

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 OFFICER PAUL DUNCAN

Wednesday, November 6th, 2013
10:01 a.m.

Held At:

Kreindler & Kreindler LLP
277 Dartmouth Street
Boston, Massachusetts

REPORTED BY:

Maureen O'Connor Pollard, RPR, CLR, CSR

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Also Present: Lucille Sharp, Paralegal
Christina Graziano, Law Clerk
Videographer: Christopher Coughlin

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1 PROCEEDINGS
2
3 THE VIDEOGRAPHER: We are now on the
4 record. My name is Chris Coughlin, I'm a
5 videographer for Golkow Technologies. Today's
6 date is November 6, 2013, and the time is 10:01
7 a.m.
8 This video deposition is being held in
9 Boston, Massachusetts in the matter of Eurie A.
10 Stamps, Jr. and Norma Bushfan Stamps,
11 Coadministrators of the Estate of Eurie A. Stamps,
12 Sr. as Plaintiffs, versus the Town of Framingham
13 and Paul K. Duncan, individually and in his
14 capacity as a police officer of the Framingham
15 Police Department, as Defendants, in the United
16 States District Court, District of
17 Massachusetts, Civil Action Number
18 1:12-cv-11908-FDS.
19 The deponent is Paul Duncan.
20 Will counsel please identify
21 yourselves for the record.
22 MR. MUSACCHIO: Yes. My name is
23 Joseph Musacchio, I represent the Plaintiff,
24 Eurie Stamps, Jr., a coadministrator of the

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1 estate of Eurie Stamps, Sr..
2 MR. FUGATE: Good morning. My name is
3 Anthony Fugate, I represent Norma Bushfan Stamps
4 in her capacity as coadminister for the estate
5 of her deceased husband, Eurie Stamps.
6 MR. DONOHUE: Tom Donohue, I represent
7 Officer Paul Duncan and the Town of Framingham.
8 THE VIDEOGRAPHER: Will all others
9 present please state your name for the record.
10 MS. GRAZIANO: Christina Graziano on
11 behalf of the Plaintiffs.
12 MS. SHARP: Lucille Sharp, paralegal
13 on behalf of the Plaintiff.
14 THE VIDEOGRAPHER: Thank you.
15 The court reporter is Maureen
16 O'Connor, and she will now swear in the witness.
17
18 OFFICER PAUL DUNCAN,
19 having been first identified duly sworn, was
20 examined and testified as follows:
21 DIRECT EXAMINATION
22 BY MR. MUSACCHIO:
23 Q. Officer Duncan, could you please state
24 your name just for the record.

Officer Paul Duncan

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1 A. Paul Duncan.
2 Q. And where do you presently reside?
3 A. Shrewsbury, Massachusetts.
4 Q. And what is your present employment?
5 A. Police officer.
6 Q. And is that with the Framingham Police
7 Department? Is that correct?
8 A. Yes.
9 Q. And you've been a police officer with
10 the Framingham Police Department since 2006, is
11 that correct?
12 A. Correct.
13 Q. And what is your present status or
14 position with the Framingham Police Department?
15 A. I'm assigned to the day shift patrol
16 motorcycle unit.
17 Q. Now, you received a BA from Curry
18 College, is that correct?
19 A. Yes.
20 Q. And that was in criminal justice?
21 A. Yes.
22 Q. During the course of your studies, did
23 you study any -- did you take any courses
24 relating to Constitutional rights and search and

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1 seizure law?
2 A. I can't recall what the academic
3 classes were at this time. I mean I probably
4 did, but I don't recall.
5 Q. Now, you were a member of the
6 Framingham Police Department SWAT team for a
7 period of time, is that correct?
8 A. Yes.
9 Q. What years were you a member of the
10 SWAT team?
11 A. I don't recall exactly what year I
12 joined the team. I couldn't -- I couldn't give
13 you exactly the year that I joined or what the
14 date was that I joined the team.
15 Q. And, but you're no longer a member of
16 the SWAT team.
17 A. Correct.
18 Q. Is that correct?
19 And you stopped being a member after
20 the shooting incident of Mr. Stamps, is that
21 correct?
22 A. Correct.
23 Q. And when you were a member of the SWAT
24 team, what was your position?

