near --
22 to the right side. The copy that was provided
23 by the Town of Framingham is illegible. Can you
24 make it out, since you wrote it? Maybe you --

Page 96

1 A. It's my name, sir, "Downing." To the
2 right by the door?
3 Q. No.
4 MR. DONOHUE: On the right.
5 BY MR. TARRICONE:
6 Q. In the margin of the --
7 A. I apologize.
8 Q. -- photograph, I think at the top it
9 might say "B," and then it has two words.
10 A. It does, sir. It says "Casey" and
11 "Langmyre."
12 Q. Okay. Does that signify that they
13 were covering the B side of the house?
14 A. Yes, sir, that window.
15 Q. And then there's writing near that
16 door to the basement. Do you see that?
17 A. Yes, sir.
18 Q. And that has -- is that where you
19 indicated you were standing?
20 A. Yes.
21 Q. Where you wrote "Downing"?
22 A. Yes.
23 Q. And then near the door to the -- out
24 to the common hallway, it has "Downing,"

Page 97

1 "Sheehan" and "O'Toole." Is that indicating
2 that that's the door you three entered through?
3 A. Yes.
4 Q. So back to Page 19, I just want you to
5 read that in context, where you say "because I
6 knew there was an officer right here," you don't
7 know whether you were pointing to this
8 photograph or something else?
9 A. I don't recall, to be honest with you,
10 sir, no.
11 Q. Take a look, if you would, at Page 29
12 of Exhibit 10, the first answer there where you
13 again reference someone. Let me read it into
14 the record.
15 The question was "So you didn't even
16 know there was someone lying in the hallway
17 there?"
18 And your answer was "No, I had no
19 idea. Because, like I said, because it turned
20 out to be Officer Duncan but, at the time, I saw
21 an operator. But when you have that gear on, no
22 one looks the same because everyone's got the
23 big gear and the helmet. So I just saw
24 someone's back. I had no idea, like I said,

Lieutenant Robert F. Downing

<p style="text-align: right;">Page 98</p> <p>1 when I heard the noise, I had no idea where it 2 came from because the room was empty." 3 When you're referencing here an 4 operator who's got gear on, is that the same 5 individual that you reference in the answer that 6 we previously looked at on Page 19? 7 A. I do believe Page 19 I'm referencing 8 Officer Sebastian. 29, I do believe I'm 9 referencing Officer Duncan. 10 Q. Okay. And Sebastian was one of the 11 ones who came to the cellar door? 12 A. Yes, sir. 13 Q. Are you sure about that? 14 A. Sure about what? 15 Q. Who you're referencing on 19, that 16 it's Sebastian and not Duncan? 17 A. Can I look at it? 18 Q. Yes. 19 (Witness reviewing document.) 20 A. Okay. Question? 21 BY MR. TARRICONE: 22 Q. Referencing Page 19 where you're 23 talking about an officer who has his back 24 towards you --</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. -- isn't that so? 2 A. Yes, sir. 3 Q. Now, before the gunshot was fired, did 4 you see Duncan anywhere? 5 A. I don't -- like I said, no, sir, no. 6 Q. You don't remember? 7 A. I don't recall. 8 Q. When the gunshot was fired -- by the 9 way, you've been around guns most of your life, 10 haven't you? 11 A. Yes, sir. 12 Q. And you've heard an M-4 fired 13 thousands and thousands of times? 14 A. Yes, sir. 15 Q. You know what an M-4 sounds like, 16 don't you? 17 A. I do. 18 Q. And you heard this gun -- this shot, 19 you knew it was a gunshot, didn't you? 20 A. To be honest with you, I wasn't sure. 21 Like I said, it's in my -- I wasn't really sure. 22 It was an odd sound, to be honest with you. It 23 sounds crazy, but... 24 Q. You're facing into the kitchen,</p>
<p style="text-align: right;">Page 99</p> <p>1 A. Yes, sir. 2 Q. -- who were you referring to on 3 Page 19? 4 A. Like I said, I do believe right there 5 at the stairway is Officer Sebastian. 6 Q. And he had his back towards you? 7 A. Yes, sir. 8 Q. So which way was he facing if he had 9 his back towards you? 10 A. Towards the door. 11 Q. And where were you facing? 12 A. Towards the room. 13 Q. So at the time that Sebastian was 14 there, you had your back to the cellar door, 15 Sebastian is facing the door, and you've ordered 16 him to assist Riley in taking the cellar, is 17 that right? 18 A. Yes. 19 Q. So those two guys are going to be 20 responsible for the cellar? 21 A. Yes, sir. 22 Q. And at some point there's a gunshot 23 fired -- 24 A. Yes.</p>	<p style="text-align: right;">Page 101</p> <p>1 correct? 2 A. Yes. 3 Q. And that means you're looking at the 4 threshold that goes into the hallway where 5 O'Toole and Sheehan had already entered, passing 6 over Mr. Stamps, is that right? 7 A. Yes. 8 Q. And Officer Duncan, who is approaching 9 Mr. Stamps who is lying on his belly with his 10 hands up, his gun goes off -- 11 A. Yes. 12 Q. -- right? 13 A. Yes, sir. 14 Q. And is it really your testimony that 15 you didn't know it was a gun? 16 A. To be honest with you, yes. I mean, 17 like I said, I wasn't sure what it was. 18 Q. You were within 10 feet maximum of 19 where Duncan was? 20 A. Yes. 21 Q. Isn't that so? 22 A. Yes. 23 Q. And you knew that the flashbang was 24 long over?</p>

