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## 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		Page 4
1	APPEARANCES:	1	PROCEEDINGS
2 3	EOD THE DI AINTIEC CUDIC A CTAMPO ID	2	
4	FOR THE PLAINTIFF EURIE A. STAMPS, JR.: ANTHONY TARRICONE, ESQUIRE	3	(Whereupon, Exhibit Number 10, 1/7/11
	JOSEPH P. MUSACCHIO, ESQUIRE	4	Transcript of Interview of Robert
5	KREINDLER & KREINDLER LLP	5	Downing, Number 10A, Copy of
6	277 Dartmouth Street Boston, Massachusetts 02116	6	photograph, and Number 10B, Copy of
	617-424-9100	7	photograph, were marked for
7 8	atarricone@kreindler.com	8	identification.)
9	FOR THE PLAINTIFF NORMA BUSHFAN STAMPS:	9	(Off of video record.)
10	ANTHONY W. FUGATE, ESQUIRE	10	MR. DONOHUE: Same stipulations as
11	BARDOUILLE & FUGATE 22 Broad Street	11	last time, just form objections, reserved to
	Lynn, Massachusetts 01902-5023	12	the time of trial?
12	781-593-8888	13	MR. TARRICONE: Yes.
14	FOR THE DEFENDANTS:	14	MR. DONOHUE: Now that I see that in
15	THOMAS R. DONOHUE, ESQUIRE	15	writing, I guess should say we reserve all
16	BRODY HARDOON PERKINS & KESTEN, LLP One Exeter Place	16	objections except as to the form of the
10	699 Boylston Street	17	question until the time of trial.
17	Boston, Massachusetts 02116	18	(On video record.)
18	617-880-7100 tdonohue@bhpklaw.com	19	THE VIDEOGRAPHER: We are now on the
19	identificações para vicent	20	record. My name is Chris Coughlin, I'm a
20	Also Present: Lucille Sharp, Paralegal	21	videographer for Golkow Technologies.
21	Videographer: Christopher Coughlin	22	Today's date is August 1st, 2013, and
22		23	the time is 12:51 p.m.
23		24	This video deposition is being held in
	Page 3		
7		,	Page 5
1 2	INDEX EXAMINATION PAGE	1	Boston, Massachusetts, in the matter of
3	EXAMINATION PAGE LT. ROBERT F. DOWNING	2	Eurie A. Stamps, Jr. and Norma Bushfan
4		3	Stamps, Co-Executors of the Estate of Eurie
5	BY MR. TARRICONE 6 EXHIBITS	4 5	A. Stamps, Sr., versus the Town of
6	NO. DESCRIPTION PAGE	6	Framingham and Paul K. Duncan, Individually
7	10 1/7/11 Transcript of Interview of	7	and in his Capacity as a Police Officer of
8	AND THE REPORT OF THE PROPERTY	8	the Framingham Police Department,
9	Robert Downing 4 10A Copy of photograph 4	9	Defendants, in the United States District
10	10B Copy of photograph	10	Court, District of Massachusetts, Civil Action Case Number 1:12-cv-11908-FDS.
11	11 Rebuttal statement, Bates STAMPS	11	The deponent is Robert F. Downing.
12	00188216	12	
13	12 1/5/11 After Action Report, Bates	13	Would counsel please identify yourselves for the record.
14	STAMPS 000521 through 529	14	THE STATE OF THE PROPERTY AND THE RESIDENCE OF THE PROPERTY OF
15	13 Search Warrant	15	MR. TARRICONE: Anthony Tarricone from
16		16	the Kreindler law firm representing the
17	14 Color diagram	17	Stamps family.  MR. DONOHUE: Tom Donohue from Brody
18		18	
19		19	Harpoon Perkins & Kesten. I represent the Defendants.
20		20	
21		21	MR. MUSACCHIO: Joseph Masacchio with the Kreindler law firm representing Eurie
22		22	Stamps and his family.
23		23	THE VIDEOGRAPHER: The court reporter
24		24	is Maureen Pollard, and she will now swear
~ I		27	15 Maureen Fonard, and she will now swear

	Page	5	Page 8
1	in the witness.	1	A. Westfield State College.
2		2	Q. Do you have a degree?
3	LT. ROBERT F. DOWNING,	3	A. Yes, sir.
4	having been first duly sworn, was examined and		Q. What is the degree?
5	5 testified as follows:		A. I got a degree I got my bachelor's
6	DIRECT EXAMINATION	6	degree and a master's degree.
7	BY MR. TARRICONE:	7	Q. In what subjects?
8	Q. Lieutenant Downing, would you please	8	A. Criminal justice, and I got a minor in
9	state your full name?	9	psych and soc.
10	<ol> <li>Robert Fitzpatrick Downing.</li> </ol>	10	Q. For both bachelor's and
11	Q. What town or city do you live in?	11	A. Just bachelor's.
12	A. Town of Framingham.	12	Q. And your master's degree is what?
13	Q. What is your date of birth?	13	A. Criminal justice.
14	A. March 4th, 1968.	14	Q. Is that also from Westfield?
15	Q. And are you a lieutenant in the	15	A. Yes, sir.
16	Framingham Police Department?	16	Q. What year did you complete your
17	A. Yes, sir.	17	bachelor's degree?
18	Q. How long have you been a lieutenant?	18	A. 1991.
19	<ol> <li>A. Approximately three years.</li> </ol>	19	Q. And what year did you complete your
20	Q. So you would have become a lieutenant	20	master's?
21	in 2010?	21	A. I'm not positive. I do believe it
22	A. I do believe so, yes, sir.	22	was I don't know. To be honest with you, I
23	Q. Were you a sergeant before that?	23	don't I want to say I'm not positive on
24	A. Yes, sir.	24	that.
	Page 7		Page 9
1	Q. How long were you a sergeant?	1	Q. Was that after you had already entered
2	A. I do believe I became a sergeant in	2	the workforce, the master's?
3	2005.	3	A. Yes, I was already on the job when I
4	Q. And before 2005, were you an officer	4	sought the master's.
5	of the Framingham Police Department?	5	Q. What role, if any, do you have today
6	A. Yes, sir.	6	with respect to the Framingham Police
7	Q. When did you begin there?	7	Department's SWAT team?
8	A. 1995, September.	8	A. Right now today, sir?
9	Q. So from '95 until about 2005 you were	9	Q. Yes.
10	an officer, and then promoted to sergeant?	10	A. The XO, the second in charge.
11	A. Yes. Approximately, yes.	11	Q. What's the term you used?
12	Q. Did you attend police academy?	12	A. XO.
13	A. Yes, sir.	13	Q. What does that mean?
14	Q. Where?	14	A. Executive officer.
15	A. Norwood, Massachusetts.	15	Q. Executive officer?
16	Q. When was that?	16	A. It's like being a vice-president.
17	A. September of 1995.	17	Q. That's second in charge behind whom?
18	Q. Are you a high school graduate?	18	A. Deputy Davis.
19	A. Yes, sir.	19	Q. He's
20	Q. Which high school, and what year?	20	A. The commander, sir.
21	A. Framingham High School, in 1987.	21	Q. He's the commander.
22	Q. Did you attend college?	22	And for how long have you had that
23	A. Yes, I did, sir.	23	position?
24	Q. Where?	24	A. I got that position in July of 2010.

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

	Page 1	1	
,		0.44	Page 16
2	Q. Either deposition or trial?	1	MR. TARRICONE: Mark this, please.
3	A. I've been to court, but no deposition. This is my first.	2	(Whereupon, Exhibit Number 11,
4		3	Rebuttal statement, Bates STAMPS
5	Q. When you've been to court, has it ever been in conjunction with a civil	4	001882, was marked for
6	A. No.	5	identification.)
7		6	BY MR. TARRICONE:
8		7	Q. Do you have in front of you what's
9	<ul><li>A. No. I apologize. No, sir.</li><li>Q. So every time you've testified, it's</li></ul>	8	been marked as Exhibit 11?
10	been in a criminal proceeding?	9	A. I do, sir.
11	A. Yes, sir.	10	Q. Is that what you just referred to as
12	Q. Is that right?	11	the rebuttal?
13	Before today, did you review any	12	A. Yes, sir.
14	documents, or this morning, did you review any	13	Q. Did you review anything else?
15	documents to prepare to give testimony today a		A. I believe that's it, sir. Well, like
16	this deposition?	1	I said, I stated Deputy Davis' AAR report, after
17	A. Yes.	16	action review. I don't know if you have that.
18	Q. What did you review?	18	Q. I do. Thank you.
19	A. This document right here, and	1	When did you first become team leader of the SWAT team?
20	Q. You're pointing to the transcript?	19	
21	A. Can I pick it up?	21	A. I don't know that date, sir, to be honest with you.
22	Q. Yes, of course. Exhibit Number 10,	22	
23	that's the transcript of the questions and	23	
24	answers, your answers to questions from	24	<ul><li>A. I would say so, yes.</li><li>Q. And from that time up until the time</li></ul>
		-	
	Page 15	'l	Page 17
1	Lieutenant Forster?	1	you became executive officer, were you involved
2	A. Yes, sir.	2	in the hands-on training of SWAT team members?
3	Q. What was the date that you answered	3	A. Like I said, team leader basically
4	those questions?	4	executes the plans as opposed to the
5	A. Can I look?	5	XO/commander. Kind of
6	Q. Of course you can look.	6	Q. So you would do the hands-on training?
7	A. It was the 7th of January, 2011.	7	A. As a team leader I did, yes.
8	Q. What else did you review, if anything?	8	Q. So somebody else was creating the
9	A. I had pictures, like these pictures.	9	training plan, and then you would carry it out?
10 11	Q. Take a look at the Exhibits 10A and B.	1 00 00 0	A. Yes, sir.
12	Are those did you review those?  A. Yes, I do believe so. Mine wasn't in	11	Q. Did anybody else have that
13	A. Yes, I do believe so. Mine wasn't in color, but yes.	12	responsibility?
14		13	A. As a team leader?
15	Q. And are Exhibits 10A and B copies of photographs that you	14	Q. Yes.
16	A. Signed.	16	A. Sergeant Stuart and I. But I mean
17	And the second s	17	prior to this, there's been numerous team
18	Q made markings on when you were answering Lieutenant Forster's questions?	18	leaders that come and go on the team also, sir.
19	A. Yes, sir. Yes.	19	Q. So during the time that you were team
20	Q. Did you review anything else?	20	leader, was Sergeant Stuart also a team leader?
21	A. I reviewed a copy of Deputy Davis'	21	A. Yes, he was one of them, yes.     O. How many years back before 2011 do you
22	after action review, and a copy of a rebuttal by	22	Q. How many years back before 2011 do you think you were both team leaders?
			9
23	IIIVSEII and Sergeant Shiart on Jiames' report	1 / 4	A Logether/
23 24	myself and Sergeant Stuart on Ijames' report, and that should be it, sir.	23	A. Together? Q. Yes. Three, four, five? Give me your

	D		
	Page :	L8	Page 20
1	best estimate, I'm not this isn't a quiz.	1	in my law office, you are under oath and
2	A. I apologize.	2	testifying in a formal legal proceeding?
3	Q. Just give me your best estimate.	3	A. Yes.
4	A. Three or four years, sir.	4	Q. Before today, have you given testimony
5	Q. So did you and Sergeant Stuart condu	1	under oath concerning this case?
6	the training together as a team?	6	A. What do you mean?
7	A. Yes.	7	Q. Have you been sworn to tell the
8	Q. Did that training include the use of	8	truth
9	rifles?	9	A. Yes.
10	A. Yes, yes.	10	Q in any other capacity in this case,
11	Q. Including the M-4?	11	to give testimony concerning this case, that is
12	A. Yes.	12	the incident that occurred on January 4th and
13	Q. And the MP-5?	13	the early morning hours of January 5th, 2011 at
14	A. Yes.	14	26 Fountain Street in Framingham, Massachusetts?
15	Q. And when I say "the use of rifles," I	15	MR. DONOHUE: You mean other than
16	don't mean just target practice, but I mean the		today?
17	procedures and protocols for handling a rifle	17	MR. TARRICONE: Yes.
18	during certain procedures and operations.	18	A. Break that down. I'm not really
19	A. Yes.	19	that's what I'm hung up.
20	Q. So you were one of the instructors for		BY MR. TARRICONE:
21	that?	21	Q. Let me break it down. That was a long
22	A. Yes.	22	question. I apologize.
23	Q. Did you have occasion to train Office		A. Like I said, the only time I've really
24	Duncan during that time?	24	talked about it at length is with that
	Page 1	9	Page 21
1	A. Yes.	1	lieutenant right here.
2	<ul> <li>Q. Did you also have occasion to train</li> </ul>	2	Q. And that was at the police department?
3	Officer Riley?	3	A. Yes, in a conference room on the 7th
4	A. Yes.	4	of January.
5	Q. In your position as executive officer,	5	Q. And there was no court officer there
6	do you have a role in deciding who should or	6	that gave you an oath at that time, was there?
7	should not be on the SWAT team?	7	A. No, no. Just I'm sorry, your
8	A. Yes. Well, as the XO, yes.	8	title?
9	Q. And when did you become XO again?	9	Q. There was a stenographer
10	A. July of 2010. Yes.	10	A. Yes. I apologize.
11	Q. So that would have been approximately		Q who took down the questions and
12	six months, five, six months before the	12	answers?
13	A. Correct.	13	A. Yes, sir.
14	Q execution of the search warrant	14	Q. And between that time and now, have
15	that's the subject of this case?	15	you given testimony under oath in any other
16	A. Yes.	16	proceeding concerning the events of January 4th
17	Q. You understand that you're here today	17	and 5th, 2011 at 26 Fountain Street in
18	giving testimony in a case that's pending in the		Framingham?
19	Federal Court, the United States District Cour		A. No. I mean, no, unless talking to
20	here in Massachusetts?	20	Q. No, no.
21	A. Yes.	21	MR. DONOHUE: No.
22	Q. You understand that?	22	BY MR. TARRICONE:
23	A. Yes.	23	Q. I think you understood the question.
24	Q. You understand that even though we're	24	A. I'm not trying to give you a hard

	Page 22	T	Page 24
1			
2	time, I just want to make sure we're tracking.  Q. I understand.	1 2	of the weapons procedure that has been adopted
3			and amended from time to time by the Framingham
4			Police Department?
5	,		A. That's more Deputy Davis. Deputy
6	A. I don't believe so. I believe it was	5	Davis is in the admin side of the house, so he
7	on just a tape recorder, sir.	7	does basically all the policies and procedures for the PD.
8	Q. When was the first time you handled or	8	202493 No. 3924 294 294
9	had anything to do with an M-4 rifle?	9	<ul> <li>Q. In the training that you conducted</li> <li>over the years, did that include making entry</li> </ul>
10	A. Myself?	10	into a building for the purposes of executing a
11	Q. Yes.	11	warrant, or for other reasons?
12	A. In basic training of 1991.	12	A. Yes.
13	Q. So quite a while ago?	13	Q. And did it include encountering
14	A. Yes.	14	individuals during the course of an entry?
15	Q. When you say "basic training," do you	15	A. During an actual mission?
16	mean	16	Q. Yes.
17	A. Army.	17	A. Yes, sir.
18	Q military?	18	Q. So you were one of the people that
19	A. Military, yes. That's when I first	19	trained officers what the appropriate and proper
20	touched an M-16.	20	procedures were?
21	Q. How many years in the military did you	21	A. Yes.
22	have occasion to use an M-4?	22	Q. Okay. If you would, the last exhibit
23	A. 22.	23	that was put in front of you
24	Q. Are you in the Guard now?	24	A. What number, sir?
	Page 23		Page 25
1	A. I just retired.	1	Q. Number 11.
2	Q. But during that 22 years, was the M-4	2	A. Yes, sir.
3	the weapon that was used for the	3	Q. You used the term "rebuttal." And
4	A. Well, it transitioned. Again, it was	4	it's a one page document, is that right?
5	M-16, then A-1, A-2, M-4. It's the same	5	A. Yes, sir.
6	concept. It's just a shorter barrel really.	6	Q. And you said you reviewed it before
7	Q. It's a short barrel. Is it considered	7	A. Yes, sir.
8	an automatic or semi-automatic weapon?	8	Q coming in here today?
9	A. It depends. You can make them both.	9	A. Yes, sir.
10	Q. The ones that you used in the	10	Q. Do you know who wrote this?
11	military, were those automatic?	11	A. It was Brian Simoneau.
12	A. Yes.	12	Q. So the "I," where it says "On
13	Q. In the police department, is the M-4	13	Wednesday, September 21, 2011, I attended," the
14	an automatic or semi-automatic?	14	"I" is Brian Simoneau?
15	A. It is semi.	15	A. Yes, sir.
16	Q. Is it fair to say you've had	16	Q. What was his position at that time?
17	considerable experience with the M-4?	17	A. He's basically the chief's aide.
18	A. Yes, sir.	18	Q. Is he a police officer?
19	Q. Did you train other officers in the	19	A. No. He's an attorney.
20	use and handling of the M-4?	20	Q. So he's a civilian, if that's the
21	A. Yes.	21	right term?
22	Q. Do you continue to do that today?	22	A. Yes. I do believe he's auxiliary or
23	A. Yes.	23	something also, yes.
24	Q. Did you play any role in the drafting	24	Q. And you were at this meeting?