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1 A. I was just an operator.
2 Q. Now, you understand that you're here
3 today to discuss your involvement in the
4 shooting and killing of Eurie Stamps during the
5 execution of a search warrant at 26 Fountain
6 Street in Framingham on January 5th, 2011?
7 A. Yes.
8 Q. And you understand that Eurie Stamps,
9 Sr. was killed by a bullet fired from your
10 weapon?
11 A. Yes.
12 Q. Have you ever had your deposition
13 taken before?
14 A. No.
15 Q. Have you ever testified in court
16 before?
17 A. Yes.
18 Q. In what capacity?
19 A. As a police officer.
20 Q. Now, on January 6, 2011, you were
21 interviewed by the state police, Officer
22 Forster, as part of the district attorney's
23 homicide investigation into the killing of Eurie
24 Stamps, Sr., is that correct?

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1 A. Yes.
2 Q. And you gave -- and you described in
3 there what you recall happened that evening, is
4 that right?
5 A. Yes.
6 Q. And that interview was not under oath,
7 is that correct?
8 A. I believe it was not, correct.
9 Q. It was not.
10 And you've never testified under oath
11 relating to the events that occurred on
12 January 5th, 2011 that led to the death of Eurie
13 Stamps, is that correct?
14 A. Correct.
15 Q. But you understand you're under oath
16 today, is that right?
17 A. Yes, I do.
18 Q. And you understand what it means to
19 raise your right hand and swear to tell the
20 truth?
21 A. Yes, I do.
22 Q. And you know the consequences of
23 giving testimony under oath, is that correct?
24 A. Yes, I do.

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1 Q. And you understand that when you give
2 an oath you're swearing to tell the truth under
3 the pains and penalties of perjury, is that
4 correct?
5 A. Yes, I do.
6 Q. And you understand that you're giving
7 testimony in a civil rights lawsuit brought by
8 the family of Eurie Stamps, Sr. that is pending
9 in the United States District Court for the
10 District of Massachusetts, is that right?
11 A. Yes.
12 Q. And your testimony is being recorded
13 today, and it's being videotaped today. You
14 understand that, right?
15 A. Yes.
16 Q. And you understand that the reason
17 it's being videotaped and it's being recorded
18 with a stenographer is that this testimony that
19 you give today may be used in any trial that
20 occurs in Federal Court, is that correct?
21 A. That's my understanding, yes.
22 Q. And you understand that your testimony
23 here today has the same effect as if you were
24 sitting in Federal Court before a Federal

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1 District Court judge and a jury, is that
2 correct?
3 A. Yes.
4 Q. In preparation for your deposition
5 today, did you review your transcript of the
6 interview you gave to the state police back on
7 January 6th, 2011?
8 A. Yes.
9 Q. And did you review any other materials
10 other than your interview?
11 A. I briefly looked over some
12 photographs, and I briefly looked over a
13 firearms policy.
14 Q. And what firearms policy did you look
15 over?
16 A. The Framingham Police Department
17 firearms policy.
18 Q. And is that the policy that has
19 reference to procedures such as contact/cover?
20 A. There are two policies that I briefly
21 looked over the other day.
22 Q. And one that existed at the time of
23 Eurie Stamps' death did not have contact/cover
24 in it, is that correct? Is your understanding?

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1 A. I believe that is correct.
2 Q. And the other policy that was amended
3 after the death of Eurie Stamps had reference to
4 contact/cover, is that correct?
5 A. I believe it did.
6 Q. Okay. Have you reviewed the
7 transcript of Officer Riley that is -- have you
8 reviewed the transcript of the deposition of
9 Officer Riley that was taken in this case?
10 A. It was given to me, and I read the
11 first few lines of it, and then I did not read
12 any further.
13 Q. Okay. So when you say literally, I
14 mean you didn't get past the first page then?
15 A. I don't believe I did, no.
16 Q. Have you discussed your testimony with
17 Officer Riley?
18 A. No.
19 Q. Has he discussed his testimony that he
20 gave in this case to you?
21 A. No.
22 Q. Have you reviewed the transcript of
23 Officer Sebastian that was taken in this case?
24 A. No.