Page 102

1 A. Yes.
2 Q. The entry had already been made?
3 A. Yes, sir.
4 Q. So you knew it couldn't be a
5 flashbang, right?
6 A. Yes. Well, yes.
7 Q. And this gun goes off within 10 feet
8 of you?
9 A. Yes, sir.
10 Q. And it's your testimony before this
11 judge and jury you didn't know that it was a
12 gun? Is that your testimony?
13 MR. DONOHUE: I object to the
14 question.
15 BY MR. TARRICONE:
16 Q. Is that your testimony, Officer
17 Downing?
18 A. Gun? Like I said, I testified I
19 wasn't sure what it was. I knew I heard a bang,
20 but I wasn't positive what it was, sir.
21 Q. Now, in your statement, the transcript
22 here --
23 A. Yes, sir.
24 Q. -- it states that the first time you

Page 103

1 observed Duncan after the shot, he was walking
2 towards you?
3 A. Yes, sir.
4 Q. Is that right?
5 A. Yes.
6 Q. And by the way, there's no question
7 that what you heard was the gunshot, is that
8 right?
9 A. Again, I testified I didn't know.
10 Q. This bang that you heard, you now know
11 that was a gunshot, don't you?
12 A. I do know now, yes, sir.
13 Q. No question about that, is there?
14 A. No.
15 Q. And you also know that it was Duncan's
16 M-4 that was fired?
17 A. I do know.
18 Q. Is that right?
19 A. Yes.
20 Q. And you know that no one else that
21 evening of all the 25 officers in the general
22 vicinity, in the house, outside the house, no
23 one else fired a weapon?
24 A. Correct.

Page 104

1 Q. And when you saw Duncan, he was in the
2 kitchen walking towards you?
3 A. Yes, sir.
4 Q. At some point after the gun was fired,
5 did you instruct Officer Sibilio to take Duncan
6 off the premises?
7 A. I do believe, like I said, he was
8 walking towards me in a state that I had Officer
9 Sibilio take him, yes, sir.
10 Q. Did you have any discussion with
11 Duncan at that point?
12 A. I don't recall.
13 Q. So do you have any memory as you sit
14 here today of anything that Duncan said to you
15 or you said to him?
16 A. No, sir.
17 Q. Do you remember instructing Officer
18 Sibilio to take him off the premises?
19 A. Yes, sir.
20 Q. Later that evening -- well, I guess
21 early morning hours, January 5th, did you go and
22 meet up with Duncan anywhere?
23 A. I don't believe so, no.
24 Q. Where was he taken when he left the