Page 26	Dama 20
	Page 28
1 A. Yes, sir. 1 talked about it. So that	
2 Q. Along with Chief Steven Carl, Deputy 2 was Sergeant Stuart and	d I who wanted to have
3 Chief Craig Davis, and Sergeant Vincent Stuart? 3 this meeting.	
4 A. Yes, sir. 4 Q. Had you at the	
5 Q. That's the Sergeant Stuart who was a 5 meeting, had you seen 3	James' what's James'
6 team leader along with you, is that right? 6 name?	
7 A. Yes. 7 A. Ijames. That's a	
8 Q. And did you have an opportunity to 8 think it's Steven Ijames.	
9 review Exhibit 11 after Mr. Simoneau prepared 9 Q. Steven Ijames.	
10 it? Had you seen his	
11 A. No. The first time I saw this, sir, 11 A. I don't believe so	
12 is this morning. 12 I said, it was all news to	
Q. Really. Do you remember it, as you 13 said, I was kind of surpr	
look at it, do you remember the meeting? 14 generated without a face	
15 A. Yes. 15 Q. So you never ha	d a face-to-face
Q. Would you do you consider this an 16 meeting with him?	
17 accurate summary of the discussion that occurred 17 A. No.	
18 on September 21, 2011? 18 Q. Did you feel that	
A. Yes, more accurate than the original 19 opportunity to give him	adequate input for
20 one, that's why we did a rebuttal, like I said, 20 this	
21 sir. 21 A. No, no.	
	ne was conducting?
23 talking about James' report? 23 A. No, no.	
24 A. Yes, which I've never seen. 24 Q. In fact, you were	the team one of
Page 27	Page 29
1 Q. You've never seen that? 1 the team leaders that night	on the scene.
2 A. No. 2 weren't you?	
3 Q. So explain to me how this meeting came 3 A. Yes.	
4 about, the meeting on September 21, 2011. 4 Q. On June 26th I m	nean January 26th?
5 A. It basically came about, as I recall, 5 A. I recall	and the second s
6 that, like I said, this Mr. Ijames was supposed 6 Q. Wait a minute. Exc	cuse me. Let me
7 to review the team and the incident in January. 7 re-ask the question because	
8 And it was my assumption that we were going to 8 up.	*
9 have a sit-down meeting with him, or some type 9 You were one of the	team leaders on
10 of face-to-face. 10 the evening that the search	warrant was executed
And I don't remember the exact date, 11 in January, 2011, is that rig	
but in the summertime, probably the summer of 12 A. Yes, sir.	
2011, I was actually at Hershey Park with my 13 Q. Did you know that t	this Ijames was
family, and I just received a phone call out of lambda going to be doing a his o	And the second s
the blue. And I just picked it up, and it was 15 writing a report?	
this Mr. James. And he just, you know, asked me 16 A. I did know, I did kn	ow about it, but
a bunch of questions, a bunch of questions, and like I said, it would be like	
then all of a sudden this report came up. 18 we're doing now over the te	
Q. Okay. On September 21, 2011, who 19 I said, I expected a face-to-	1
20 called this meeting that's summarized in Exhibit 20 was my assumption that my	face. Either it
called this meeting that's summarized in Exhibit 20 was my assumption that my 11? 21 leaders of the team would s	face. Either it vself and the team, team
20 called this meeting that's summarized in Exhibit 21 11? 22 A. As I recall, I think I mean, again, 20 was my assumption that my 21 leaders of the team would s 22 to us, I mean thinking it wo	face. Either it vself and the team, team see him, or he'd come
called this meeting that's summarized in Exhibit 20 was my assumption that my 21 11? 21 leaders of the team would s	face. Either it vself and the team, team tee him, or he'd come and be cheaper for

		Page 30	T	Page 32
1	Q. So you never	had that opportunity?	1	would I don't remember, but I would say that
2	A. No, sir.	naa mar opportunty.	2	would be the meats and potatoes of it.
3		Stuart have that	3	Q. In other words, this Steven Ijames was
4	opportunity?		4	critical of the training that you and Sergeant
5	A. No, sir.		5	Stuart had given Officer Duncan, and you
6		know, Steven Ijames did	6	disagreed with that point of view?
7		ham to interview people?	7	A. Correct.
8		an he didn't interview	8	Q. And Sergeant Stuart also disagreed
9	myself or Sergeant S	tuart.	9	with that point of view?
10	Q. You never sa		10	A. Yes, sir.
11	A. Correct, sir.	Like I said, it took	11	Q. And this Steven Ijames never even sat
12		ot of Hershey Park, my	12	down with you and Sergeant Stuart to discuss the
13	conversation with his		13	matter?
14	Q. How long we	re you on the phone with	14	A. Correct, sir.
15	him?	<b>→</b> 10 10 10 10 10 10 10 10 10 10 10 10 10	15	Q. Is that right?
16	A. I don't recall.	I mean like I said, I	16	A. Yes, sir.
17	just remember being	in the park. And I don't	17	Q. Did he have the benefit of seeing all
18		ide for some reason and I	18	of your training materials?
19	answered the phone.	I mean I don't have I	19	A. To be honest with you, I don't know
20	mean 20, 30 minutes	To be honest with you, I	20	that. I mean I don't I don't I don't
21	can't honestly		21	know.
22	Q. So the investi	gation or review of what	22	Q. You don't know what he looked at?
23	occurred that this Ijan	nes, Steve Ijames	23	A. I have no clue what he looked at.
24	conducted was not w	hat you expected was going to	24	That would make sense, though, but I don't know.
		Page 31		Page 33
1	be done?		1	Q. Have you, as of today, have you seen
2	A. Correct.		2	his written report?
3	Q. So you and S	ergeant Stuart then called	3	A. No.
4		e a meeting to discuss	4	Q. And just as a preliminary, before I
5	<ol> <li>To clarify.</li> </ol>		5	ask you more questions about Exhibit 11, on the
6	Q. Okay. When	you say "clarify," to	6	evening of January 4, 2011, the SWAT team
7	clarify what?		7	mission was to execute a search warrant at 26
8		do believe Sergeant	8	Fountain Street, is that right?
9		can't testify for Sergeant	9	A. Yes, sir.
10	Stuart, but he did see	the report from Ijames,	10	Q. And in the planning for that
11		ppy, and we talked about it.	11	operation, you and the members of the SWAT team
12	So that's how this me		12	knew that there were two young males who were
13		of Ijames' report and	13	thought to be dealing drugs from that location,
14		u and Sergeant Stuart	14	is that right?
15	concerned about?		15	A. I do believe it was three.
16		with you, like I said, I	16	Q. Well, the search warrant identifies
17		en saw the document, so I	17	two individuals, one named Joseph Bushfan and
18		e I said, I just I don't	18	the other one named Dwayne Barrett. Do you
19	recall, to be honest w		19	remember those names?
20		learn at some point in	20	A. I recognize the names, yes.
21		nes concluded that Officer	21	Q. Who is the third person that you think
22		re contributing causes to	22	might have been the subject?
23	the death of Mr. Star	-	23	A. If you give me a copy of that AAR, I
24	A. I mean I to	be honest with you, I	24	could show you, that's what I saw this morning.

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	Page 34		Page 36
1	Deputy Davis' AAR report of the incident.	1	N-W-A-F-O-R-D, is the subject of this search
2	Q. The AAR report has a third name, but	2	warrant?
3	that name does not I'll tell you the name in	3	A. On the first page? Or can I go
4	a second if I can find it.	4	through it, sir?
5	A. That's why I'm going by recollection	5	Q. Take a look at it.
6	that I saw three names.	6	(Witness reviewing document.)
7	MR. DONOHUE: Devon Talbert?	7	A. And the next question would be?
8	MR. TARRICONE: No. Let's mark it as	8	BY MR. TARRICONE:
9	an exhibit so there's no question. Let me	9	Q. The two individuals identified in the
10	have the the one called the after action.	10	search warrant as the subjects of this search
11	BY MR. TARRICONE:	11	are, in fact, Joseph Bushfan and Dwayne Barrett,
12	Q. Lieutenant Downing, is this the is	12	is that correct?
13	that part of it?	13	A. Yes, sir.
14	A. Let me see it, I can let you know.	14	Q. Is there a third individual?
15	Q. Is that the after action report you're	15	A. No. But would it be on the attached
16	referring to (handing)?	16	Amendments A and B?
17	A. I do believe so, sir. And here are	17	Q. Take a look.
18	the three names I was talking about.	18	A. It's not here, that's what I'm saying.
19	Q. What are the three names?	19	It's says "amendment." No? If you know the
20	A. Dwayne Barrett, Deandre Nwaford, and	20	answer, let me know. Like I said, I'm not
21	Joseph Bushfan.	21	trying to be difficult.
22	Q. Okay. So let me see, if I could.	22	I see the two names that you're asking
23	We'll mark this as an exhibit in a moment.	23	for, Dwayne Barrett and Joseph Bushfan.
24	But the three names are Dwayne	24	Q. That's on the front page, right?
	Page 35		Page 37
1	Barrett, Deandre Nwaford, N-W-A-F-O-R-D, and	1	A. Correct.
2	Joseph Bushfan, is that right?	2	Q. And you knew those, from the planning,
3	A. Yes, sir.	3	that those were two young men in their twenties,
4	MR. TARRICONE: And let's also mark	4	is that right?
5	the first of all, let's mark this. This	5	A. Yes.
6	will be Exhibit Number 12.	6	Q. And did you also know in the planning
7	(Whereupon, Exhibit Number 12, 1/5/11	7	phase of this mission that there was an elderly
8	After Action Report, Bates STAMPS	8	gentleman that lived at the home?
9	000521 through 529, was marked for	9	A. Yes.
10	identification.)	10	Q. His name was Eurie Stamps?
11	MR. TARRICONE: This will be	11	A. Yes, sir.
12	Exhibit 13, this is the search warrant.	12	Q. And he's the gentleman that was shot
13	(Whereupon, Exhibit Number 13, Search	13	in the face during this mission, is that right?
14	Warrant, was marked for	14	A. Yes, sir.
15	identification.)	15	Q. You knew before executing the mission
16	BY MR. TARRICONE:	16	that he was 68 years old, I believe, is that
17	Q. Did you ever see the search warrant in	17	right?
18	the planning phase of this SWAT team mission?	18	A. I don't remember his age.
19	A. I can't recall if I did or not, sir.	19	Q. You knew he was elderly?
20	I know it was being done as we got called in, as	20	A. There was an older gentleman, yes.
21	I recall.	21	Q. And he was not the target of this
22	Q. That's 13?	22	search warrant, was he?
23	Would you look at Exhibit 13 and tell	23	A. Not that we knew. I mean no, he was
24	me if that third name, Deandre Nwaford,	24	just in the house.
			■ 1 - 100 -

	Page 38		Page 40
	Q. And there was no information to	1	Town of Framingham indicate that a PowerPoint
	suggest that he was dangerous or armed before	2	presentation was made that evening. Is that
	you executed this search warrant, was there?	3	something that sometimes is done?
.	A. I don't recall, but I do believe part	4	A. Yes, sometimes, yes, sir.
	of Deputy Davis' AAR may I look at that?	5	Q. Have you seen the PowerPoint
	Q. Sure.	6	presentation since that evening?
'	7 (Witness reviewing document.)	7	A. I don't believe so. I mean like I
;	A. Yeah, I mean looking at his AAR, it	8	said, I'm going strictly by memory, but I think
1 :	just says	9	there was I don't think it was a PowerPoint,
1	The state of the s	10	like I said, PowerPoint per se. I think it was
1:	BY MR. TARRICONE:	11	more of a layout from Officer Murtagh, he has
1:	NS 2200	12	like layouts. I think that's what you might be
13		13	referring to.
14	A. Yes. But again, to be honest with	14	Q. I'm referring to documents that say it
15		15	was a PowerPoint program. I'll put my hands on
16		16	it, and then we'll come back to it.
1		17	A. If I could see it I'll just.
18		18	Q. I know, I will hang on, let me take
19		19	a look now so we can do a more
20		20	WAY 12 And 3 C 4 C 4 C 5 C 5 C 5 C 5 C 5 C 5 C 5 C 5
21		21	Is that in the after action report?
22		22	MR. MUSACCHIO: Yes. First page, last line.
23	, , , , , , , , , , , , , , , , , , , ,	23	
24		24	BY MR. TARRICONE:
2.	that he was in the house:	24	Q. Exhibit 13?
	Page 39		Page 41
1	A. Yes, there was I mean, to be honest	1	Page 41 A. 13 is
1 2	A. Yes, there was I mean, to be honest with you, I'm not I can't attest to the	1 2	W 1997 1
	A. Yes, there was I mean, to be honest with you, I'm not I can't attest to the briefing that night because I don't remember.	3005	A. 13 is
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3 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19	A. Yes, there was I mean, to be honest with you, I'm not I can't attest to the briefing that night because I don't remember. I'm sure if it was part of the briefing. But like I said, I, pretty much, yes, I would say yes.  Q. And that would have included A. We generally all the information we have we pass on. We don't hold back any information.  Q. So that information would have been imparted to Officer Duncan?  A. Yes.  Q. I read that the briefing in part was conducted using a PowerPoint presentation. Do you remember that?  A. I don't. I don't remember how it was conducted, to be honest with you. Where did you say you read that? I don't recall. I mean we've done both, to be honest with you, we've	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20	A. 13 is Q. I'm sorry, Exhibit 12. The last sentence of the first page of that exhibit states "Officer" Murtagh is that how you A. Murtagh. Q "Murtagh produced a PowerPoint presentation based on these photographs." A. Yes. So what I think he's referring to is the briefing as a whole was not done on a PowerPoint. Officer Murtagh is our intelligence officer, and he generally before a mission he'll go on-line, he can get information from the town and give us a layout of the actual layout. So I think that's what you're referring to is not a PowerPoint of the whole presentation, but a PowerPoint of the layout of the apartment. Is that correct? Q. Well, I'm just I'm only reading what the document says. A. Okay.
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22 33 44 55 66 77 88 9 10 11 12 13 14 15 16 17 18 19 20 21 22	A. Yes, there was I mean, to be honest with you, I'm not I can't attest to the briefing that night because I don't remember. I'm sure if it was part of the briefing. But like I said, I, pretty much, yes, I would say yes.  Q. And that would have included A. We generally all the information we have we pass on. We don't hold back any information.  Q. So that information would have been imparted to Officer Duncan?  A. Yes.  Q. I read that the briefing in part was conducted using a PowerPoint presentation. Do you remember that?  A. I don't. I don't remember how it was conducted, to be honest with you. Where did you say you read that? I don't recall. I mean we've done both, to be honest with you, we've briefed it on the podium or we have done PowerPoint.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	A. 13 is Q. I'm sorry, Exhibit 12. The last sentence of the first page of that exhibit states "Officer" Murtagh is that how you A. Murtagh. Q "Murtagh produced a PowerPoint presentation based on these photographs." A. Yes. So what I think he's referring to is the briefing as a whole was not done on a PowerPoint. Officer Murtagh is our intelligence officer, and he generally before a mission he'll go on-line, he can get information from the town and give us a layout of the actual layout. So I think that's what you're referring to is not a PowerPoint of the whole presentation, but a PowerPoint of the layout of the apartment. Is that correct? Q. Well, I'm just I'm only reading what the document says. A. Okay. Q. You don't have a memory of what that

		JC1 C	r. Downing
	Page 42		Page 44
1	over the whole operation, because, like I said,	1	A. Yes.
2	it's very time consuming. We basically either	2	Q. Shortly after midnight?
3	do a drawing of the execution which explains	3	A. Yes.
4	everything. And generally the PowerPoint, I do	4	Q. So that would have been in the early
5	believe, that's being referred to is Officer	5	morning hours just after midnight on the 4th
6	Murtagh, like I say, he goes on-line and gets	6	going into the morning of the 5th?
7	the layout of where we're going.	7	A. As I recall, yes.
8	Q. There's a reference here to "aerial	8	Q. January that is, 2011?
9	view maps, street view maps and interior photos	9	A. Yes, sir.
10	of 26 Fountain Street." Is that what he would	10	Q. And you were one of the team leaders,
11	have been presenting?	11	second in command that evening, is that right?
12	A. Yes, sir.	12	A. Yes, sir.
13	<ul> <li>Q. And also either in this document, I</li> </ul>	13	Q. And at that point you were the
14	guess on page same document, Exhibit 12, on	14	executive officer
15	the third page, there's a reference to Eurie	15	A. Yes, sir.
16	Stamps as being 68 years old.	16	Q of the SWAT team?
17	Do you see that?	17	A. Yes, sir.
18	A. I do, sir.	18	Q. And my understanding is that there
19	And also two paragraphs down, that's	19	were some 20 SWAT team members, officers,
20	where it actually clarifies, it says	20	detectives, and medics involved in this
21	"Additionally, an ICD projector was utilized to	21	operation?
22	project a PowerPoint presentation which was by	22	A. Yeah, I don't know the exact number.
23	Officer Murtagh." That's what I do believe that	23	But yeah, there was a group of Framingham
24	he's referring to right there. That's generally	24	officers there, yes.
	Page 43		Page 45
1	how it goes.	1	Q. Group, I mean how many would you
2	Q. Now, I also saw somewhere that there	2	estimate of all the different categories of
3	were photographs available of Mr. Bushfan and	3	people who were there in some official capacity,
4	Mr. Barrett that were put up on the wall for	4	before the shooting occurred?
5	people to look at. Is that a common practice?	5	A. Total?
6	A. Yes. I mean we get the information	6	Q. Yes.
7	from detectives, and they come up with a	7	A. Good point. Let's see. I'd say
8	portfolio, per se, of who the targets would be.	8	approximately 25 it should be. I don't remember
9	Q. Okay. So	9	exact number. I mean around there.
10 11	A. But I haven't seen them recent.	10	Q. Okay. And during the and the plan,
12	Q. So back to the background information,	11	as I take it, was for two stacks or two teams to
13	this was the mission was to be execution of a	12	make entry into the house?
14	search warrant relating to these two individuals, Bushfan and Barrett, who were males	13	A. Yes, sir.
15	in their early twenties, is that right?	14	Q. With coverage from officers on the
16	A. Yes.	15 16	four sides of the building?
17	Q. And the location was 26 Fountain		A. Yes.
18	Street in Framingham, is that right?	17 18	Q. Is that right?
19	A. Yes, sir.	19	A. Yeah. I mean yes.
20	Q. It was the plan was to conduct this	20	Q. And the two teams, you were one of those teams?
21	search using is it a knock and announce, is	21	A. Yes, sir.
22	that the term?	22	
23	State Control		,
	A. Yes, sir.	2.3	Officer O'Loole and Officer Sheehon is that
24	A. Yes, sir. Q. Knock and announce procedure?	23 24	Officer O'Toole and Officer Sheehan, is that right?