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1 Q. Have you discussed your testimony with
2 Officer Sebastian?
3 A. No.
4 Q. Has Officer Sebastian discussed his
5 deposition testimony with you at any time?
6 A. No.
7 Q. Have you reviewed the deposition
8 transcript of Lieutenant Downing that was taken
9 in this case?
10 A. No.
11 Q. Have you had any discussion with
12 Lieutenant Downing about your deposition here
13 today?
14 A. No.
15 Q. Have you had any -- has Lieutenant
16 Downing ever discussed with you the substance of
17 his testimony that he gave in this case?
18 A. No.
19 Q. Have you taken -- have you reviewed
20 the transcript of the deposition of Officer
21 Sheehan in this case?
22 A. No.
23 Q. Has Officer Sheehan discussed with you
24 his deposition?

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1 A. No.
2 Q. Have you discussed with him your
3 deposition here today?
4 A. No.
5 Q. Have you take -- have you reviewed the
6 transcript of Officer O'Toole that was taken in
7 this case?
8 A. No.
9 Q. Has Officer O'Toole discussed his
10 deposition testimony with you at any time?
11 A. No, he hasn't.
12 Q. Have you discussed your deposition
13 here today with Officer O'Toole at any time?
14 A. No.
15 Q. Have you reviewed the deposition of
16 Deputy Chief Craig Davis that was taken in this
17 case?
18 A. No.
19 Q. Have you talked to Deputy Chief Craig
20 Davis at any time about your deposition and the
21 substance of your deposition here today?
22 A. No.
23 Q. Has he talked to you about his
24 deposition testimony with you prior to today?

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1 A. No.
2 Q. Have you reviewed the deposition
3 transcript of Sergeant Stuart that was taken in
4 this case?
5 A. No.
6 Q. Have you had any discussions with
7 Sergeant Stuart about your deposition?
8 A. No.
9 Q. Has Sergeant Stuart discussed his
10 deposition and the substance of his deposition
11 with you today?
12 A. No.
13 Q. Okay. At any time prior to today?
14 A. No.
15 Q. What about Officer Langmyre? This is
16 the last one. Officer Langmyre, have you
17 discussed your deposition with Officer Langmyre?
18 A. No.
19 Q. Has he ever discussed his deposition
20 that was taken in this case with you?
21 A. No.
22 Q. So have you had any other -- have you
23 had any discussions with any law enforcement
24 personnel employed by the Framingham Police

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1 Department regarding your deposition here today?
2 A. No.
3 Q. Have you discussed your deposition
4 with any administrative personnel employed by
5 the Framingham Police Department or the Town of
6 Framingham, other than counsel?
7 A. No.
8 Q. Now, during the evening of January
9 4th, 2011, you reported to the Framingham Police
10 Department in response to a page for all SWAT
11 members to report to the station, is that
12 correct?
13 A. Yes.
14 Q. And you arrived at the station at
15 approximately 10:15 in the evening on
16 January 4th, is that right?
17 A. I believe so.
18 Q. At some time between 10:15 p.m. and
19 midnight, you learned that the SWAT team was
20 being employed for the execution of a search
21 warrant at 26 Fountain Street, is that right?
22 A. Yes.
23 Q. Now, during the planning meeting that
24 was conducted prior to the execution of the

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1 search warrant, information was provided to you
2 and other members of the SWAT team regarding the
3 layout of the first floor apartment where the
4 warrant was going to be executed, is that right?
5 A. Yes.
6 Q. You also entered the apartment, the
7 first floor apartment, at 26 Fountain Street on
8 January 5th to actually execute the warrant, is
9 that right?
10 A. Yes.
11 Q. And you made certain observations of
12 the inside of that apartment when you went in
13 there, is that correct?
14 A. Yes.
15 MR. MUSACCHIO: Let's go off the
16 record for a second.
17 THE VIDEOGRAPHER: Going off the
18 record. The time is 10:13.
19 (Off the record discussion.)
20 THE VIDEOGRAPHER: Back on the record.
21 The time is 10:13.
22 BY MR. MUSACCHIO:
23 Q. Mr. Duncan, I'm going to show you what
24 is going to be marked as Exhibit Number 47 in