Page 105

1 premises?
2 A. As I refreshed my memory today, he was
3 turned over to Officer Eliadi and brought back
4 to the station.
5 Q. Did you go back to meet with him?
6 A. No, sir, no.
7 Q. Were you ever authorized to question
8 him about what happened as the executive officer
9 of the SWAT team?
10 A. No.
11 Q. Do you know whether this Steven
12 Ijames -- by the way, is "I" his middle initial,
13 or is his last name Ijames?
14 A. It's I-J-A-M-E-S. I believe it's one
15 word, sir.
16 MR. DONOHUE: It's pronounced Ijames.
17 MR. TARRICONE: Oh, Ijames. Okay.
18 A. I don't know who he is.
19 BY MR. TARRICONE:
20 Q. Do you know whether Steven Ijames,
21 spelled Ijames, ever met with Duncan or talked
22 to Duncan face-to-face?
23 A. I don't know that, sir.
24 Q. So when you heard the gun being fired,

Lieutenant Robert F. Downing

Page 106

1 did you know that it was a weapon of some kind?
2 A. I knew it was some type of a weapon,
3 yes, sir.
4 Q. Do all the officers on the SWAT team
5 carry M-4s?
6 A. No, sir.
7 Q. What other weapons do they carry, if
8 not an M-4?
9 A. The handgun, which is 40 rounds. We
10 have an MP-5.
11 Q. So --
12 A. It's 40 cal.
13 Q. Is it the case that some officers
14 would have only a handgun and not a long rifle?
15 A. No. They would have both, sir.
16 Q. So everybody would have either an M-4
17 or an MP-5, and a handgun?
18 A. Yes, sir.
19 Q. How does an MP-5 differ from an M-4?
20 A. Smaller round.
21 Q. Is it also a long rifle?
22 A. Yes, sir.
23 Q. Long gun?
24 Are they both semi-automatic weapons?

Page 107

1 A. Yes, sir.
2 Q. As used by the police department?
3 A. Yes, sir.
4 Q. Back to the drawing, Exhibit 14, would
5 you indicate on here with an X where it was that
6 you saw Duncan when you first saw him?
7 A. (Labelling).
8 Q. And would you put -- just put a number
9 4 near that X?
10 A. 4, sir?
11 Q. Number 4, yes.
12 A. (Labelling).
13 Q. And taking this black pen, would you
14 please draw the route of your entry into the
15 building through the front entryway and to the
16 area of the cellar door?
17 A. So my understanding is the initial
18 point that we drove up into the building
19 basically?
20 Q. Well, from the front porch area, just
21 show the route that you took with your team.
22 And put an arrow up at the top there just to
23 indicate how you came in.
24 A. (Labelling).

Page 108

1 Q. Okay. Thank you.
2 And using the black pen, would you
3 just put your initials over there?
4 A. Right here?
5 Q. Right there. That's great.
6 A. (Initialling).
7 Q. Thank you.
8 I'm going to ask you to look at
9 Exhibit Number 9, which is one of the
10 photographs taken, I think, by the state police.
11 But it's a photograph that shows that there's
12 blood on the floor.
13 Do you see that?
14 A. Yes, sir.
15 Q. With respect to the layout of the
16 kitchen as you see it there, and the items that
17 are laying around the kitchen, is that generally
18 what it looked like when you went in that night?
19 A. Yes, sir.
20 Q. Aside from the blood?
21 A. Yes, sir.
22 Q. I'm going to show you now Exhibit
23 Number 5 (handing).
24 A. Yes, sir.

Page 109

1 Q. Do you recognize that document?
2 A. Yes. It's the policy and procedure
3 from the Framingham Police Department on
4 firearms and weapons, sir.
5 Q. Now, Exhibit 5, as I understand it, is
6 the version of the Framingham Police Department
7 Policy on Firearms and Weapons as amended
8 through October 4, 2012.
9 Do you see that date on there?
10 A. Yes, sir.
11 Q. I'm going to ask you, Lieutenant
12 Downing, if you would turn to section Roman
13 Number IV., "Patrol Rifle," which begins on
14 Page 4 of the document, Bates number 4105.
15 Do you have that in front of you?
16 A. 4 Bravo?
17 Q. Yes.
18 A. Yes, sir. The "Operational Carry
19 Condition"?
20 Q. Well, Roman Number IV., the entire
21 section. Do you have that in front of you?
22 A. Yes, sir.
23 Q. And let's just go through it.
24 First, the "Patrol Rifle," does that