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	Page 46		Page 48
1	A. Yes, sir.	1	that the safety is
2	Q. And you were to make entry through	2	A. Not on.
3	up the stairs, through the front door to the	3	Q not on. It's in an off position?
4 house, through the common area, and directly		4	A. Correct.
5	into the kitchen through the door that is facing	5	Q. And when the safety is in an on
6	the front of the house from the kitchen, is that	6	position, the gun cannot be fired, is that
7	right?	7	right?
8	A. Yes.	8	A. Correct, sir.
9	Q. And the other stack or team, who was	9	Q. The paragraph goes on to state, quote,
10	the leader of that?	10	"The report states, 'the training Officer Duncan
11	A. Sergeant Stuart.	11	received as it relates to threat assessment and
12	Q. Sergeant Stuart was with Duncan and	12	the status of the M-4 rifle safety/selector were
13	who was the third one?	13	contributing causes in the death of Mr. Stamps.'
14	A. Sebastian.	14	More specifically, the report states that 'the
15	Q. Sebastian. They were to go in through	15	training Officer Duncan received resulted in him
16	the door to the right as you enter the home?	16	removing his weapon from 'safe' in the absence
17	A. Yes, sir.	17	of a defined threat."
18	Q. Into the living room?	18	Do you see that?
19	A. Yes, sir.	19	A. Yes, sir.
20	Q. Now, back to Exhibit 11, the document	20	Q. And at the time of this meeting, from
21	that you've described as the rebuttal, the	21	one source or another did you understand that to
	second paragraph states, quote, "The chief	22	be the conclusion that this Steven Ijames had
	concern of Downing and Stuart was that the	23	reached?
	Ijames report attributes training regarding	24	A. Yes.
	Page 47		Page 49
1	threat assessment, as it relates to the position	1	Q. And I take it from this document and
2	of the M-4 selector switch, as a contributing	2	from what you said that you and Sergeant Stuart
3	cause of the death."	3	disagreed with this opinion?
4	Do you see that?	4	A. Correct. I don't remember Mr. Ijames
5	A. Yes, sir.	5	even asking that question, to be honest with
6	Q. Did I read that correctly?	6	you.
7	A. Yes, sir.	7	Q. So when he talked to you when you were
8	Q. And the death here refers to the death	8	on vacation with your family, he didn't even ask
9	of the 68 year old Eurie Stamps who was shot in	9	you about this?
10	the face during the execution of this warrant,	10	A. I don't believe so. Like I said, the
11 :	is that right?	11	conversation was so cordial, it was like not
12	A. Yes, sir.	12	friends, but it was very laid back, to be honest
13	Q. And the reference to M-4 selector	13	with you.
14	switch, is that the safety? I refer to it as a	14	Q. So he really didn't get into the real
15 8	safety.	15	details of
16	A. It's a selector switch, safety,	16	A. No, not really.
17 \$	selector, it's the same, same answer.	17	Q of how Duncan was trained and what
18	Q. In other words, it has to be in	18	he did or didn't do properly?
19 1	what's the term you use, on, off, active, hot?	19	A. Correct. It was just basic
	I've heard different terms.	20	information.
21	A. It's all the same. It's all it's	21	Q. Okay. And that's the only time he
22 8	all on, off. I mean I never use the term on,	22	ever contacted you?
	off. It's either you're hot or you're not.	23	A. Yes, sir.
24	Q. Okay. So for the gun to be hot means	24	Q. Do you know if he had a similar

	Page 50	1	
1	Page 50		Page 52
1 2	discussion with Sergeant Stuart?	1	A. Yes.
	A. I know he did speak to Sergeant	2	Q. Is this an accurate
3	Stuart, but I can't attest to where he was. But	3	A. Yes.
4	it was an informal setting like myself.	4	Q. Recitation of how you viewed his
5	Q. Then the next paragraph of this	5	conclusion?
7	Exhibit 12 states, quote, "Sergeant Stuart and	6	A. Yeah.
8	Lieutenant Downing claim that officers are	7	Q. Your view, which you related in this
9	trained to keep their rifles 'on safe' unless	8	meeting which Mr. Simoneau put in this
10	the officer 'perceives a threat' or he is	9	paragraph, was that Duncan should have had his
11	'actively clearing rooms/danger area.' This means that Duncan should have had his weapon 'on	10	weapon on safe because neither of the two
12	safe, because neither of the above two	1	conditions existed at the time of the shooting,
13	conditions existed."	12	is that right?
14	A. Yes, that's what it says.	13	A. I mean I'm not sure, to be honest with
15	Q. Have I read that correctly?	14	you, because I really don't like that wording,
16	A. Yes, sir.	15	because I can't attest to what Officer Duncan's
17	Q. And is that the essence of what you	16	perception is and, like I said, the keyword
18	and Sergeant Stuart felt about Ijames'	17	there is "perceives a threat." So I don't know
19	A. Yes.	18 19	what Officer Duncan perceived that evening.
20	Q opinion?	20	Q. What does that mean to you, "perceive a threat"?
21	A. Yes.	21	
22	Q. Explain to me, if you would, what	22	A. Again, I think that's objective. Like
23	how you and Sergeant Stuart, who were	23	I said, you might perceive something different than I do. I mean, for example, go into a dark
24	responsible for training, had trained not only	24	room might not bother you or it may bother me,
		21	
_	Page 51		Page 53
1	Officer Duncan but other officers concerning the	1	so everyone has different types of perceptions.
2	hot or not, I think is the term you used, safe	2	So I'm not really I can't assess to what
3	on, safe off with the M-4 rifle during a mission	3	Officer Duncan perceived as a I don't even
4	such as the one that was conducted that evening.	4	know what happened between him and Mr. Stamps so
5 6	MR. DONOHUE: Object to the form.	5	I can't really attest to what was going on in
7	Go ahead.	6	his head, if that makes sense to you.
8	THE WITNESS: Go ahead what?	7	Q. Okay. Are you given any training
9	MR. DONOHUE: Go ahead and answer, if	8	about what constitutes a threat, or have you
10	you can. A. I can't	9	conducted training about what constitutes a
11	BY MR. TARRICONE:	10	threat?
12	Q. I'm going to re-ask the question.	11 12	A. I mean we basically I mean we do, but not in terms of I mean I'm not sure how
13	A. I think	13	
14	Q. Wait, wait. You know what, my	14	to go with that one. But I mean a threat would be I don't know, it could be numerous things.
15	question was bad, he objected, so I'm going to	15	Like I said, it's all based upon your
16	re-ask it. I'm going to break it down a little	16	perception. There's a lot of latitude there, I
17	bit.	17	would say, to be honest with you.
18	A. Fine.	18	Q. Now, regardless of whether he
19	Q. So just bear with me, you'll have a	19	perceived a threat or not, isn't it true that
20	chance to answer.	20	when he decided if he decided that he was
21	Lieutenant Downing, the paragraph here	21	going to go hands-on with Mr. Stamps for
22	that I believe you testified accurately reflects	22	whatever reason, that his gun should have been
23	how you and Sergeant Stuart viewed Steven James'	23	put on safe before he attempted that?
	conclusion first, have I said that correctly?	24	A. Yes.
24			

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1	Q. There's no question about that, is	1	officer.
2	there?	2	Q. In other words, you wouldn't try to go
3	A. Yes. I mean, yeah, unless	3	hands-on with me, you'd just you'd wait until
4	something like I said, I wasn't there, I	4	you got help?
5	didn't see it, unless something happened or his	5	A. In your example, yes. But if you
6	perception. But in a normal circumstance, if	6	became non-compliant or you started to come
7	you could give me an example, I could probably	7	after me in such a way, then that would change
8	answer it better.	8	the rules.
9	Q. Well, how about a 68 year old man on	9	Q. Okay. There's nothing to suggest that
10	his belly, having been ordered on his belly,	10	Mr. Stamps was non-compliant or came after
11	with his hands up as ordered and his face	11	anybody, is there?
12	looking up?	12	A. To be honest with you, I've seen no
13	A. In that case, I would say the weapon	13	I haven't seen no paperwork that really
14	would be on safe.	14	describes the whole Duncan I mean I haven't
15	Q. It should have been on safe?	15	seen nothing, so I can't really attest to that,
16	A. Yes, sir.	16	to be honest with you, I haven't seen nothing
17	Q. And the next paragraph here references	17	that says that he was or was not.
18	a principle called "contact and cover"?	18	Q. Okay. So you're not aware of him
19	A. Yes, sir.	19	being non-compliant?
20	Q. What is that?	20	A. Correct.
21	A. It's like I said, I'm not being	21	Q. And in this contact and cover, the
22	sarcastic, but it's a basic principle that you	22	first officer to encounter an individual,
23	basically learn in police academy. It's	23	knowing that there are other officers in the
24	basically if you come upon a subject, suspect,	24	available, would be the cover officer, and that
	Page 55		Page 57
1	or a bad guy, and there's two of you, it's just	1	he would then wait for somebody else to come and
2	a way you approach that subject in a safe	2	make the contact, is that what you meant by the
3	manner.	3	first officer is the contact?
4	Q. So the procedure is for one officer to	4	A. Yes.
5	engage another officer before making a physical	5	Q. I mean the cover?
6	encounter with an individual?	6	A. Yes, and then you'd wait. Or as soon
7	A. Yeah, it's for one officer to engage	7	as again, it's a little different in a SWAT
8	the suspect, and the other one to provide a	8	operation because you've got operators moving
9	cover position in case that subject becomes	9	about, so they're busy. In a typical patrol
10	non-compliant.	10	situation you have backup instantly, if that
11	Q. So if there is a second officer	11	makes sense.
12	available	12	Q. During this mission, you said there
13	A. Correct.	13	were some 25 people in the vicinity?
14	Q to assist, the first officer would	14	A. No. Negative. No, that's not how
15	have his assistance before making attempting	15	the question was, and I misunderstood, there was
16	physical contact with the subject?	16	25 people totally on the scene of on the
17	A. Correct. If you're there by yourself,	17	scene. But when a SWAT call, only the SWAT
18	you're the cover officer, you're not contact	18	operators go in. As soon as we clear it, then
19	officer.	19	people come in. But no not people just
20	Q. So when you say if you're there by	20	can't rush and flush the house, because that's
21	yourself, there's only one officer and you're	21	why we're there.
22	the cover officer.	22	Q. So you now let's go back to the
23	A. If it's just you and I, and you're the	23	entry into the house. You went in through the
24	bad guy or the suspect, I would be the cover	24	kitchen?

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	Page 58		Page 60
1	A. I did.	1	A. Yes.
2	Q. Right?	2	Q. Everybody had a job to do, is that
3	A. I did.	3	right?
4	Q. And you then turned your attention to	4	A. Going into the mission, yes, sir.
5	the cellar door, is that right?	5	<li>Q. And you were coordinating what</li>
6	A. To my left, sir, yes.	6	everybody was doing?
7	Q. And the two officers who entered with	7	A. I was. But again, I got tied down to
8	you went through the threshold door into the	8	the door. I mean Sergeant Stuart also, I mean
9	hallway on the other side of the kitchen, is	9	him and I are both the I mean I am in charge
10	that correct?	10	of the scene, but like I said, he's delegated a
11	A. I mean through my readings today,	11	lot of responsibility because, you know, he's a
12	yeah. But like I said, so many things were	12	good operator. So he was more mobile than I
13	going on, I can't	13	was.
14	Q. You don't remember that?	14	Q. And he made entry through the other
15	A. Yeah, exactly.	15	door, is that right?
16	Q. When you entered the kitchen, did you	16	A. Yes, sir.
17	see Mr. Stamps, the elderly man?	17	Q. Exhibit, back to Exhibit 12
18	A. No, I did not.	18	actually let me back up for a second.
19	Q. Did you see him at any time before he	19	Did you ever hear Officer Duncan call
20	was shot?	20	for another officer to engage a contact and
21	A. No. I don't believe so, no.	21	cover?
22	Q. Did you hear Officer O'Toole or	22	A. Like I said, I don't even remember
23	Officer Sheehan telling him to get on the	23	seeing Officer Duncan and Mr. Stamps.
24	ground?	24	Q. You never heard him call for
	Page 59		Page 61
1	A. To be honest with you, like I said	1	assistance then?
2	stated before, it was just loud and chaotic, I	2	A. I just, like I said yeah, I
3	don't like I say, it was a lot of yelling	3	suppose, yes. Because, like I said, I don't
4	going on, and I was yelling things, and people,	4	remember seeing Mr. Stamps and Mr. Duncan.
5	because like I said, it was kind of	5	<ol><li>Q. My question is very specific.</li></ol>
6	Q. So you don't remember that?	6	Did you ever hear Officer Duncan call
7	A. I don't recall that, no, sir.	7	for assistance?
8	Q. At some point in time, did you know	8	A. State those words, no.
9	that he had gotten on the ground on his belly	9	Q. If an officer encounters somebody and
10	with his hands up?	10	decides that contact and cover is the
11	A. Like I said, I don't recall even	11	appropriate procedure, what would he say to get
12	seeing Officer Duncan and Mr. Stamps, to be	12	another officer who is in the vicinity to help
13	honest with you.	13	him?
14	Q. Okay.	14	A. "I need another operator. I need
15 16	A. There was some reason why I was fixated on that door because it's considered a	15	another body."
17	danger area, per se.	16	Q. Okay. And you never heard Duncan say
18		17	that?
19	Q. Now, you were the second in command for this?	18	A. No.
20	A. Yes, sir.	19	Q. Exhibit 12 goes on to state in that
21	Q. And you were the number one in command	20	last paragraph concerning contact
22	inside the house?	21	A. What page?
23	A. Yes, sir.	22	MR. DONOHUE: Which page?
24	Q. Is that right?	24	A. 12 or 11? BY MR. TARRICONE:
	Z. 10 mm 118m:	24	DI MIK. IAKKICONE:

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1	Q. I'm sorry, Exhibit 11.	1	him, in either case when he's going to make
2	A. Yes, sir.	2	physical contact, he would have the rifle in the
3	Q. The rebuttal.	3	safe position and around his back?
4	A. Yes, sir.	4	A. No. Because if no, because in that
5	Q. The last paragraph of it goes on to	5	scenario you're stating is if he's going if
6	state concerning contact and cover, quote, "This	6	he's by himself and he's making contact, there's
7	foundational concept is taught as part of the	7	a reason. I mean he wouldn't have time to sling
8	patrol rifle course, SWAT training courses, and	8	the weapon and put it on safe, because there's a
9	in the 'applied patrol procedures' section of	9	reason why he wouldn't have done that, if he's
10	every basic police academy in Massachusetts."	10	by himself. Am I making sense?
11	Do you stand by that statement?	11	Q. No. But let me ask a few more
12	<ul> <li>A. "This foundational concept is taught</li> </ul>	12	questions.
13	as part of the patrol rifle course, SWAT	13	MR. DONOHUE: I think you're making
14	training courses" I mean yes, like I said,	14	sense.
15	it's a basic concept that's taught from day one.	15	BY MR. TARRICONE:
16	Q. And this paragraph goes on to state,	16	Q. How many officers were in the home at
17	"Under the 'contact and cover' concept, the	17	the time that the shot was fired?
18	officer who is engaging in 'hands-on' contact	18	A. I don't know the exact number. I
19	with a suspect will not have his weapon 'off	19	mean, like I said, there was officers from
20	safe."	20	different assignments.
21	Have I read that correctly?	21	Q. Well, there were the two stacks, three
22	A. Yes. That's what it states, yes.	22	and three, which is six.
23	Q. And that means that before an officer	23	A. I could say there was at least six
24	attempts hands-on contact, he would have his	24	inside, sir.
	Page 63		Page 65
1	the safe would be on, the safety would be on,	1	Q. And then Officer Riley and Officer
2	and the rifle could not be fired, is that right?	2	Sebastian had also come in, is that right?
3	A. Yes, sir.	3	A. I do remember officer Sebastian, yes,
4	Q. And is it also the case that he would	4	sir.
5	sling the weapon behind his back?	5	Q. That would make eight?
6	A. Yes, sir, if he was the contact	6	A. That's correct.
7	officer.	7	Q. There were at least eight in the
8	Q. That is correct. The officer who is	8	house?
9	attempting to put hands on a	9	A. Yes, sir.
10	A. Yes, sir.	10	Q. Is that right?
11	Q on a subject.	11	And putting the weapon on safe is not
12	And then it states, "The weapon will	12	only for the protection of the police officer,
13	be slung, with the selector in the 'safe'	13	but also the protection of a subject, is that
14 15	position, while the contact officer has physical	14	right?
16	contact with the suspect."	15	A. Putting the weapon on safe is for the
17	Have I read that correctly?  A. Yes, sir.	16	protection of everybody in that immediate area.
18	Q. And that's the case, is it not,	17	Q. Everyone in the area?
19	whether he's acting alone or with somebody	18	A. Correct.
20	covering?	19 20	Q. This paragraph goes on to state,
21	A. State that again?	21	quote, "According to both Downing and Stuart,
22	Q. Is it do you agree that an officer,	22	Officer Duncan's training instructed him to place his weapon on 'safe' and sling it prior to
23	whether acting alone engaging a subject hands-on	23	assuming the role of the 'contact officer."
20			
24	for whatever reason or with somebody covering	24	Have I read that correctly?