Lieutenant Robert F. Downing

Page 110	Page 112
<p>1 refer to an M-4? 2 A. Yes, sir. 3 Q. And an MP-5? 4 A. Yes, sir. 5 Q. This would cover both? 6 A. Yes. 7 Q. Part B, "Operational Carry Condition," 8 what does that mean, "Operational Carry 9 Condition"? 10 A. Do I have to read it? 11 Q. Well, what does the general term mean? 12 A. Operational carry position? 13 Q. Is it the way the gun should be 14 configured when being carried? 15 A. Yes, how you should -- operational 16 use. 17 Q. What does it provide here for that? 18 A. Do you want me to read it? 19 Q. Yes. 20 A. "Release rifle from the vehicle 21 mount/lock; point muzzle down in safe direction; 22 Ensure weapon is on safe; Pull the charging 23 handle to the rear, and release; Conduct a press 24 check; and move the weapon into 'low ready.'"</p>	<p>1 confirm that there's a round loaded in the 2 chamber properly? 3 A. Yes, sir. 4 Q. Then on the next page, Page 5 of this 5 exhibit, Bates Number 4106, the next section is 6 called "Low Ready," and it has a more detailed 7 description of what the low ready position is. 8 Do you see that? 9 A. Yes, sir. 10 Q. Would you read the first part of that, 11 please? 12 A. Of Low Ready, sir? 13 Q. Yes. 14 A. "The 'Low Ready' is the standard carry 15 position while the patrol rifle is operational. 16 The 'Low Ready' is also the default carry 17 position. The weapon's stock is seated in the 18 shoulder; muzzle down." 19 Q. The first subpart of that, "On Safe," 20 what does that mean? 21 A. "Finger Off trigger, and along low 22 receiver; Two hands on weapon." 23 Q. And "On Safe" means that the gun is 24 not active or hot, is that right?</p>
Page 111	Page 113
<p>1 Q. What is "low ready"? What does low 2 ready mean? 3 A. Do you want me to demonstrate? It's 4 probably easier. 5 Q. Sure. 6 A. Just keep the weapon low (indicating). 7 Q. Pointed down? 8 A. Yes. 9 Q. What's the purpose of that position? 10 A. It's safe. 11 Q. It's for safety? 12 A. Yes, sir. 13 Q. So that the gun is not pointed at 14 somebody? 15 A. Yes, sir. 16 Q. Is that right? 17 A. Yes. 18 Q. And what is "Press Check"? What does 19 that mean? 20 A. That means basically when you pull the 21 charging end you can see the round, you're just 22 pushing to see inside the chamber. 23 Q. So part C here is explaining the 24 procedure to do the press check, and that's to</p>	<p>1 A. Yes, sir. 2 Q. And then the next section, "Off Safe," 3 and would you read that, please? 4 A. "Officer perceives a threat, weapon 5 comes up onto target, only when the officer is 6 ready to shoot does the weapon come off safe; 7 eyes align sights; acquire proper sight 8 picture." 9 Go on? 10 Q. Yes. Go ahead, continue it. 11 A. "After firing, or when the decision 12 not to fire is made, the weapon is placed back 13 on Safe." 14 Q. Now, my understanding is that this 15 entire section called Patrol Rifle, including 16 this subpart C, Low Ready, On Safe, Off Safe, 17 was added to the weapons policy after the 18 shooting at 26 Fountain Street, is that the 19 case? 20 A. I do believe this is the updated one, 21 yes, sir. 22 Q. Now, aside from whether it was in a 23 written protocol before the shooting, is what's 24 stated here in part C, Low Ready, On Safe, Off</p>