	Page 66		Page 68
1	A. Yes, sir.	1	8136 81 0'0F mile 5436 5434 W
2	Q. Do you stand by that statement?	2	Q. And then the last sentence of this
3	A. Yes.	3	Exhibit 11 is that, quote, "Further, if Officer
4	Q. Did Officer Duncan on that evening,	4	Duncan perceived Stamps as having posed a
5	from your understanding, fail to comply with the	5	threat, he should have maintained his position
6	way he was trained and instructed by you,		as a 'cover officer' and waited until another
7	Sergeant Stuart, and others who were responsible	6	(contact) operator was available to search
8	for training the SWAT team?	7	and/or secure Stamps."
9	A. Again, under your scenario, what you	8	Have I read that correctly?
10		9	A. You've read yeah, but again,
11	gave me, I would say yes. But again, I stated that I'm not I can't attest to what Officer	10	that's again that's again, the term
12		11	perceived and I really, I really haven't this
1	Duncan perceived was a threat at that time.	12	is the second time I've seen this, I read this
13	Q. Have you seen anything to suggest that	13	document.
14	Mr. Stamps was in any position other than on his	14	Q. Let's look at the sentence carefully.
15	belly with his hands above his head as	15	A. Correct.
16	instructed?	16	Q. It states, "If Duncan perceives Stamps
17	A. I don't I haven't seen anything.	17	as having posed a threat."
18	What you stated to me earlier is the first time.	18	A. Correct.
19	I mean I really haven't seen any paperwork, I	19	Q. That's assuming that he had that
20	really haven't seen any paperwork to say what	20	perception, valid or not, correct?
21	exactly went down there, to be honest with you.	21	A. Yes, sir.
22	So I don't have the facts of what the the	22	Q. In that instance, it goes on to say,
23	encounter right there.	23	quote, "He should have maintained his position
24	<ul> <li>Q. Did you conduct your own investigation</li> </ul>	24	as a 'cover officer' and waited until another
	Page 67		Page 69
1	as the executive officer of the SWAT team?	1	(contact) operator was available to search
2	A. Did I have a personal one?	2	and/or secure Stamps."
3	Q. Yes.	3	A. Yes.
4	A. No.	4	Q. That's what it says, right?
5	Q. Did you conduct one in an official	5	A. I understand what you read, yes.
6	capacity?	6	Q. Do you stand by that?
7	A. Official?	7	A. No. Because again, I haven't seen
8	Q. Yes.	8	this document. Like I said, Mr. Simoneau wrote
9	A. No.	9	that. I can't attest to what Mr. Duncan's
10	Q. And then the last	10	perception is a threat. Like I said, in the
11	A. What do you mean by that? Just out of	11	perfect situation that you gave me, that would
12	curiosity.	12	not have been a threat. But like I said, I
13	Q. Did you as executive officer of the	13	don't know exactly what went down between
14	SWAT team with or without your superior who	14	Mr. Stamps and Mr. Duncan.
15	is your superior?	15	7
16	A. So you're basically asking if I just	16	Q. Assuming he does perceive an individual as a threat
17	did my own thing and just tried to find out the		And order and the Control of Cont
18	facts?	17 18	A. Yes.
19	Q. No, that's not what I'm asking.		Q for whatever reason, his statement
20	I'm asking; did you participate in any	19	goes on to say in the event he perceives it as a
21		20	threat, he would be the cover officer. I think
22	official investigation of Officer Duncan's	21	you said the first officer is the cover
23	activities that evening in your capacity as executive officer of the SWAT team?	22	officer
		23	A. Correct.
24	A. No, no.	24	Q before, correct?

			т—	
		Page 70		Page 72
1	A	Depending on how compliant the subject	1	Officer Sebastian. I don't recall seeing
2	is.	-	2	Officer Riley.
3	Q.	Assuming a compliant subject	3	Q. So if Officer Riley testified that he
4	Α.	Correct.	4	was in the room before Sebastian, do you have
5	Q.	and a perceived threat, valid or	5	any reason to disagree with his testimony?
6	not.		6	A. No, sir.
7		Well, that changes again.	7	Q. Assuming the three of you were in
8	Q.	Assuming, just assume it's a perceived	8	there and others were entering the house behind
9	threat.		9	them, there were people in this home, weren't
10	A. `	Yes.	10	there?
11	Q. I	He perceives a threat in his mind.	11	A. General area, yes.
12		Correct.	12	Q. Did you ever hear Officer Duncan call
13	Q. 1	And assuming there are other officers	13	for help?
14		cinity who can assist, that first	14	A. Again, I stated I don't recall. Like
15		should remain the cover officer and wait	15	I said, I didn't see Mr. Duncan and Mr. Stamps,
16		her officer to make contact?	16	but I don't recall the words "help" coming from
17		Yes, sir.	17	Mr. Duncan. But I do recall people saying "I
18		sn't that so?	18	need bodies, I need bodies." Because there's a
19		Yes. Like I said, in the perfect	19	lot going on.
20		f patrol. But in the SWAT world, you	20	MR. TARRICONE: Let's take a quick
21		ve SWAT operators standing around	21	break. Is that okay?
22		g, they're actively looking for work, so	22	THE WITNESS: Yes, sir.
23		re moving all about.	23	THE VIDEOGRAPHER: Going off the
24	Q. I	n this how big was this kitchen?	24	record. The time is 1:59.
		Page 71		Page 73
1	A. N	Maybe the size of this room, sir.	1	(Whereupon, a recess was taken.)
2		m going to show you an exhibit.	2	(Whereupon, Exhibit Number 14, Color
3		ook at this drawing.	3	diagram, was marked for
4		es, sir.	4	identification.)
5		his is Exhibit Number 2. That's a	5	THE VIDEOGRAPHER: Back on the record.
6		of this house.	6	The time is 2:24.
7	1000 C	you see the kitchen there?	7	BY MR. TARRICONE:
8		do, sir.	8	Q. Lieutenant Downing, when you were in
9		and take a look also at the let me	9	the kitchen after entering the home and you were
10		photographs. Let me show you Exhibit	10	joined by Officer Riley and Officer Sebastian
11		9. Does that depict the kitchen?	11	A. Yes.
12		es.	12	Q at any time before they arrived did
13		nd this kitchen was	13	you hear Duncan say anything?
14		Il orientate it just like that.	14	A. No.
15		ike 14-by-10 feet with furniture in	15	Q. After they arrived, did you hear
16		ning along those lines, would you say?	16	Duncan say anything?
17		eah, I mean that's what you have	17	A. I don't recall.
18		e. I assume this is to scale. Like I	18	Q. You have no memory of him saying
19		s pretty small.	19	anything?
20		s a small room.	20	A. No.
21		d in that room, by the time Duncan	21	Q. At that time with you and the other
22		you were there along with Officers	22	two officers in the room, all in the vicinity of
23		Sebastian in the room, right?	23	the cellar door and by the way, I take it
24		ike I said I saw I attested to	24	they were assigned to cover the cellar, those
				and acceptance to constitute centar, those

Page 74  1 two, Sebastian and Riley, is that right? 2 A. Yes. 3 Q. And you were number one in command inside the home at that time, is that right? 5 A. Yes. 6 Q. If after they were in the room with you Officer Duncan had called for assistance, would you have ordered one of them to assist him? 10 A. Yes. 11 Q. Or would you have done it yourself? 12 A. Yes. 13 Q. One or the other? 14 A. S I recall, that they arrived at me after the incident. 15 after the incident. 16 Q. Say that again? 17 A. Those two arrived upon my location after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so, yes. 23 Q. After the shooting occurred? 24 A. Yes, sir. 29 Q. And ordifeer Riley entered through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the door after tyou entered, and when he entered the wordered him to take the door. 18 A. Okay. 21 Q. Ordicer Riley eatified this morning that he entered the kitchen through the same door that you entered, and when he entered the door after, yes, I do believe so, yes. 20 A. Okay. 21 Q. Officer Riley testified this morning that he entered the kitchen through the same door that you entered, and when he entered the door after, yes, I do believe so. 22 A. Okay. 23 Q. After the shooting occurred? 24 A. Yes, sir. 25 Page 75 26 A. They arrived at the door after, yes, I do believe so, yes. 26 A. A They arrived at me the door after, yes, I do or that you entered, and when he entered the kitchen furbugh the same door that you entered, and when he entered the door that you entered, and when he entered the word that he entered the kitchen furbugh the same door that you entered, and when he entered the word that he entered the kitchen through the same door that you entered, and when he entered the word that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the word t			Т —	
2 A. Yes. 3 Q. And you were number one in command inside the home at that time, is that right? 5 A. Yes. 6 Q. If after they were in the room with you Officer Duncan had called for assistance, would you have ordered one of them to assist him? 10 A. Yes. 11 Q. Or would you have done it yourself? 12 A. Yes. 13 Q. One or the other? 14 A. Yes. 15 after the incident. 16 Q. Say that again? 17 A. Those two arrived upon my location after the incident. 18 after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 22 Q. And Officer Riley entered through the same door that you entered into the kitchen? 14 A. Those two arrived upon my location after the incident. 15 A. They arrived at the door after, yes, I do believe so. 26 Came into the room after the shooting occurred? 27 A. They arrived at the door after, yes, I do believe so. 28 Q. And Officer Riley entered through the same door that you entered in the kitchen! Prough the same door that you entered in the kitchen through the same to door that you entered him to take the door. 18 A. Okay. 29 Q. Cover the door 20 A. Okay. 21 Q of the cellar? 20 Q. Do you have any reason to disagree with that? 21 A. No, sir. 22 Q. He also said that this occurred before the shooting occurred? 23 Q. Do you have any reason to disagree with that? 24 A. Yes. 25 Q. Do you know that happened? 26 A. No, I think told you - no. 27 Q. How clear is your memory as you sit here today about what happened? 28 A. Yes. 29 Q. And officer Riley is testified the immediately after the two stacks, didn't they? 29 A. I do believe so, yes. 20 Q. Officer Riley testified this morning that the entered the kitchen! Through the same door that you entered into the kitchen? 29 A. Okay. 21 Q of the cellar? 21 Q. Do you have any reason to disagree with that? 22 Q. Do you have any reason to disagree with that? 23 Q. Do you have any reason to disagree with that? 24 A. Yes. 25 Q. Do you know that? 26 A. No,				Page 76
Q. And you were number one in command inside the home at that time, is that right? A. Yes. Q. If after they were in the room with you Officer Duncan had called for assistance, would you have ordered one of them to assist him?  N. Yes.  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 after the incident. 15 after heinident. 16 Q. Say that again? 17 A. Those two arrived upon my location after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 23 Q. After the shooting occurred? 24 A. Yes, sir. 29 Q. Have you read anybody else's statements about what happened? 20 A. No. I think told you no. 21 Q. Have you read anybody else's statements about what happened? 22 A. No. I think told you no. 23 Q. And you know, don't you, that Officer Sheehan and O'Toole had alterady left the kitchen before the shooting occurred? 21 Q. And you know, don't you, that Officer Sheehan and O'Toole had alterady left the kitchen before the shooting occurred? 24 A. Yes. 25 Q. And has also cutred before the shooting occurred? 26 A. No. I think told you no. 27 Q. How clear is your memory as you sit here today? 28 A. Fairly clear, I was there. 29 Q. And you know, don't you, that Officer Sheehan and O'Toole had alterady left the kitchen before the shooting occurred? 29 Q. And you know, don't you, that Officer Sheehan and O'Toole had alterady left the kitchen before the shooting occurred? 29 Q. And you know, don't you, that Officer Sheehan and O'Toole had alterady left the kitchen before the shooting occurred? 29 Q. They had left the kitchen and were down-range. 20 Q. They had left the kitchen and were down-range. 21 Q. Is that right? 22 Q. Is that right? 23 Q. I fair they were down they were down-range. 24 Q. I fair they were down they were down-range. 25 Q. I go you know that? 26 A. Yes, sir. 27 Q. Wow back to my question. Had Officer Duncan	4000		1	that he had complied? Do you know that?
inside the home at that time, is that right?  A. Yes.  Q. If after they were in the room with you officer Duncan had called for assistance, would you have ordered one of them to assist him?  10 A. Yes. 11 Q. Or would you have done it yoursel? 12 A. Yes. 13 Q. One or the other? 14 A. As I recall, that they arrived at me after the incident. 15 q. You memory today is that those two came into the room after the shooting occurred? 16 A. Those two arrived upon my location after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 22 Q. After the shooting occurred? 24 A. Yes, sir.  Page 75 1 Q. That's your memory as you sit here today? 3 A. Yes, sir. 4 Q. Have you read anybody else's statements about what happened? 6 A. No. I think fold you – no. 7 Q. How clear is your memory as you sit here today about what happened? 6 A. No. I think fold you – no. 7 Q. How clear is your memory as you sit here today about what happened? 6 A. No. I think fold you, – no. 7 Q. And you know, don't you, that Officer Shebstian and O'Toole had already left the kitchen bouse? 10 A. Fes. 11 A. A No, sir. 12 Q. And you know that? 12 Q. And you know that? 13 A. Yes, sir. 14 Q. And you know, don't you, that Officer down-range. 15 Q. They had left the kitchen and were down-range. 16 A. Do I know, they were down – they were down-range. 17 Q. I had left the kitchen and were down-range. 18 Q. They had left the kitchen and were down-range. 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. They in the form of you another copy of the mot od so? 24 A. Yes, sir. 25 A. Yes, sir. 26 A. Okay. 27 A. No, sir. 29 A. No, sir. 29 A. No, sir. 20 A. No, sir. 20 A. No, sir. 21 A. No, sir. 22 Q. He also said that this occurred before the shooting. 23 Q. And he also testified that Officer Sebastian. 24 A. Yes, sir. 25 A. Yes, sir. 26 A. Now back to my question. Had Officer Duncan at any time asked for a			2	
A. Yes.  Q. If after they were in the room with you Officer Duncan had called for assistance, would you have ordered one of them to assist him?  A. Yes.  A. Yes.  A. Yes.  C. Or would you have done it yoursel?  A. Yes.  Q. One or the other?  A. As I recall, that they arrived at me after the incident.  Q. Osay that again?  A. Those two arrived upon my location after the incident.  Q. Your memory today is that those two came into the room after the shooting occurred?  A. They arrived at the door after, yes, I do believe so.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at me after the incident.  A. Those two arrived upon my location after the incident.  A. They arrived at the door after, yes, I do believe so.  A. They arrived at me after the incident.  A. They arrived at me after the incident.  A. They arrived at the door after, yes, I do believe so.  A. Those two arrived upon my location after the incident.  A. They arrived at the door after, yes, I do believe so.  A. Those two arrived upon my location after the incident.  A. Those two arrived upon my location after the incident.  A. Those two arrived upon my location after the incident.  B. Q. Ox our there the cellar door and you ordered him to take the door.  A. Okay.  C. Cover the door  A. Okay.  A. Okay.  A. Yes, sir.  Page 75  A. No, sir.  Q. He also said that this occurred before the shooting occurred.  A. No, sir.  Q. How clear is your memory as you sit here today about what happened on January 4th and the early morning of the 5th, 2011?  A. Farily clear, I was there.  Code is the code of the cellar?  A. No, sir.  Q. He also said that this occurred before the shooting occurred.  A. No, sir.  Q. Do you have any reason to disagree with that?  A. No, sir.  Q. I with Officer Rebastian.  A. No, sir.		30 - 50 - 10	3	<li>Q. And that all occurred before the</li>
7 O. If after they were in the room with you Officer Duncan had called for assistance, would you have ordered one of them to assist him?  10 A. Yes. 11 Q. Or would you have done it yoursel? 12 A. Yes. 13 Q. One or the other? 14 A. As I recall, that they arrived at me after the incident. 15 Q. Say that again? 16 A. Those two arrived upon my location after the incident. 17 A. Those two arrived upon my location after the incident. 18 Q. Your memory today is that those two came into the room after the shooting occurred? 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 22 Q. After the shooting occurred? 23 Q. After the shooting occurred? 24 A. Yes, sir.  Page 75  1 Q. That's your memory as you sit here today? 3 A. Yes, sir.  Page 75  1 Q. That's your memory as you sit here today? 3 A. Yes, sir.  Page 75  1 Q. Have you read anybody else's statements about what happened? 4 A. No. I think told you - no. 4 Q. How clear is your memory as you sit here today about what happened? 5 A. Fairly clear, I was there. 10 Q. And you know, don't you, that Officer Sheehan and O'Toole had already left the kitchen before the shooting occurred? 12 Shechan and O'Toole had already left the kitchen before the shooting occurred? 14 A. Yes. 15 Q. Do you know that? 16 A. Do I know, they were down they were down-range. 17 Q. They had left the kitchen and were down-range. 18 Q. They had left the kitchen and were down-range. 19 Day to the first price of the shooting occurred? 20 A. Yes, sir. 21 Q. Is that right? 22 Q. Is that right? 23 Q. Igut in front of you another copy of them to do so? 24 A. Yes, sir.			4	shooting, didn't it?
the home, Riley and Sebastian, came in immediately after the two stacks, didn't they? him?  10 A. Yes. 11 Q. Or would you have done it yoursel?? 12 A. Yes. 13 Q. One or the other? 14 A. As I recall, that they arrived at me after the incident. 15 after the incident. 16 Q. Say that again? 17 A. Those two arrived upon my location after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 22 Q. After the shooting occurred? 23 Q. After the shooting occurred? 24 A. Yes, sir. 25 Q. Have you read anybody else's statements about what happened? 26 A. No. I think told you — no. 27 Q. How clear is your memory as you sit here today about what happened? 28 Sheahen and O'Tocle had already left the kitchen in before the shooting occurred? 29 A. Fairly clear, I was there. 21 Q. And Officer Riley entered through the same door that you entered into the kitchen? 14 A. Okay. 15 Q. Officer Riley testified this morning that he entered the kitchen through the same door that you entered into the kitchen? 16 A. Okay. 17 A. I do believe so, ves. 18 A. I do believe so, ves. 19 Q. Officer Riley entered through the same door that you entered into the kitchen? 18 A. I do believe so, ves. 19 Q. Officer Riley testified this morning that he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered and when he entered the kitchen voor the victher and the cellar voor the door. 18 A. Okay. 29 C. or or the cellar? 20 L A. No, sir. 20 D you have an			5	A. Yes.
8 would you have ordered one of them to assist him?			6	Q. And these other officers that entered
would you have ordered one of them to assist him?  A. Yes.  A. Yes.  O. Or would you have done it yoursel?  A. Yes.  O. One or the other?  A. As I recall, that they arrived at me after the incident.  O. Say that again?  A. Those two arrived upon my location after the incident.  O. Your memory today is that those two came into the room after the shooting occurred?  A. They arrived at the door after, yes, I do believe so.  O. And Officer Riley testified this morning that he entered the kitchen through the same door that you entered, and when he entered the kitchen or and when he entered the kitchen or and when he entered the kitchen through the same door that you entered, and when he entered the kitchen or and when he entered the kitchen or and when he entered the kitchen or and you ordered him to take the door.  A. Okay.  O. Cover the door.  A. Okay.  O. Cover the door.  A. Okay.  O. Aod Okay.  A. Yes, sir.  Page 75  O. That's your memory as you sit here today?  A. Yes, sir.  Page 75  A. No, Ithink told you -no.  O. How clear is your memory as you sit here today about what happened?  A. No I think told you -no.  O. How clear is your memory as you sit here today about what happened?  A. Fairly clear, I was there.  O. And you know, don't you, that Officer  Sheehan and O'Toole had already left the kitchen through the same door that you entered into the kitchen?  A. Okay.  O. Officer Riley estrified this morning that he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen or and you or dered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered and when he entered the kitchen through the same door that you entered and when he ent	1		7	the home, Riley and Sebastian, came in
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 after the incident. 15 Q. Say that again? 17 A. Those two arrived upon my location after the incident. 19 Q. Your memory today is that those two came into the room after the shooting occurred? 21 A. They arrived at the door after, yes, I do believe so. 22 A. Yes, sir. 23 Q. After the shooting occurred? 24 A. Yes, sir. 29 Page 75 1 Q. That's your memory as you sit here today? 3 A. Yes, sir. 4 Q. Have you read anybody else's statements about what happened? 4 A. No. I think told you no. 5 Q. How clear is your memory as you sit here today about what happened on January 4th and the early morning of the 5th, 2011? 20 A. Fairly clear, I was there. 21 Q. And you know, don't you, that Officer Sheastian mire before the shooting occurred? 22 A. Do I know, they were down they were downrange. 23 Q. They had left the kitchen and were back in the rooms in the back of the house? 24 A. Yes, sir. 25 Q. Do you know that? 26 A. Do I know, they were down they were downrange. 27 A. Yes, sir. 28 Q. Do you know that? 29 A. Yes, sir. 30 Q. Mad he also testified that Officer Shebastian. 31 Do I know, they were down the			8	
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 today? 3 A. Yes, sir. Q. Have you read anybody else's 5 statements about what happened on January 4th 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 before the shooting occurred? 19 Q. Do you know that? 10 A. Yes, sir. 11 Q. And you know, don't you, that Officer 12 Sheehan and O'Toole had already left the kitchen before the shooting occurred? 13 A. Yes. 14 A. Yes. 15 Q. Do you know that? 16 A. Do I know, they were down - they were down-range. 17 Q. They had left the kitchen and were back in the rooms in the back of the house? 18 Q. They had left the kitchen and were 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. They had left the kitchen and two officer were in that room, would either you have assisted him or ordered one of that you entered hak then through the kitchen that the entered the kitchen thouse the kitchen you were there at the cellar door and you ordered him to take the door.  A. Okay.  Q. Or over the door.  A. Okay.  Q. Have you read anybody else's with that?  A. No, sir.  Q. Have so said that this occurred before the shooting occurred.  A. No, sir.  Q. Do you have any reason to disagree with that?  A. No, sir.  Q. And he also testified that Officer bon	9		9	
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 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 here today about what happened on January 4th 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 before the shooting occurred? 14 A. Yes. 15 Q. Do you know that? 16 A. Do I know, they were down – they were down-range. 17 Q. They had left the kitchen and were back in the rooms in the back of the house? 18 A. I don't know that. 19 Q. Say that again? 19 A. I don't know that. 20 C. Oreft iley testified this morning that he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the same door that you entered, and when he entered the kitchen through the stitchen you were there at the cellar door and you ordered him to take the door.  A. Okay.  Q. The also said that this occurred before the shooting.  A. No, sir. Q with Offic	10	A. Yes.	10	Q. And Officer Riley entered through the
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Q. After the shooting occurred? A. Yes, sir.  Page 75  Q. That's your memory as you sit here today? A. Yes, sir.  A. Yes, sir.  A. No, sir. Q. Has also said that this occurred before the shooting. A. No, sir. Q. How clear is your memory as you sit here today about what happened on January 4th and the early morning of the 5th, 2011? A. Fairly clear, I was there. Q. And you know, don't you, that Officer Sheehan and O'Toole had already left the kitchen before the shooting occurred? A. Yes. Q. Do you have any reason to disagree the shooting. A. No, sir. Q with Officer Riley's testimony? A. No, sir. Q. And he also testified that Officer Sebastian arrived before the shooting occurred. Do you have any reason to disagree with that? A. No, sir. Q. And he also testified that Officer Sebastian arrived before the shooting occurred. Do you have any reason to disagree with that? A. Correct, I recall Officer Sebastian. Q. So those two were in the room with you? A. Yes, sir. Q. Now back to my question. Had Officer Duncan at any time asked for assistance and you and two other officers were in that room, would either you have assisted him or ordered one of them to do so? A. Yes, sir. Q. I put in front of you another copy of	22		22	
Page 75  Page 75  A. Yes, sir.  Page 75  A. No, sir.  Q. He also said that this occurred before the shooting.  A. No, sir.  Q. How clear is your memory as you sit here today about what happened on January 4th and the early morning of the 5th, 2011?  A. Fairly clear, I was there.  Q. And you know, don't you, that Officer  Sheehan and O'Toole had already left the kitchen before the shooting occurred?  A. Yes.  Do you know that?  A. Do I know, they were down they were down-range.  Q. They had left the kitchen and were back in the rooms in the back of the house?  A. Yes, sir.  Page 77  A. No, sir.  Q. He also said that this occurred before the shooting.  A. Okay.  A. Okay.  A. No, sir.  Q with Officer Riley's testimony?  A. No, sir.  Q. And he also testified that Officer boyou have any reason to disagree with that?  A. Correct, I recall Officer Sebastian.  Q. So those two were in the room with you?  A. Yes, sir.  Q. Now back to my question. Had Officer Duncan at any time asked for assistance and you and two other officers were in that room, would either you have assisted him or ordered one of them to do so?  A. Yes, sir.  Q. I put in front of you another copy of	23	Q. After the shooting occurred?		,
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	22		22	Q. I put in front of you another copy of
Q. And you know, don't you, that they had 23 that drawing that shows the home, the vellow and	23	Q. And you know, don't you, that they had	23	that drawing that shows the home, the yellow and
24 already ordered Mr. Stamps on the ground and 24 red drawing. Right here. And it's been marked	24	already ordered Mr. Stamps on the ground and	24	

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 I through? 2 A. Yes, sir. 3 Q. When you made entry into the officer Sheehan and O'Toole, was the locked or unlocked? 4 Officer Sheehan and O'Toole, was the locked or unlocked? 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 do you have Exhibit 10A in front of you? 11 Q. And it's not smashed here, is mean it looks like now it's in an open in photograph 8, Exhibit 8, is that ri	Page 80
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12 A. I do. 12 mean it looks like now it's in an ope	
12 A. I do. 12 mean it looks like now it's in an ope	s it? I
in photograph o, Exhibit o, is that if	
14 Fountain Street? 14 A. Yes, sir.	8
15 A. Yes, sir. 15 Q. I read somewhere that the do	or was not
16 Q. And is that the door under the 16 locked.	
17 vestibule there, that's the front entrance to 17 A. I don't recall.	
18 the home? 18 Q. Do you recall seeing a woma	an either on
19 A. Correct, sir. 19 the porch or coming out of the house	
Q. That's the door that you entered that 20 went onto the porch and through the	
21 you just indicated as number 1, is that right? 21 A. Yes, sir.	
22 A. Yes, sir. 22 Q. Do you know who that was?	
Q. And after entering that door, you were 23 A. No, I don't, sir. No, I don't k	now
24 in a common area? 24 her.	
Page 79	Page 81
1 A. Yes, sir. 1 Q. As part of your planning for t	his we
2 Q. Is that right? 2 talked earlier about 68 year old Eurie	
3 A. Yes, sir. 3 being known to be at the home, living	
4 Q. I'm going to show you Exhibit 7 from 4 home, do you recall also that his wife	
5 this morning's deposition. 5 Bushfan Stamps was known to live a	
6 A. Yes, sir. 6 residence as well?	
7 Q. Is that the view entering from the 7 A. Yes.	
8 front door of that common area hallway? 8 Q. When you saw the woman on	the porch or
9 A. Yes, sir. 9 in front of the house, is that as you w	
10 Q. As you recall it? 10 entering, or before you entered, or ex-	
11 A. Yes, sir. 11 when?	
12 Q. And the door that you entered through 12 A. Prior to entering, sir, door nur	nber 1.
13 is in a closed position in Exhibit 7, is that 13 Q. When she came out, who	
14 right? 14 A. She was already out.	
15 A. Yes, sir. 15 Q. And what happened to her wh	en she came
16 Q. And I'm going to show you now Exhibit   16 out?	
Number 8, which shows the same view with that 17 A. I don't the team just went in	, sir.
door open, is that correct?  18 I don't know what happened to her, to	
19 A. Yes, sir. 19 with you.	
Q. And this photograph was taken after 20 Q. So you didn't have anything to	do with
the shooting as evidenced by the blood on the 21 her?	
22 floor; is that so? 22 A. No, sir.	
23 A. Yes, sir. 23 Q. Before that occurred, were you	ı aware
Q. And is that the door you entered 24 of an individual being seized down th	e street

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		Page 82		Page 84
1		the gas station?	1	Q. Into that door where you've marked
2	A.		2	number 2?
3	Q.	You've since learned, I assume, that	3	A. Yes, sir.
4		h Bushfan was observed and then seized by	4	Q. Were you the first of the three?
5		officers, I think Officer	5	A. I don't recall.
6	A.	I knew there was an incident.	6	Q. Are you the person who announced,
7	Q.	Let me finish my question.	7	knocked and announced before making entry?
8		I believe it's Officer Gutwill and	8	A. No, sir.
9		sa, and that they had detained him down the	9	Q. Who was that?
10	street	. Did you know that?	10	A. Sergeant Stuart.
11	A.	Yeah. Not at the time, but	11	Q. So he did that on the door to the
12	Q.	You know it now?	12	living room?
13	A.	Correct, sir.	13	A. Yes, sir.
14	Q.	Okay. At the time when you were about	14	Q. Were all six of you, that is the two
15		er the home, did you know about anything	15	teams, in that common area at the time that he
16	going	on down the street?	16	did the knock and announce?
17	A.	No, sir.	17	A. We were in two separate areas.
18	Q.	Nobody informed you over your radio?	18	Q. Well, you're all in this front entry
19	A.	No, sir.	19	room, is that right?
20	Q.	You were equipped with a radio, I	20	A. Yes.
21	assum	ne?	21	Q. All six of you, the two teams, came
22	A.	Yes, sir.	22	through the door from outside the building into
23	Q.	As was everybody else on this mission?	23	the front entryway?
24	A.	Yes, sir.	24	A. Yes.
		Page 83		Page 85
1	Q.	All on a common frequency?	1	Q. So were all six of you in that room
2	A.	Common among the operators.	2	when he did the knock and announce?
3	Q.	Meaning everybody on this mission was	3	A. Yes.
4	on the	same frequency?	4	Q. And I think you said earlier there
5	A.	Yes.	5	were officers covering all four sides of the
6	Q.	Is that right?	6	building?
7		Do you know whether that frequency is	7	A. Yes. There was coverage outside the
8	monite	ored at the station?	8	building, sir, yes.
9	A.	I don't believe so.	9	Q. And what was the plan with respect to
10	Q.	Do you know whether it's recorded?	10	using flashbangs?
11	A.	I do not know.	11	A. I don't remember exact plans, sir. I
12	Q.	You don't know one way or the other?	12	do believe I don't remember exactly, to be
13	A.	I don't know if it's recorded, sir.	13	honest with you.
14	Q.	Okay. So you've marked number 1 on	14	Q. What I've read, I'm going to relate to
15	Exhibi	it 14 where you made entry into the	15	you and you tell me if it sounds correct, is
		ng, is that right?	16	that two of the officers were equipped with
16				
17		Yes, sir.	17	flashbangs, one at the living room window that's
17 18	A. Q.	Yes, sir. And would you show which door you	17 18	The region of the second of th
17 18 19	A. Q. entered	Yes, sir.  And would you show which door you d to leave the common area and enter the		flashbangs, one at the living room window that's
17 18 19 20	A. Q. entered	Yes, sir.  And would you show which door you do to leave the common area and enter the coor apartment? Put a number 2.	18	flashbangs, one at the living room window that's closest to the front door, and the other one on
17 18 19 20 21	A. Q. entered	Yes, sir. And would you show which door you d to leave the common area and enter the oor apartment? Put a number 2. (Labelling).	18 19	flashbangs, one at the living room window that's closest to the front door, and the other one on the B side of the house, the kitchen side, one
17 18 19 20 21 22	A. Q. entered first flow A. Q.	Yes, sir.  And would you show which door you d to leave the common area and enter the cor apartment? Put a number 2.  (Labelling).  Are you the one who made entry through	18 19 20	flashbangs, one at the living room window that's closest to the front door, and the other one on the B side of the house, the kitchen side, one of those windows over there.
17 18 19 20 21	A. Q. entered first flow A. Q. number	Yes, sir.  And would you show which door you d to leave the common area and enter the cor apartment? Put a number 2.  (Labelling).  Are you the one who made entry through	18 19 20 21	flashbangs, one at the living room window that's closest to the front door, and the other one on the B side of the house, the kitchen side, one of those windows over there.  A. Yes, sir.