Page 114

1 Safe, consistent with the training that you
2 provided the SWAT team officers?
3 A. Yes, sir.
4 Q. So that training was provided even
5 before this was memorialized in the actual
6 weapons policy?
7 A. Yes, sir.
8 Q. And then if you would, sir, please
9 turn to the next page of this exhibit.
10 By the way, this is Exhibit 5, is that
11 right? I just want to have it clear on the
12 record. Exhibit 5, yes. On the next page
13 there's a Section F, and it's called
14 "Contact/Cover."
15 Do you see that?
16 A. Yes, sir.
17 Q. And would you please read that into
18 the record?
19 A. "The Contact/Cover technique requires
20 at least two officers. When an officer
21 confronts a subject or subjects that poses a
22 potential threat and needs to be secured, the
23 officer will use the 'Contact/Cover' technique.
24 If the officer is alone at the time of the

Page 115

1 confrontation with the subject, the officer will
2 maintain cover position, and call for an
3 additional officer to assist him/her."
4 Q. Let me stop you right there.
5 What you just read up until that
6 point, was that, aside from whether it was in
7 the written policy, is that the way that you
8 trained, you and Sergeant Stuart, trained
9 officers of the SWAT team before the execution
10 of the search warrant in January of 2011?
11 A. Yes, sir.
12 Q. Is that something that you learned as
13 early as the police academy?
14 A. Yes, sir.
15 Q. And is that something that you would
16 have emphasized in training through all the
17 years that you were training SWAT officers?
18 A. I mean we talk about it certainly.
19 It's not -- I mean, yes.
20 Q. Is this something you'd consider
21 basic?
22 A. Yes.
23 Q. Would you continue reading that?
24 A. "The...compliance and control of

Page 116

1 subject until an additional officer arrives to
2 assist. The Cover Officer provides lethal (in
3 some instances less than lethal) cover for the
4 Contact Officer. The Contact Officer, is the
5 hands on officer, and must put their long gun on
6 safe and sling it securely on his/her back (or
7 holster for a handgun) Before moving in to
8 secure to the subject."
9 Q. Again, aside from whether it was in
10 any written policy, is that the way that you
11 trained the SWAT team members before -- in the
12 years before the execution of the search
13 warrant --
14 A. Yes.
15 Q. -- in January of 2011?
16 A. Yes, sir.
17 Q. And you know, don't you, from
18 everything you've seen and read that Officer
19 Duncan did not have the safe -- have his gun in
20 a safe on position and slung behind his back
21 when he encountered Mr. Stamps on that evening,
22 isn't that so?
23 A. Yes.
24 Q. And if you would turn to Exhibit 4,

Page 117

1 please.
2 A. Which one is that one, sir?
3 Q. It's the old version of the weapons
4 policy.
5 A. I don't think I have that.
6 Q. I'm sorry, I've got it in my hand
7 (handing)?
8 A. Can I get the cover for this again?
9 Q. (Handing).
10 A. Thank you, sir.
11 This is the old one, sir?
12 Q. Yes.
13 Take a look at the front, it has an
14 initial date of July 1, '03, and a revision date
15 of April 30, 2011.
16 Looking at this, do you know what
17 revision was made in April of 2011?
18 A. I do believe the revisions, as I
19 recall, again as I recall, the revisions are in
20 Part IV., Patrol Rifles, and the whole -- I'm
21 sorry, in Exhibit 5, and Page 5.
22 Q. You're looking now at Exhibit 5, is
23 that right?
24 A. Correct.

Lieutenant Robert F. Downing

Page 118

1 Q. That has some of the new provisions
2 that you recognize?
3 A. That's what I thought the question
4 was.
5 Q. No. Looking at Exhibit 4, it has an
6 initial date of July 1, '03, and it has one
7 revision date of April 30, 2011.
8 A. Yes, sir.
9 Q. And just to be clear, Exhibit 5 has
10 additional revision dates of September 21, 2011,
11 February 20, 2012, and October 4, 2012.
12 A. Yes, sir.
13 Q. And it has an effective date of
14 January 7, 2011.
15 A. Yes, sir.
16 Q. Is that right?
17 A. Yes, sir.
18 Q. And that was just two days after this
19 shooting, wasn't it, the effective date?
20 January 7, 2011?
21 A. Doesn't --
22 Q. I'm sorry, that's October, isn't it?
23 A. Yes, sir.
24 Q. I'm reading it upside down.