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	Page 86		Page 88
1	the flashbang that was intended for the living	1	Q. Did you give that order, or somebody
2	room was never activated because the officers	2	else?
3	were through the door so quickly, it was too	3	A. I don't recall, sir.
4	late for him to use it, do you know that to be	4	Q. It would have to be somebody in that
5	the case?	5	front entry, I assume, so they would know about
6	A. I do believe that, yes, sir.	6	the effect of the knock and announce?
8	Q. There was a flashbang that was used in the kitchen?	7	A. Yes, sir.
9	A. Yes, sir.	8	Q. So somebody among the six of you then
10	Q. Is that right?	9	gave the command to make entry?
11	A. Yes, sir.	10	A. Yes, sir.
12	Q. And that would have been before you	11	Q. And at that point the flashbang was
13	opened the door and entered, is that correct?	12	detonated in the kitchen?
14	A. Yes.	13	A. Yes, sir.
15	Q. Is that the normal procedure?	14	Q. And how long would you then wait
16	A. Yes. Yes.	15 16	before going through the door into the kitchen?
17	Q. So the flashbang is first explain	17	A. You just wait for it to go off, sir,
18	what a flashbang is, if you would.	18	then you make entry.
19	A. It's a noise it's a diversionary	19	Q. So there's no time for the smoke to
20	device to get the attention of the subjects	20	clear or anything like that?  A. No, sir.
21	inside the house so the team can make a safe	21	Q. So when you entered the kitchen, you
22	entry.	22	turned your attention to that cellar door?
23	Q. So it's employed before the entry into	23	A. Yes, sir.
24	the house?	24	Q. And would you mark that with a number
	Page 87		
1		1	Page 89
2	<ul><li>A. Generally, yes, sir.</li><li>Q. And is it an explosive device?</li></ul>	1 2	3 in Exhibit 14, please?
3	A. Yes, sir.	3	<ul><li>A. (Labelling).</li><li>Q. And this was it pre-arranged that</li></ul>
4	Q. Do you remember the flashbang going	4	somebody would be taking the cellar door?
5	off in the kitchen?	5	A. I don't
6	A. I do, sir, yes.	6	Q. Have responsibility for it?
7	Q. So just so I understand the order of	7	A. I don't recall.
8	things, would the knock and announce be first	8	Q. Do you recall instructing Officer
9	before the flashbang? Give me the order from	9	Riley to take the door when he came in the
10	the time of the knocking.	10	kitchen?
11	A. It would be the knock and announce,	11	A. I don't. I just remember, like I
12	the flashbang going off, then the entry.	12	said, Officer Sebastian being there. I don't.
13	Q. Do you remember those events this	13	Is there any way I can talk to him for
14	evening?	14	like two seconds?
15	A. I yes.	15	MR. DONOHUE: Sure. He answered the
16	Q. What do you remember about the knock	16	question.
17	and announce?	17	MR. TARRICONE: Sure.
18	A. I remember Sergeant Stuart knock and	18	THE VIDEOGRAPHER: Going off the
19	announcing loudly, because he's very loud, and	19	record. The time is 2:39.
20	that that flashbang going off over here, and	20	(Whereupon, a recess was taken.)
21	then entry.	21	THE VIDEOGRAPHER: Back on the record.
22	Q. Who gives the order for the flashbang?	22	The time is 2:40.
23	A. It goes over the radio, "make entry,	23	MR. DONOHUE: The lieutenant thinks he
24	make entry."	24	may have misspoken, and would like to clear

Page 90  I something up.  BYMR TARRICONE:  Q Okay. What is it that you'd like to designations A and B, A being the front of the house?  A. I do believe I stated when the incident happened with Mr. Duncan, that's when we made entry down the stairs, after that noise.  I think I said the opposite earlier when you asked that question, sir.  Q. Please repeat yourself. I didn't catch that.  A. My memory is when that incident happened with Mr. Duncan, the shot, that they made entry downstairs. I think I said the opposite way earlier. I think I told you earlier that they went downstairs, then the incident happened.  Be Q. I don't think you did, but now it's clear for sure.  So let me just, just to be clear one and go down to the cellar until after the shooting occurred?  Page 91  A. Correct. Q. Okay.  A. I shat how I said it the first time? Q. Jokay. A. I shat how I said it the first time? Q. I think so. A. I apologize. Q. Na Shath shang. Q. You have written there Riley and Sibilio? A. That's the window, A-1, that's how we mark the window, A-1, that's how the left o				50000
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 5 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 a asked that question, sir. 10 Q. Please repeat yourself. I didn't 11 catch that. 12 A. My memory is when that incident happened with Mr. Duncan, that's when 13 happened with Mr. Duncan, that's 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 16 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 11 the record, Licutenant 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? 25 A. Correct. 2 Q. Okay. 3 A. Jes, sir. 4 Q. I think So. 5 A. I apologize. 6 Q. No problem. No problem. 1 I'm going to show you now Exhibit 10A, 8 which actually you have in front of you. 4 A. Can I get the cap to this? Because I 2 will eventually wear this pen. 2 Q. Handing). 3 Q. Now, do you recognize Exhibit 10A as 4 one of the photographs hat you used and markings on when you answered Lieutenant 16 Forster's questions on January 7th, 2011? 3 A. Yes, sir. 4 Q. And is that your signature at the bottom? 5 A. Yes, sir. 6 Q. And is that your signature at the bottom? 6 A. Yes, sir. 7 Q. And ben the first didn't only and sibilio, is that right? 9 A. Yes, sir. 9 A. And at the window, A-1, that's how we mark the window, A.1. that's how we mark the window, A.1. that's how we mark the window, A.1. that's how we mark the window, Sir. 9 Q. What's the significance of that? 14 A. That's that flashbang. 15 A. That's that flashbang. 16 Q. Was anybody covering the D side? 17 A. Yes, sir. 18 Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think it is any fremale." 18 A. That's the significance of that? 19 A. Yes, sir. 10 Q. M		Page 90		Page 92
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? 25 A. I spot have written there Riley and 26 Sibilio? 27 A. Yes. 28 Q. Okay. 3 A. I shat how I said it the first time? 4 Q. I think so. 5 A. I apologize. 6 Q. No problem. 7 Im going to show you now Exhibit 10A, 8 which actually you have in front of you. 9 A. Can I get the ago to this? Because 1 10 will eventually wear this pen. 11 Q. (Handing). 12 A. Thank you. 13 Q. Now, do you recognize Exhibit 10A as one of the photographs that you used and made markings on when you answered Lieutenant Forster's questions on January 7th, 2011? 18 Q. And is that your handwriting? 19 A. Yes, sir. 19 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 have a provided by the right side of the house C? 23 A. It would be Charlie, yes, sir. 4 Q. And at the window, to the left of the house facing the house? 4 A. That's the window, or a hotation there. What is the window to the left of the house facing the house? 4 A. Yes, sir.  9 Q. And at the window to the left of the house facing the house? 4 A. That's the significance of that? 4 A. That's the window, A-1, that's how we mark the window, sir. 6 Q. What's the significance of that? 8 A	1	something up.	1	designations A and B. A being the front of the
declear up?  A. I do believe I stated when the incident happened with Mr. Duncan, that's when we made entry down the stairs, after that noise. I think I said the opposite earlier when you asked that question, sir.  D. Please repeat yourself. I didn't catch that.  A. My memory is when that incident happened with Mr. Duncan, the shot, that they happened with Mr. Duncan, the shot, that they are dentry downstairs. I think I said the opposite way earlier. I think I told you earlier that they went downstairs, then the incident happened.  D. I don't think you did, but now it's clear for sure.  So let me just, just to be clear on the record, Lieutenant Downing, Officers Riley and go down to the cellar until after the shooting occurred?  Page 91  A. Correct.  Q. Okay.  A. I sh that how I said it the first time?  Q. I think so.  A. I apologize.  A. I raposity to show you now Exhibit 10A, which actually you have in front of you.  A. Can I get the cap to this? Because I will eventually wear this pen.  Q. (Handing).  A. Can I get the cap to this? Because I owill eventually wear this pen.  Q. And is the rear of the house C?  A. It would be Charlie, yes, sir.  Q. And at the window to the left of the front door, you have a notation there. What is tright? The A team, Riley and Sibilio, is that right?  A. Yes.  A. That's the window, A-1, that's how we mark the window, sir.  Q. What's the significance of that?  A. They were providing security on the Bravo/Charlie side.  Q. And at the upper left corner of the photographs that you now Exhibit 10A, which actually you have in front of you.  A. Can I get the cap to this? Because I will be provided the providing security on the Bravo/Charlie side.  Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think is the first time?  A. Thank you.  Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think is the first time?  A. Yes, sir.  Q. And on the front of the front door?  A. Yes, sir.  Q. And then to the left of the front door?	2	BY MR. TARRICONE:	2	
declear up?  A. I do believe I stated when the incident happened with Mr. Duncan, that's when we made entry down the stairs, after that noise. I think I said the opposite earlier when you asked that question, sir.  Q. Please repeat yourself: I didn't catch that.  Lack that.  A. My memory is when that incident happened with Mr. Duncan, the shot, that they made entry downstairs. I think I said the opposite way earlier. I think I told you earlier that they went downstairs, then the incident happened.  Q. I don't think you did, but now it's clear for sure.  So let me just, just to be clear on the record, Lieutenant Downing, Officers Riley and Sebastian did not go through the cellar door and go down to the cellar until after the shooting occurred?  Page 91  A. Correct. Q. Okay. A. I apologize. Q. No problem. No problem. Tm going to show you now Exhibit 10A, which actually you have in front of you. A. Can I get the cap to this? Because I will eventually wear this pen. Q. (Handing). A. Chan Ry et the cap to this? Because I owill eventually wear this pen. Q. And is the rear of the house C? A. It would be Charlie, yes, sir. Q. And at the window to the left of the front door, you have a notation there. What is tright? A. Yes, sir. Q. And at the window, A-1, that's how we mark the window, sir. Q. You have written there Riley and Sibilio? A. Yes, sir. Q. What's the significance of that? A. They were providing security on the Bravo/Charlie side. Q. And at the upper left corner of the photographs that you used and made mankings on when you answered Lieutenant Downing. Officers Riley and Sibilio? A. Yes, sir. Q. And at the window, A-1, that's how we mark the window, sir. B. Q. What's the significance of that? A. They were providing security on the Bravo/Charlie side. Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think is the first time? A. Yes, sir. Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think is the first time? A. Yes, sir. Q. And then to the le	3	Q. Okay. What is it that you'd like to	3	A. Yes, sir.
5 A. I do believe I stated when the incident happened with Mr. Duncan, that's when wade entry down the stairs, after that noise.  8 I think I said the opposite earlier when you asked that question, sir.  10 Q. Please repeat yourself: I didn't catch that.  12 A. My memory is when that incident happened with Mr. Duncan, the shot, that they made entry downstairs. I think I told you earlier that they went downstairs, then the incident happened.  13 happened with Mr. Duncan, the shot, that they made entry downstairs. I think I told you earlier that they went downstairs, then the incident happened.  14 cearlier that they went downstairs, then the incident happened.  15 Q. I don't think you did, but now it's clear for sure.  16 So let me just, just to be clear on the record, Lieutenant Downing, Officers Riley and Sebastian did not go through the cellar door and go down to the cellar until after the shooting occurred?  16 A. Correct.  17 Q. What's the significance of that?  28 A. Is that how I said it the first time?  29 A. Yes, sir.  20 Okay.  10 A. Is will be Charlie, yes, sir.  20 And at the window to the left of the front door, you have a notation there. What is that? The A team, Riley and Sibilio, is that right?  18 A. That's the window, A-1, that's how we mark the window, sir.  19 A. Yes,  20 You have a notation there. What is that? The A team, Riley and Sibilio, is that right?  21 A. Correct.  22 Q. Okay.  23 A. Is that how I said it the first time?  44 Q. I think So.  45 A. Is would be Charlie, yes, sir.  46 A. The would be the right side of the house?  46 A. That's the window, A-1, that's how we mark the window, sir.  47 A. Yes,  48 Q. You have a notation there. What is that? The A team, Riley and Sibilio, is that right?  49 A. That's the window, A-1, that's how we mark the window, sir.  40 Q. What's the significance of that?  41 A. That's the window, A-1, that's how we mark the window, sir.  41 A. That's the window, A-1, that's how we mark the window, sir.  42 Q. Okay.  43 A. Is that how I said the privation	4		4	PARTY CONTROL OF THE STATE OF T
Think I said the opposite earlier when you asked that question, sir.	5	A. I do believe I stated when the	5	
Think I said the opposite earlier when you asked that question, sir.  Q. Please repeat yourself. I didn't catch that.  A. My memory is when that incident happened with Mr. Duncan, the shot, that they made entry downstairs. I think I said the opposite way earlier. I think I told you earlier that they went downstairs, then the incident happened.  B. Q. I don't think you did, but now it's clear for sure.  So let me just, just to be clear on the record, Lieutenant Downing, Officers Riley and Sebastian did not go through the cellar door and go down to the cellar until after the shooting occurred?  Page 91  A. Correct. Q. Okay. A. Is twould be Charlie, yes, sir. Q. And at the window to the left of the house facing the house? A. Yes, sir. Q. And at the window to the left of the front door, you have a notation there. What is that? The A team, Riley and Sibilio, is that sight? A. That's the window, A-1, that's how we mark the window, sir. A. Yes, and Sibilio? A. Yes, and the window, A-1, that's how we mark the window, sir. A. Yes, and A team, Riley and Sibilio? A. Yes what's the significance of that? A. That's that flashbang. Q. Wath's the significance of that? A. They were providing security on the Bravo/Charlie side. Q. Was anybody covering the D side? A. I don't – I mean I don't know offhand. Which actually you have in front of you. A. Can I get the cap to this? Because I will eventually wear this pen. Q. (Handing). Q. (Handing). Q. (Handing). A. Yes, sir. Q. And sate the window to the left of the house facing the house? A. That's the window, A-1, that's how we mark the window, A-1, that's how we mark the window, sir. B. Q. Was anybedy and sibilio, is that that? A. They seemark the window, A-1, that's how we mark the window, sir. B. Q. Was anybedy covering the D side? A. That's that flashbang. A. Yes, sir. C. What's the significance of that? A. I don't – I mean I don't know offhand. A. I don't – I mean I don't know offhand. A. I don't – I mean I don't know offhand. A. I do believe that's just an "A," sir. Q. And then	6	incident happened with Mr. Duncan, that's when	6	A. Yes, sir.
1 Ithink I said the opposite earlier when you asked that question, sir.  Q. Please repeat yourself. I didn't catch that.  A. My memory is when that incident happened with Mr. Duncan, the shot, that they made entry downstairs. I think I said the opposite way earlier. I think I said the incident happened.  Q. I don't think you did, but now it's clear for sure.  So let me just, just to be clear on the record, Lieutenant Downing, Officers Riley and Sebastian did not go through the cellar door and go down to the cellar until after the shooting occurred?  Page 91  A. Correct. Q. Okay. A. Is that how I said it the first time? Q. I think so. A. Is apologize. Q. No problem. No problem. I'm going to show you now Exhibit 10A, as which actually you have in front of you. A. Can I get the cap to this? Because I will eventually wear this pen. Q. (Handing). A. Thank you. Q. Now, do you recognize Exhibit 10A as one of the photographs that you used and made markings on when you answered Lieutenant Forster's questions on January 7th, 2011? A. Yes, sir. Q. And sit the window to the left of the front door, you have a notation there. What is that? The A team, Riley and Sibilio, is that right? A. That's the window, A-1, that's how we mark the window, sir. Q. You have written there Riley and Sibilio, is that right? A. That's the window, A-1, that's how we mark the window, sir. Q. You have written there Riley and Sibilio, is that right? A. That's the window, A-1, that's how we mark the window, sir. Q. You have written there Riley and Sibilio, is that right? A. That's the window, A-1, that's how we mark the window, sir. Q. You have written there Riley and Sibilio, and tright right right right right right right right right right. A. That's the significance of that? A. That's that flashbang. Q. And at the upper left corner of the photograph, B/C, it says Curtis and Reardon.  Page 91  What's the significance of that? A. Thou wild be charging the D side? A. That's the window, A-1, that's how we mark the window, sir. Q. Was anybody covering	7	we made entry down the stairs, after that noise.	7	
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 15 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 16 incident happened. 18 Q. I don't think you did, but now it's 19 clear for sure. 19 So let me just, just to be clear on 10 the record, Lieutenant Downing, Officers Riley 11 A. Correct. 12 Q. Okay. 13 A. Is that how I said it the first time? 14 Q. I think so. 15 A. I apologize. 16 Q. No problem. No problem. 17 Im going to show you now Exhibit 10A, 8 which actually you have in front of you. 19 A. Can I get the cap to this? Because I 10 will eventually wear this pen. 11 Q. (Handing). 12 A. Yes, sir. 13 Q. Now, do you recognize Exhibit 10A as one of the photographs that you used and made markings on when you answered Lieutenant Ferrority and sone of the photographs that you used and made markings on when you answered Lieutenant Ferrority and sone of the photographs that you used and made markings on when you answered Lieutenant Ferrority and sone of the photographs that you used and made markings on when you answered Lieutenant Ferrority and sone of the photographs that you used and made markings on when you answered Lieutenant Park of the home near this pen. 16 Q. That's your signature at the bottom? 17 A. Yes, sir. 18 Q. And is that the window, volune khat is the significance of that? 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	8	I think I said the opposite earlier when you	8	
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Q. Okay.  A. Is that how I said it the first time?  Q. I think so.  A. I apologize.  Q. No problem. No problem.  I'm going to show you now Exhibit 10A, which actually you have in front of you.  A. Can I get the cap to this? Because I  Will eventually wear this pen.  Q. (Handing).  A. Thank you.  Q. Now, do you recognize Exhibit 10A as one of the photographs that you used and made markings on when you answered Lieutenant  Forster's questions on January 7th, 2011?  A. Yes, sir.  Q. And is that your handwriting?  A. Yes, sir.  Q. That's your signature at the bottom?  Q. I see here, and it's very difficult  for me to read, maybe you can read it better  A. I sthat how I said it the first time?  A. I they were providing security on the Bravo/Charlie side.  Q. Was anybody covering the D side?  A. I don't I mean I don't know offhand.  Q. And on the front of Exhibit 10A, that is the forefront, there's some writing, I think it says is it "entry" or "enter"? I'm having trouble reading it. It's just beneath the car that's depicted in front of the front door.  A. I do believe that's just an "A," sir.  Q. And then to the left of "A," does it say "female"?  A. Yes, sir.  Q. And what is the significance of that?  A. I do believe, as I recall, that's the female you talked about earlier, Mr. Stamps' wife, was located there.  Q. So she was in front of the home near this car that was in front of the front door?  A. Yes, sir.  Q. And then if you would, please, turn to		Page 91		Page 93
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A. Yes, sir.  Q. I see here, and it's very difficult for me to read, maybe you can read it better  21 this car that was in front of the front door?  A. Yes, sir.  Q. And then if you would, please, turn to				
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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 paragraph at the top, you say "eventually, over the right kel said, I doint even know—like I said, because I knew there was an officer right here, the I shad, I doint even know—like I because I knew there was an officer right here. Shad when you were that? 14 know who it was. And again, I didn't know—I didn't know what the noise was. So I had no clue what it was, whether a handgun or a diversionary device." 18 Do you see that? 19 A. Yes. 20 Q. The reference to "the officer right here." 21 A. Yes. 22 A. Yes. But can I read from this beginning— 22 A. Pes. 23 By MR. TARRICONE: 4 I does, sir. It says "Casey" and "Lapologize. 4 A. Yes, sir. 5 Q. And then there's writing near that door to the basement. Do you see that? 10 A. Yes, sir. 11 Q. Take a look at Exhibit 10B, the photograph one of the photographs? 1 MR. DONOHUE: Yes. 2 A. Pes. 3 MR. DONOHUE: Yes. 4 A. Yes. 5 By MR. TARRICONE: 9 Q. Mad then there's writing near that door to the basement. Do you see that? 10 A. Yes, sir. 11 Q. And that has—is that where you wind the bearing near that door to the basement. Do you see that? 12 Q. Where you wrote "Downing." 13 A. Yes. 14 A. Yes, sir. 15 G. A. Take a look at Exhibit 10B, the photograph one of the photograph of the kitchen. 16 Q. Take a look at Exhibit 10B, the photograph of the kitchen. 17 A. Yes, sir. 18 Do you see that? 18 Do you see that? 19 A. Yes. 20 Q. Take a look at Exhibit 10B, the photograph or something else? 21 Q. When you were pointing to this photograph or something else? 22 A. Yes, sir. 23 Q. And you've got some writing on this document as well, do you not? 24 Q. Take a look at Exhibit 10B, the photograph or something						
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 paragraph at the top, you say "eventually, over here, like I said, I don't even know – like I said, because I knew there was an officer right here, but his back was towards me, so I didn't know who it was. And again, I didn't know – I didn't know who it was. And again, I didn't know – I didn't know what the noise was. So I had no 16 clue what it was, whether a handgun or a diversionary device." 18 Do you see that? 19 A. Yes. 20 Q. The reference to "the officer right here." 21 A. Yes. But can I read from this beginning – Q. Yes. 22 A. Pas. 23 beginning – Q. Yes. 24 A. Pas. But can I read from this beginning – Q. Yes. 25 A. — please? 26 Q. When you used the words "right here," were you pointing to a place on the photograph, one of the photographs? 3 A. To be honest with you, I don't – Q. Take a look at Exhibit 10B, the photograph of the kitchen. 3 Q. Was this also a photograph that you marked when you were being questioned that day? 3 A. Yes, sir. 4 Q. And you've got some writing on this document as well, do you not? 4 A. Yes, sir. 4 Q. And you've signed it at the bottom? 5 A. Yes, sir. 6 Q. And you've got some writing on this document as well, do you not? 6 A. Yes, sir. 6 Q. And you've signed it at the bottom? 7 A. Yes, sir. 8 A. Yes, sir. 9 Q. And you've signed it at the bottom? 9 A. Yes, sir. 10 Q. Lacal'read what it says over near – to to the right side. The copy that was provided by the Town of Framingham is illegible. Can you say the town of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham is illegible. Can you say the fown of Framingham		Page 94		Page 96		
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Q. Was this also a photograph that you marked when you were being questioned that day?  A. Yes, sir.  Q. And you've got some writing on this document as well, do you not?  A. Yes, sir.  Q. And you've signed it at the bottom?  A. Yes, sir.  Q. And you've signed it at the bottom?  A. Yes, sir.  Q. I can't read what it says over near  to the right side. The copy that was provided  by the Town of Framingham is illegible. Can you  again reference someone. Let me read it into the record.  The question was "So you didn't even know there was someone lying in the hallway there?"  And your answer was "No, I had no idea. Because, like I said, because it turned out to be Officer Duncan but, at the time, I saw an operator. But when you have that gear on, no one looks the same because everyone's got the big gear and the helmet. So I just saw	1100000					
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make it out, since you wrote it? Maybe you 24 someone's back. I had no idea, like I said.	24	make it out, since you wrote it? Maybe you	24	someone's back. I had no idea, like I said,		