Page 119

1 So it's October, 2011?
2 A. Yes, sir.
3 Q. Now, going back to Exhibit 4, the
4 older version.
5 A. Yes, sir.
6 Q. Do you know, looking through this, and
7 it's a six or seven page, seven -- eight full
8 pages, do you know what the change was that was
9 made in April of 2011?
10 A. Again, going through, the change from
11 4 to 5, sir?
12 Q. Okay. Is there anything -- let me put
13 it this way.
14 Is there anything in Exhibit 4 that
15 you recognize as a new policy, or does this --
16 or does Exhibit 4 appear to be the way the
17 policy was actually written, the written form of
18 the policies --
19 A. Prior to --
20 Q. -- at the time of the shooting?
21 A. Yes. It would appear to be that way,
22 yes, sir.
23 Q. Now, if you would turn to Page 6,
24 "Weapon Handling"?

Page 120

1 A. Yes.
2 Q. By the way, there is no section in
3 here called "Patrol Rifle," is that right? In
4 Exhibit 4 there's no section called "Patrol
5 Rifle," is there?
6 A. Yes, sir. Correct.
7 Q. Now, looking at Page 6 of Exhibit 4,
8 "Weapon Handling," part D says "Officers" --
9 VI., I'm sorry, Section Roman Numeral VI.(d) on
10 Page 6 states officers shall "Keep their finger
11 outside of the trigger guard until ready to
12 engage and fire on a target."
13 Do you see that?
14 A. Yes, sir.
15 Q. And was that something that was a
16 fundamental principle that was taught to all the
17 officers on the SWAT team?
18 A. Yes, sir.
19 Q. That predated the date of the shooting
20 in January, 2011, did it not?
21 A. Yes, sir.
22 Q. And the next section states officers
23 shall "Point the weapon's muzzle in a safe
24 direction at all times."

Page 121

1 That's also something that's
2 fundamental, and was taught to all SWAT team
3 officers?
4 A. Yes.
5 Q. Is that right?
6 THE VIDEOGRAPHER: This concludes
7 videotape number one in the August 1, 2013
8 deposition of Robert F. Downing. Going off
9 the record. The time is 3:14.
10 (Whereupon, a recess was taken.)
11 THE VIDEOGRAPHER: Here marks the
12 beginning of videotape number two in the
13 August 1, 2013 deposition of Lieutenant
14 Robert F. Downing. Back on the record. The
15 time is 3:32 p.m.
16 BY MR. TARRICONE:
17 Q. Lieutenant Downing, do you recall what
18 position you had your gun in with respect to the
19 safety, whether it was hot, or the safety was
20 engaged when you made entry into the building
21 and into the kitchen?
22 A. Safe.
23 Q. Did you ever take your gun off safe
24 that evening?

Page 122

1 A. I don't recall. I don't believe so.
2 Q. So you had it on the safe position
3 when you were in the common hallway after coming
4 through the front door of the house?
5 A. Yes, sir.
6 Q. And you had it in the safe position
7 when you entered the kitchen, is that right?
8 A. Yes, sir.
9 Q. And when you heard the gunshot, did
10 you at that point take it off safe?
11 A. No, sir.
12 Q. Did you ever discuss with any of the
13 other SWAT team members what the position of
14 their gun was with respect to the safety that
15 evening?
16 A. No, sir.
17 Q. You had yours in the safe position
18 because that was the procedure as you taught it
19 to SWAT team members, isn't that so?
20 A. Yes.
21 Q. In the weeks and months after the
22 shooting of Mr. Stamps on January 5th, 2011, in
23 the SWAT team training sessions, was there a
24 debriefing about what happened that evening?

Page 123

1 A. I don't recall, but it would be hard
2 to believe that there wasn't, to be honest with
3 you. I do believe there was a debriefing after
4 the incident like we normally do, sir.
5 Q. Would that have been done the day of
6 the incident?
7 A. The evening of. As a matter of fact
8 we did, because I remember Chief Carl addressing
9 the team.
10 Q. What do you remember about the
11 debriefing?
12 A. I don't, I don't -- to be honest with
13 you, I don't really remember much. I don't
14 think we really talked about the facts. I think
15 the chief basically came in and just tried to
16 talk to the team.
17 Q. What is a typical debriefing after the
18 SWAT team completes a mission?
19 A. It's basically you just talk about the
20 mission's -- I can't think of the term right
21 now. I can't believe it.
22 You just think about -- you just
23 basically talk about the things that went well,
24 things that did not go well, and things you

Page 124

1 could sustain, should sustain.
2 Q. So after this event, this incident --
3 A. Yes.
4 Q. -- when Mr. Stamps was shot, there was
5 a debriefing back at headquarters?
6 A. I don't believe it was in that format,
7 to be honest with you, sir. I do believe, like
8 I said, the debriefing was given by Chief Carl,
9 but he didn't really debrief the incident, he
10 basically just gave an overview just because
11 people were visibly upset, so he basically just
12 tried to talk to people. I don't believe there
13 was ever a debriefing, per se, about the
14 incident.
15 Q. Who was there for whatever form this
16 debriefing --
17 A. The team, just generally the team and
18 the medics.
19 Q. So was Duncan there?
20 A. I don't believe so. I do believe that
21 he was at the hospital.
22 Q. And it was the chief who addressed the
23 group?
24 A. Yes, sir.

Page 125

1 Q. What about -- is it Lieutenant Davis?
2 A. Deputy Davis.
3 Q. -- Deputy Davis, did he address the
4 group?
5 A. I don't recall.
6 Q. Are debriefings generally recorded --
7 A. No.
8 Q. -- by anybody?
9 In the training sessions following the
10 shooting of Mr. Stamps, was there anything that
11 you did in training to address what happened and
12 take steps to ensure that it doesn't happen
13 again?
14 A. Yes.
15 Q. Tell me what you did.
16 A. Obviously we did more contact cover
17 work, and more selector switch work.
18 Q. More what?
19 A. Selector switch work.
20 Q. You're talking about switching the
21 safety on and off?
22 A. Yes, sir.
23 Q. When you say you "did more selector
24 switch work," what did you do?

Lieutenant Robert F. Downing

Page 126

1 A. We were required to fire 3,000 rounds
2 per team member.
3 Q. Each team member had to fire 3,000
4 rounds?
5 A. Yes, sir.
6 Q. Were they required to put the safety
7 switch on and off --
8 A. Yes.
9 Q. -- between each round?
10 A. Safety manipulation.
11 Q. How long would it take to do 3,000
12 rounds?
13 A. It was over the course of a year. It
14 wasn't just one.
15 Q. Okay. Anything else?
16 A. Well, the policy and procedure was
17 obviously fixed, the wording changed.
18 Q. In other words, the protocols that you
19 were teaching were now put in writing and put in
20 that weapons policy?
21 A. State that again?
22 Q. If I understand what you're saying,
23 you're referring to the changes that were made
24 in the weapons policy, Exhibit 5?

Page 127

1 A. Yes.
2 Q. And you had testified that you had
3 already been training the SWAT team members
4 that, but now it was put in writing in the
5 document?
6 A. Yes.
7 Q. Did you also in the aftermath of this
8 shooting re-emphasize the contact and cover
9 procedure?
10 A. Yes, sir. I stated that, yes.
11 Q. Anything else that you recall?
12 A. I don't recall. I don't recall.
13 Q. Is Officer Duncan still a member of
14 the SWAT team?
15 A. No, sir.
16 Q. When did he leave?
17 A. The day after the incident.
18 Q. He never returned for another session?
19 A. For SWAT training, no.
20 Q. Was he terminated from the group?
21 A. He was removed.
22 Q. Whose decision was that?
23 A. I actually did it.
24 Q. When you say you did it, are you the

Page 128

1 one who told him?
2 A. Yes, sir.
3 Q. Did you have to clear that with
4 somebody?
5 A. Well, no one really told him. It was
6 kind of a -- no one really told him, so I felt I
7 was obligated to tell him.
8 Q. Who actually made the decision to
9 terminate him?
10 A. I used my chain of command, the chief
11 and Deputy Davis.
12 Q. So did you recommend to them that he
13 be terminated?
14 A. The term "terminated" -- just removed
15 from the team.
16 Q. Well, did you recommend to them that
17 he be removed from the SWAT team?
18 A. Yes, but it was -- yes.
19 Q. Was it a consensus?
20 A. Yes.
21 Q. Everybody agreed?
22 A. Yes.
23 Q. And was that because he didn't follow
24 procedure that evening?