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

	Page 102	Τ	Page 104
1	A. Yes.	1	Q. And when you saw Duncan, he was in the
2	Q. The entry had already been made?	2	kitchen walking towards you?
3	A. Yes, sir.	3	A. Yes, sir.
4	Q. So you knew it couldn't be a	4	Q. At some point after the gun was fired,
5	flashbang, right?	5	did you instruct Officer Sibilio to take Duncan
6	A. Yes. Well, yes.	6	off the premises?
7	Q. And this gun goes off within 10 feet	7	A. I do believe, like I said, he was
8	of you?	8	walking towards me in a state that I had Officer
9	A. Yes, sir.	9	Sibilio take him, yes, sir.
10	Q. And it's your testimony before this	10	Q. Did you have any discussion with
11	judge and jury you didn't know that it was a	11	Duncan at that point?
12	gun? Is that your testimony?	12	A. I don't recall.
13	MR. DONOHUE: I object to the	13	Q. So do you have any memory as you sit
14	question.	14	here today of anything that Duncan said to you
15	BY MR. TARRICONE:	15	or you said to him?
16	Q. Is that your testimony, Officer	16	A. No, sir.
17	Downing?	17	Q. Do you remember instructing Officer
18	A. Gun? Like I said, I testified I	18	Sibilio to take him off the premises?
19	wasn't sure what it was. I knew I heard a bang,	19	A. Yes, sir.
20	but I wasn't positive what it was, sir.	20	Q. Later that evening well, I guess
21	Q. Now, in your statement, the transcript	21	early morning hours, January 5th, did you go and
22	here	22	meet up with Duncan anywhere?
23	A. Yes, sir.	23	A. I don't believe so, no.
24	Q it states that the first time you	24	Q. Where was he taken when he left the
	Page 103		Page 105
1	observed Duncan after the shot, he was walking	1	premises?
2	towards you?	2	A. As I refreshed my memory today, he was
3	A. Yes, sir.	3	turned over to Officer Eliadi and brought back
4	Q. Is that right?	4	to the station.
5	A. Yes.	5	Q. Did you go back to meet with him?
6	Q. And by the way, there's no question	6	A. No, sir, no.
7	that what you heard was the gunshot, is that	7	Q. Were you ever authorized to question
8	right?	8	him about what happened as the executive officer
9	A. Again, I testified I didn't know.	9	of the SWAT team?
10	Q. This bang that you heard, you now know	10	A. No.
11	that was a gunshot, don't you?	11	Q. Do you know whether this Steven
12	A. I do know now, yes, sir.	12	Ijames by the way, is "I" his middle initial,
13	Q. No question about that, is there?	13	or is his last name Ijames?
14	A. No.	14	A. It's I-J-A-M-E-S. I believe it's one
15	Q. And you also know that it was Duncan's	15	word, sir.
16	M-4 that was fired?	16	MR. DONOHUE: It's pronounced Ijames.
17 18	A. I do know.	17	MR. TARRICONE: Oh, Ijames. Okay.
19	Q. Is that right? A. Yes.	18	A. I don't know who he is.
20		19	BY MR. TARRICONE:
21		20	Q. Do you know whether Steven Ijames,
22	evening of all the 25 officers in the general vicinity, in the house, outside the house, no	21	spelled Ijames, ever met with Duncan or talked
23	one else fired a weapon?	22 23	to Duncan face-to-face?
24	A. Correct.	24	A. I don't know that, sir.  O. So when you heard the gun being fired.
	Za. Collect.	44	Q. So when you heard the gun being fired,

	Page 106	.T	Page 100
1	did you know that it was a weapon of some kind?		Page 108
2	A. I knew it was some type of a weapon,	2	<ul><li>Q. Okay. Thank you.</li><li>And using the black pen, would you</li></ul>
3	yes, sir.	3	just put your initials over there?
4	Q. Do all the officers on the SWAT team	4	A. Right here?
5	carry M-4s?	5	Q. Right there. That's great.
6	A. No, sir.	6	A. (Initialling).
7	Q. What other weapons do they carry, if	7	Q. Thank you.
8	not an M-4?	8	I'm going to ask you to look at
9	A. The handgun, which is 40 rounds. We	9	Exhibit Number 9, which is one of the
10	have an MP-5.	10	photographs taken, I think, by the state police.
11	Q. So	11	But it's a photograph that shows that there's
12	A. It's 40 cal.	12	blood on the floor.
13	Q. Is it the case that some officers	13	Do you see that?
14	would have only a handgun and not a long rifle?	14	A. Yes, sir.
15	A. No. They would have both, sir.	15	Q. With respect to the layout of the
16	Q. So everybody would have either an M-4	16	kitchen as you see it there, and the items that
17	or an MP-5, and a handgun?	17	are laying around the kitchen, is that generally
18	A. Yes, sir.	18	what it looked like when you went in that night?
19	Q. How does an MP-5 differ from an M-4?	19	A. Yes, sir.
20	A. Smaller round.	20	Q. Aside from the blood?
21	Q. Is it also a long rifle?	21	A. Yes, sir.
22	A. Yes, sir.	22	Q. I'm going to show you now Exhibit
23	Q. Long gun?	23	Number 5 (handing).
24	Are they both semi-automatic weapons?	24	A. Yes, sir.
	Page 107		Page 109
1	A. Yes, sir.	1	Q. Do you recognize that document?
2	Q. As used by the police department?	2	A. Yes. It's the policy and procedure
3	A. Yes, sir.	3	from the Framingham Police Department on
4	Q. Back to the drawing, Exhibit 14, would	4	firearms and weapons, sir.
5	you indicate on here with an X where it was that	5	Q. Now, Exhibit 5, as I understand it, is
6	you saw Duncan when you first saw him?	6	the version of the Framingham Police Department
7	A. (Labelling).	7	Policy on Firearms and Weapons as amended
8	Q. And would you put just put a number	8	through October 4, 2012.
9	4 near that X?	9	Do you see that date on there?
10	A. 4, sir?	10	A. Yes, sir.
11	Q. Number 4, yes.	11	Q. I'm going to ask you, Lieutenant
12	A. (Labelling).	12	Downing, if you would turn to section Roman
13 14	Q. And taking this black pen, would you	13	Number IV., "Patrol Rifle," which begins on
15	please draw the route of your entry into the	14	Page 4 of the document, Bates number 4105.
16	building through the front entryway and to the area of the cellar door?	15	Do you have that in front of you?
17	A. So my understanding is the initial	16	A. 4 Bravo?
18	point that we drove up into the building	17	Q. Yes.
19	basically?	18 19	A. Yes, sir. The "Operational Carry
20	Q. Well, from the front porch area, just	20	Condition"?
21	show the route that you took with your team.	21	Q. Well, Roman Number IV., the entire
22	And put an arrow up at the top there just to	22	section. Do you have that in front of you?  A. Yes, sir.
23	indicate how you came in.	23	Q. And let's just go through it.
24	A. (Labelling).	24	First, the "Patrol Rifle," does that
	(2000,000)	2.7	r not, the ration kille, does that

				T. DOWNING
1		Page 110		Page 112
1	refer t	to an M-4?	1	confirm that there's a round loaded in the
2	A.	Yes, sir.	2	chamber properly?
3	Q.	And an MP-5?	3	A. Yes, sir.
4	A.	Yes, sir.	4	Q. Then on the next page, Page 5 of this
5	Q.	This would cover both?	5	exhibit, Bates Number 4106, the next section is
6	A.	Yes.	6	called "Low Ready," and it has a more detailed
7	Q.	Part B, "Operational Carry Condition,"	7	description of what the low ready position is.
8	what o	does that mean, "Operational Carry	8	Do you see that?
9	Condi	tion"?	9	A. Yes, sir.
10	A.	Do I have to read it?	10	Q. Would you read the first part of that,
11	Q.	Well, what does the general term mean?	11	please?
12	A.	Operational carry position?	12	A. Of Low Ready, sir?
13	Q.	Is it the way the gun should be	13	Q. Yes.
14	config	sured when being carried?	14	A. "The 'Low Ready' is the standard carry
15	A.	Yes, how you should operational	15	position while the patrol rifle is operational.
16	use.		16	The 'Low Ready' is also the default carry
17	Q.	What does it provide here for that?	17	position. The weapon's stock is seated in the
18	A.	Do you want me to read it?	18	shoulder; muzzle down."
19	Q.	Yes.	19	Q. The first subpart of that, "On Safe,"
20	A.	"Release rifle from the vehicle	20	what does that mean?
21		/lock; point muzzle down in safe direction;	21	A. "Finger Off trigger, and along low
22		e weapon is on safe; Pull the charging	22	receiver; Two hands on weapon.
23		to the rear, and release; Conduct a press	23	Q. And "On Safe" means that the gun is
24	check;	and move the weapon into 'low ready."'	24	not active or hot, is that right?
		Page 111		Page 113
1	Q.	What is "low ready"? What does low	1	A. Yes, sir.
2	ready		2	Q. And then the next section, "Off Safe,"
3		Do you want me to demonstrate? It's	3	and would you read that, please?
4		oly easier.	4	A. "Officer perceives a threat, weapon
5	Q.	Sure.	5	comes up onto target, only when the officer is
6	A.	Just keep the weapon low (indicating).	6	ready to shoot does the weapon come off safe;
7	Q.	Pointed down?	7	eyes align sights; acquire proper sight
8	A.	Yes.	8	picture."
9	Q.	What's the purpose of that position?	9	Go on?
10	Α.	It's safe.	10	Q. Yes. Go ahead, continue it.
11	Q.	It's for safety?	11	A. "After firing, or when the decision
12	Α.	Yes, sir.	12	not to fire is made, the weapon is placed back
13	Q.	So that the gun is not pointed at	13	on Safe."
14	someb		14	Q. Now, my understanding is that this
15	A.	Yes, sir.	15	entire section called Patrol Rifle, including
16 17	Q. A.	Is that right? Yes.	16	this subpart C, Low Ready, On Safe, Off Safe,
	2	es and see a consistence of the second secon	17	was added to the weapons policy after the
18 19	Q. that me	And what is "Press Check"? What does	18	shooting at 26 Fountain Street, is that the
20	A.		19	case?
21		That means basically when you pull the ng end you can see the round, you're just	20 21	A. I do believe this is the updated one,
22		g to see inside the chamber.	22	yes, sir.
23	O.		23	Q. Now, aside from whether it was in a written protocol before the shooting, is what's
24		ure to do the press check, and that's to	24	stated here in part C, Low Ready, On Safe, Off
	proced	are to do the press cheek, and that s to	27	stated here in part C, Low Ready, On Safe, Off