Page 129

1 A. Yes.
2 Q. And as a result, Mr. Stamps was shot
3 in the face?
4 A. Yes, sir.
5 MR. TARRICONE: That's all I have.
6 MR. DONOHUE: All right. We're
7 concluded.
8 MR. TARRICONE: Lieutenant Downing,
9 thank you.
10 THE VIDEOGRAPHER: This concludes
11 videotape number two in the August 1, 2013
12 deposition of Lieutenant Robert F. Downing.
13 Going off the record. The time is 3:39 p.m.
14 (Whereupon, the deposition was
15 concluded.)
16
17
18
19
20
21
22
23
24

Page 130

1 COMMONWEALTH OF MASSACHUSETTS)
 2 SUFFOLK, SS.)
 3 I, MAUREEN O'CONNOR POLLARD, RPR, CLR,
 4 and Notary Public in and for the Commonwealth of
 5 Massachusetts, do certify that on the 1st day of
 6 August, 2013, at 12:51 o'clock, the person
 7 above-named was duly sworn to testify to the
 8 truth of their knowledge, and examined, and such
 9 examination reduced to typewriting under my
 10 direction, and is a true record of the testimony
 11 given by the witness. I further certify that I
 12 am neither attorney, related or employed by any
 13 of the parties to this action, and that I am not
 14 a relative or employee of any attorney employed
 15 by the parties hereto, or financially interested
 16 in the action.
 17 In witness whereof, I have hereunto
 18 set my hand this 8th day of August, 2013.
 19
 20 _____
 21 MAUREEN O'CONNOR POLLARD, NOTARY PUBLIC
 22 Realtime Systems Administrator
 23 CSR #149108
 24

Page 131

1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections.
 5 You should state the reason in the appropriate
 6 space on the errata sheet for any corrections
 7 that are made.
 8 After doing so, please sign the
 9 errata sheet and date it. It will be attached
 10 to your deposition.
 11 It is imperative that you return
 12 the original errata sheet to the deposing
 13 attorney within thirty (30) days of receipt of
 14 the deposition transcript by you. If you fail
 15 to do so, the deposition transcript may be
 16 deemed to be accurate and may be used in court.
 17
 18
 19
 20
 21
 22
 23
 24

Page 132

1 -----
 2 ERRATA
 3 -----
 4 PAGE LINE CHANGE
 5 _____
 6 REASON: _____
 7 _____
 8 REASON: _____
 9 _____
 10 REASON: _____
 11 _____
 12 REASON: _____
 13 _____
 14 REASON: _____
 15 _____
 16 REASON: _____
 17 _____
 18 REASON: _____
 19 _____
 20 REASON: _____
 21 _____
 22 REASON: _____
 23 _____
 24

Page 133

1 ACKNOWLEDGMENT OF DEPONENT
 2
 3 I, _____, do
 4 Hereby certify that I have read the foregoing
 5 pages, and that the same is a correct
 6 transcription of the answers given by me to the
 7 questions therein propounded, except for the
 8 corrections or changes in form or substance, if
 9 any, noted in the attached Errata Sheet.
 10 _____
 11 LT. ROBERT F. DOWNING DATE
 12
 13
 14
 15 Subscribed and sworn
 16 To before me this _____
 17 day of _____, 20____.
 18 My commission expires: _____
 19 _____
 20 Notary Public
 21
 22
 23
 24

1	LAWYER'S NOTES
2	PAGE LINE
3	_____
4	_____
5	_____
6	_____
7	_____
8	_____
9	_____
10	_____
11	_____
12	_____
13	_____
14	_____
15	_____
16	_____
17	_____
18	_____
19	_____
20	_____
21	_____
22	_____
23	_____
24	_____