		1	
	Page 114		Page 116
1	Safe, consistent with the training that you	1	subject until an additional officer arrives to
2	provided the SWAT team officers?	2	assist. The Cover Officer provides lethal (in
3	A. Yes, sir.	3	some instances less than lethal) cover for the
4	Q. So that training was provided even	4	Contact Officer. The Contact Officer, is the
5	before this was memorialized in the actual	5	hands on officer, and must put their long gun on
6	weapons policy?	6	safe and sling it securely on his/her back (or
7	A. Yes, sir.	7	holster for a handgun) Before moving in to
8	Q. And then if you would, sir, please	8	secure to the subject."
9	turn to the next page of this exhibit.	9	Q. Again, aside from whether it was in
10	By the way, this is Exhibit 5, is that	10	any written policy, is that the way that you
11	right? I just want to have it clear on the	11	trained the SWAT team members before in the
12	record. Exhibit 5, yes. On the next page	12	years before the execution of the search
13	there's a Section F, and it's called	13	warrant
14	"Contact/Cover."	14	A. Yes.
15	Do you see that?	15	Q in January of 2011?
16	A. Yes, sir.	16	A. Yes, sir.
17	Q. And would you please read that into	17	Q. And you know, don't you, from
18	the record?	18	everything you've seen and read that Officer
19	A. "The Contact/Cover technique requires	19	Duncan did not have the safe have his gun in
20	at least two officers. When an officer	20	a safe on position and slung behind his back
21	confronts a subject or subjects that poses a	21	
22	potential threat and needs to be secured, the	22	when he encountered Mr. Stamps on that evening, isn't that so?
23	officer will use the 'Contact/Cover' technique.	23	A. Yes.
24	If the officer is alone at the time of the	24	
	in the officer is arone at the time of the	2 1	Q. And if you would turn to Exhibit 4,
		1	No. 200 Control of the State of
	Page 115		Page 117
1	confrontation with the subject, the officer will	1	Page 117 please.
2	confrontation with the subject, the officer will maintain cover position, and call for an	1 2	
2	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."	1	please.
2 3 4	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.	2	please.  A. Which one is that one, sir?
2 3 4 5	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.  What you just read up until that	2 3	please.  A. Which one is that one, sir?  Q. It's the old version of the weapons
2 3 4 5 6	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.  What you just read up until that point, was that, aside from whether it was in	2 3 4	please.  A. Which one is that one, sir?  Q. It's the old version of the weapons policy.  A. I don't think I have that.  Q. I'm sorry, I've got it in my hand
2 3 4 5 6 7	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there. What you just read up until that point, was that, aside from whether it was in the written policy, is that the way that you	2 3 4 5	please.  A. Which one is that one, sir?  Q. It's the old version of the weapons policy.  A. I don't think I have that.
2 3 4 5 6 7 8	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.  What you just read up until that point, was that, aside from whether it was in the written policy, is that the way that you trained, you and Sergeant Stuart, trained	2 3 4 5 6	please. A. Which one is that one, sir? Q. It's the old version of the weapons policy. A. I don't think I have that. Q. I'm sorry, I've got it in my hand (handing)?
2 3 4 5 6 7 8	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.  What you just read up until that point, was that, aside from whether it was in the written policy, is that the way that you trained, you and Sergeant Stuart, trained officers of the SWAT team before the execution	2 3 4 5 6 7	please. A. Which one is that one, sir? Q. It's the old version of the weapons policy. A. I don't think I have that. Q. I'm sorry, I've got it in my hand (handing)?
2 3 4 5 6 7 8 9	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there.  What you just read up until that point, was that, aside from whether it was in the written policy, is that the way that you trained, you and Sergeant Stuart, trained officers of the SWAT team before the execution of the search warrant in January of 2011?	2 3 4 5 6 7 8	please.  A. Which one is that one, sir?  Q. It's the old version of the weapons policy.  A. I don't think I have that.  Q. I'm sorry, I've got it in my hand (handing)?  A. Can I get the cover for this again?
2 3 4 5 6 7 8 9 10	confrontation with the subject, the officer will maintain cover position, and call for an additional officer to assist him/her."  Q. Let me stop you right there. What you just read up until that point, was that, aside from whether it was in the written policy, is that the way that you trained, you and Sergeant Stuart, trained officers of the SWAT team before the execution of the search warrant in January of 2011?  A. Yes, sir.	2 3 4 5 6 7 8 9	please.  A. Which one is that one, sir?  Q. It's the old version of the weapons policy.  A. I don't think I have that.  Q. I'm sorry, I've got it in my hand (handing)?  A. Can I get the cover for this again?  Q. (Handing).
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	Page 118		Page 120
1	Q. That has some of the new provisions	1	A. Yes.
2	that you recognize?	2	Q. By the way, there is no section in
3	A. That's what I thought the question	3	here called "Patrol Rifle," is that right? In
4	was.	4	Exhibit 4 there's no section called "Patrol
5	Q. No. Looking at Exhibit 4, it has an	5	Rifle," is there?
6	initial date of July 1, '03, and it has one	6	A. Yes, sir. Correct.
7	revision date of April 30, 2011.	7	Q. Now, looking at Page 6 of Exhibit 4,
8	A. Yes, sir.	8	"Weapon Handling," part D says "Officers"
9	Q. And just to be clear, Exhibit 5 has	9	VI., I'm sorry, Section Roman Numeral VI.(d) on
10	additional revision dates of September 21, 2011,	10	Page 6 states officers shall "Keep their finger
11	February 20, 2012, and October 4, 2012.	11	outside of the trigger guard until ready to
12	A. Yes, sir.	12	engage and fire on a target.
13	Q. And it has an effective date of	13	Do you see that?
14	January 7, 2011.	14	A. Yes, sir.
15	A. Yes, sir.	15	Q. And was that something that was a
16	Q. Is that right?	16	fundamental principle that was taught to all the
17	A. Yes, sir.	17	officers on the SWAT team?
18	Q. And that was just two days after this	18	A. Yes, sir.
19	shooting, wasn't it, the effective date?	19	Q. That predated the date of the shooting
20	January 7, 2011?	20	in January, 2011, did it not?
21	A. Doesn't	21	A. Yes, sir.
22	Q. I'm sorry, that's October, isn't it?	22	Q. And the next section states officers
23	A. Yes, sir.	23	shall "Point the weapon's muzzle in a safe
24	Q. I'm reading it upside down.	24	direction at all times."
	Page 119		
		1	Page 121
1		1	Page 121
1 2	So it's October, 2011?	1	That's also something that's
2	So it's October, 2011?  A. Yes, sir.	2	That's also something that's fundamental, and was taught to all SWAT team
2	So it's October, 2011?  A. Yes, sir.  Q. Now, going back to Exhibit 4, the	2	That's also something that's fundamental, and was taught to all SWAT team officers?
2 3 4	So it's October, 2011?  A. Yes, sir.  Q. Now, going back to Exhibit 4, the older version.	2 3 4	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes.
2 3 4 5	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir.	2 3 4 5	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right?
2 3 4 5 6	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version.  A. Yes, sir. Q. Do you know, looking through this, and	2 3 4 5 6	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right? THE VIDEOGRAPHER: This concludes
2 3 4 5 6 7	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full	2 3 4 5 6 7	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right?  THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013
2 3 4 5 6 7 8	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full pages, do you know what the change was that was	2 3 4 5 6 7 8	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right?  THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013 deposition of Robert F. Downing. Going off
2 3 4 5 6 7	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full pages, do you know what the change was that was made in April of 2011?	2 3 4 5 6 7 8 9	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right?  THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013 deposition of Robert F. Downing. Going off the record. The time is 3:14.
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2 3 4 5 6 7 8 9 10 11 12 13 14	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full pages, do you know what the change was that was made in April of 2011?  A. Again, going through, the change from 4 to 5, sir? Q. Okay. Is there anything let me put it this way.  Is there anything in Exhibit 4 that you recognize as a new policy, or does this	2 3 4 5 6 7 8 9 10 11 12	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right? THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013 deposition of Robert F. Downing. Going off the record. The time is 3:14. (Whereupon, a recess was taken.) THE VIDEOGRAPHER: Here marks the beginning of videotape number two in the August 1, 2013 deposition of Lieutenant Robert F. Downing. Back on the record. The time is 3:32 p.m.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full pages, do you know what the change was that was made in April of 2011? A. Again, going through, the change from 4 to 5, sir? Q. Okay. Is there anything let me put it this way. Is there anything in Exhibit 4 that you recognize as a new policy, or does this or does Exhibit 4 appear to be the way the policy was actually written, the written form of the policies A. Prior to Q at the time of the shooting? A. Yes. It would appear to be that way, yes, sir.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right? THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013 deposition of Robert F. Downing. Going off the record. The time is 3:14. (Whereupon, a recess was taken.) THE VIDEOGRAPHER: Here marks the beginning of videotape number two in the August 1, 2013 deposition of Lieutenant Robert F. Downing. Back on the record. The time is 3:32 p.m.  BY MR. TARRICONE: Q. Lieutenant Downing, do you recall what position you had your gun in with respect to the safety, whether it was hot, or the safety was engaged when you made entry into the building and into the kitchen? A. Safe.
2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	So it's October, 2011?  A. Yes, sir. Q. Now, going back to Exhibit 4, the older version. A. Yes, sir. Q. Do you know, looking through this, and it's a six or seven page, seven eight full pages, do you know what the change was that was made in April of 2011? A. Again, going through, the change from 4 to 5, sir? Q. Okay. Is there anything let me put it this way. Is there anything in Exhibit 4 that you recognize as a new policy, or does this or does Exhibit 4 appear to be the way the policy was actually written, the written form of the policies A. Prior to Q at the time of the shooting? A. Yes. It would appear to be that way, yes, sir.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	That's also something that's fundamental, and was taught to all SWAT team officers?  A. Yes. Q. Is that right?  THE VIDEOGRAPHER: This concludes videotape number one in the August 1, 2013 deposition of Robert F. Downing. Going off the record. The time is 3:14.  (Whereupon, a recess was taken.)  THE VIDEOGRAPHER: Here marks the beginning of videotape number two in the August 1, 2013 deposition of Lieutenant Robert F. Downing. Back on the record. The time is 3:32 p.m.  BY MR. TARRICONE: Q. Lieutenant Downing, do you recall what position you had your gun in with respect to the safety, whether it was hot, or the safety was engaged when you made entry into the building and into the kitchen?

	Page 122		Page 124
1	A. I don't recall. I don't believe so.	1	could sustain, should sustain.
2	Q. So you had it on the safe position	2	Q. So after this event, this incident
3	when you were in the common hallway after coming	3	A. Yes.
4	through the front door of the house?	4	Q when Mr. Stamps was shot, there was
5	A. Yes, sir.	5	a debriefing back at headquarters?
6	Q. And you had it in the safe position	6	A. I don't believe it was in that format,
7	when you entered the kitchen, is that right?	7	to be honest with you, sir. I do believe, like
8	A. Yes, sir.	8	I said, the debriefing was given by Chief Carl,
9	Q. And when you heard the gunshot, did	9	but he didn't really debrief the incident, he
10	you at that point take it off safe?	10	basically just gave an overview just because
11	A. No, sir.	11	people were visibly upset, so he basically just
12	Q. Did you ever discuss with any of the	12	tried to talk to people. I don't believe there
13	other SWAT team members what the position of	13	was ever a debriefing, per se, about the
14	their gun was with respect to the safety that	14	incident.
15	evening?	15	Q. Who was there for whatever form this
16	A. No, sir.	16	debriefing
17	Q. You had yours in the safe position	17	A. The team, just generally the team and
18	because that was the procedure as you taught it	18	the medics.
19	to SWAT team members, isn't that so?	19	Q. So was Duncan there?
20	A. Yes.	20	A. I don't believe so. I do believe that
21	Q. In the weeks and months after the	21	he was at the hospital.
22	shooting of Mr. Stamps on January 5th, 2011, in	22	Q. And it was the chief who addressed the
23	the SWAT team training sessions, was there a	23	group?
24	debriefing about what happened that evening?	24	A. Yes, sir.
	Page 123		Page 125
1	A. I don't recall, but it would be hard	1	Q. What about is it Lieutenant Davis?
2	to believe that there wasn't, to be honest with	2	A. Deputy Davis.
3	you. I do believe there was a debriefing after	3	Q Deputy Davis, did he address the
4	the incident like we normally do, sir.	4	group?
5	Q. Would that have been done the day of	5	A. I don't recall.
6	the incident?	6	Q. Are debriefings generally recorded
7	A. The evening of. As a matter of fact	7	A. No.
8	we did, because I remember Chief Carl addressing	8	Q by anybody?
9	the team.	9	In the training sessions following the
10	Q. What do you remember about the	10	shooting of Mr. Stamps, was there anything that
11	debriefing?	11	you did in training to address what happened and
12	A. I don't, I don't to be honest with	12	take steps to ensure that it doesn't happen
13	you, I don't really remember much. I don't think we really talked about the facts. I think	13 14	again? A. Yes.
15	the chief basically came in and just tried to	15	Q. Tell me what you did.
16	talk to the team.	16	A. Obviously we did more contact cover
17	Q. What is a typical debriefing after the	17	work, and more selector switch work.
18	SWAT team completes a mission?	18	Q. More what?
19	A. It's basically you just talk about the	19	A. Selector switch work.
20	mission's I can't think of the term right	20	Q. You're talking about switching the
21	now. I can't believe it.	21	safety on and off?
22	You just think about you just	22	A. Yes, sir.
	basically talk about the things that went well,	23	Q. When you say you "did more selector
23	basically talk about the things that went wen,	23	Q. When you say you did more selector

	D 106	Ι	Dame 100
	Page 126		Page 128
1	A. We were required to fire 3,000 rounds	1	one who told him?
2	per team member.	2	A. Yes, sir.
3	Q. Each team member had to fire 3,000	3	Q. Did you have to clear that with
4	rounds?	4	somebody?
5	A. Yes, sir.	5	A. Well, no one really told him. It was
6	Q. Were they required to put the safety	6	kind of a no one really told him, so I felt I
7	switch on and off	7	was obligated to tell him.
8	A. Yes.	8	Q. Who actually made the decision to
9	Q between each round?	9	terminate him?
10	A. Safety manipulation.	10	A. I used my chain of command, the chief
11	Q. How long would it take to do 3,000 rounds?	12	and Deputy Davis.  Q. So did you recommend to them that he
13	A. It was over the course of a year. It	13	be terminated?
14	wasn't just one.	14	A. The term "terminated" just removed
15	Q. Okay. Anything else?	15	from the team.
16	A. Well, the policy and procedure was	16	Q. Well, did you recommend to them that
17	obviously fixed, the wording changed.	17	he be removed from the SWAT team?
18	Q. In other words, the protocols that you	18	A. Yes, but it was yes.
19	were teaching were now put in writing and put in	19	Q. Was it a consensus?
20	that weapons policy?	20	A. Yes.
21	A. State that again?	21	Q. Everybody agreed?
22	Q. If I understand what you're saying,	22	A. Yes.
23	you're referring to the changes that were made	23	Q. And was that because he didn't follow
24	in the weapons policy, Exhibit 5?	24	procedure that evening?
	Page 127		Page 129
1	A. Yes.	1	A. Yes.
2	Q. And you had testified that you had	2	Q. And as a result, Mr. Stamps was shot
3	already been training the SWAT team members	3	in the face?
4	that, but now it was put in writing in the	4	A. Yes, sir.
5	document?	5	MR. TARRICONE: That's all I have.
6	A. Yes.	6	MR. DONOHUE: All right. We're
7	Q. Did you also in the aftermath of this	7	concluded.
8	shooting re-emphasize the contact and cover	8	MR. TARRICONE: Lieutenant Downing,
9	procedure?	9	thank you.
10	A. Yes, sir. I stated that, yes.	10	THE VIDEOGRAPHER: This concludes
11	Q. Anything else that you recall?	11	videotape number two in the August 1, 2013
12	A. I don't recall. I don't recall.	12	deposition of Lieutenant Robert F. Downing.
13	Q. Is Officer Duncan still a member of	13	Going off the record. The time is 3:39 p.m.
14	the SWAT team?	14 15	(Whereupon, the deposition was
15	A. No, sir.  O. When did he leave?	16	concluded.)
16		17	
17	A. The day after the incident.  Q. He never returned for another session?	18	2
1 10	A STATE OF THE STA	19	
18	A Hor SWA I framma no		
19	A. For SWAT training, no.  O. Was be terminated from the group?	20.00	
19 20	Q. Was he terminated from the group?	20	
19 20 21	<ul><li>Q. Was he terminated from the group?</li><li>A. He was removed.</li></ul>	20 21	
19 20	Q. Was he terminated from the group?	20	

## Lieutenant Robert F. Downing

	Page 130		Page 132
1	COMMONWEALTH OF MASSACHUSETTS )	1	
2	SUFFOLK, SS. )	_	ERRATA
3	I, MAUREEN O'CONNOR POLLARD, RPR, CLR,	2	
4	and Notary Public in and for the Commonwealth of	3	PAGE LINE CHANGE
5	Massachusetts, do certify that on the 1st day of	4	
6	August, 2013, at 12:51 o'clock, the person	5	REASON:
7	above-named was duly sworn to testify to the	6	
8	truth of their knowledge, and examined, and such	7	REASON:
9	examination reduced to typewriting under my	8	
10	direction, and is a true record of the testimony	9	REASON:
11	given by the witness. I further certify that I	10	
12	am neither attorney, related or employed by any	11	REASON:
13	of the parties to this action, and that I am not	12	
14	a relative or employee of any attorney employed	13	REASON:
15	by the parties hereto, or financially interested	14	
16	in the action.	15	REASON:
17	In witness whereof, I have hereunto	16	DE LCOV
18	set my hand this 8th day of August, 2013.	17 18	REASON:
19		19	DE A SONI
20		20	REASON:
21	MAUREEN O'CONNOR POLLARD, NOTARY PUBLIC		REASON:
22	Realtime Systems Administrator	22	
23	CSR #149108	23	REASON:
24		24	
	Page 131		Page 133
1	INSTRUCTIONS TO WITNESS	1	ACKNOWLEDGMENT OF DEPONENT
2		2	T do
3	Please read your deposition over	3	I,, do Hereby certify that I have read the foregoing
4	carefully and make any necessary corrections.	4	pages, and that the same is a correct
5	You should state the reason in the appropriate	-	transcription of the answers given by me to the
6	space on the errata sheet for any corrections	5	questions therein propounded, except for the corrections or changes in form or substance, if
7	that are made.	6	any, noted in the attached Errata Sheet.
8	After doing so, please sign the	7	
9	errata sheet and date it. It will be attached	8	LT. ROBERT F. DOWNING DATE
10	to your deposition.	9	LI. ROBERT F. DOWNING DATE
11	It is imperative that you return	10	
12	the original errata sheet to the deposing	11	7
13	attorney within thirty (30) days of receipt of	12 13	
14	the deposition transcript by you. If you fail	14	
15 16		15	Subscribed and sworn
	to do so, the deposition transcript may be	13	
	deemed to be accurate and may be used in court.		To before me this
17		16	To before me this day of , 20 .
17 18			To before me this
17 18 19		16 17 18	To before me this day of, 20  My commission expires:
17 18 19 20		16 17 18	To before me this day of , 20 .
17 18 19 20 21		16 17 18	To before me this day of, 20  My commission expires:
17 18 19 20		16 17 18 19 20	To before me this day of, 20  My commission expires:

34 (Pages 130 to 133)

## Lieutenant Robert F. Downing

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