1 this case, a floor plan that was prepared by an
 2 engineer that the Plaintiffs retained to show
 3 the inside of the first floor apartment and the
 4 various dimensions. I just want you to look at
 5 that, if you could, and orientate yourself to
 6 it. I want to point out that this is the front
 7 entrance (indicating).
 8 A. Okay.
 9 Q. This is labeled the living room --
 10 A. Okay.
 11 Q. -- but I believe it's been determined
 12 that was more of a makeshift bedroom. So I want
 13 you to look at it.
 14 I want to ask you; is that a true and
 15 accurate depiction of what you recall the layout
 16 of the first floor apartment was on January 5th,
 17 2011?
 18 A. It appears to be, yes.
 19 Q. Now, during the planning meeting,
 20 information was provided regarding individuals
 21 that you might encounter when entering 26
 22 Fountain Street, is that right?
 23 A. Yes.
 24 Q. And you knew from the planning meeting

1 that drug distribution activities were taking
 2 place, or alleged to have been taking place at
 3 the first floor apartment at 26 Fountain Street,
 4 is that right?
 5 A. Yes.
 6 Q. And you were given information about
 7 the suspects, the individuals, who the police
 8 believed were distributing drugs from 26
 9 Fountain Street, is that correct?
 10 A. Yes.
 11 Q. And you received information during
 12 the planning meeting as to the [REDACTED]
 13 [REDACTED] three individuals, is that
 14 correct?
 15 A. Yes.
 16 Q. And you learned that they had a
 17 [REDACTED] is that right?
 18 A. Yes.
 19 Q. [REDACTED]
 20 [REDACTED]
 21 [REDACTED] Is that what you
 22 recall?
 23 A. I recall [REDACTED]
 24 [REDACTED]

1 [REDACTED] is what I
 2 recall.
 3 Q. Okay. And you actually were -- were
 4 you shown [REDACTED]? Do you
 5 remember seeing [REDACTED]?
 6 A. No.
 7 Q. Okay. But you knew that these were
 8 [REDACTED], is that correct?
 9 A. From what they were saying during the
 10 briefing, yes.
 11 Q. And do you recall the names of
 12 those -- of the suspects who were alleged to
 13 have been distributing drugs and [REDACTED]
 14 [REDACTED]?
 15 A. I do not.
 16 Q. Okay. I'm going to represent to you
 17 that there were -- it is Joseph Bushfan, Dwayne
 18 Barrett, and Deandre Nwaford. Do those names
 19 ring a bell with you at all today?
 20 A. No.
 21 Q. But in any event, you knew that the
 22 people who were distributing -- alleged to be
 23 distributing drugs from 26 Fountain Street had
 24 [REDACTED], is that

1 correct?
 2 A. Yes.
 3 Q. And [REDACTED]
 4 A. Yes.
 5 Q. Now, you also were given information
 6 that other individuals resided at 26 Fountain
 7 Street and were likely to be present during the
 8 execution of the search warrant, is that
 9 correct?
 10 A. Yes.
 11 Q. You learned about a black male who was
 12 in his sixties, is that correct?
 13 A. I believe so, yes.
 14 Q. Okay. I'm going to show you what's
 15 been previously marked as Exhibit Number 12 in
 16 this case (handing). And I'm going to represent
 17 to you that this has been identified by other
 18 people who have had their depositions taken that
 19 this is the After Action Report that was
 20 prepared by Deputy Chief Craig Davis reporting
 21 the events of that evening, including the
 22 planning meeting.
 23 And I want you to turn, if you could,
 24 to Page 2 of the Action After Report. And do

1 you see where it says on top, [REDACTED]
 2 [REDACTED]
 3 [REDACTED] and it lists
 4 Mr. Barrett, Mr. Nwaford, and Mr. Bushfan, is
 5 that correct?
 6 A. Yes.
 7 Q. And it shows [REDACTED]
 8 is that correct?
 9 A. It shows -- it shows -- it doesn't
 10 show [REDACTED] I see a brief
 11 synopsis of [REDACTED]
 12 [REDACTED] but -- yes.
 13 Q. Correct, correct.
 14 And you also see it says "Additional
 15 to the above subjects, these persons were
 16 believed to be within the premises," and it
 17 lists "Eurie Stamps, date of birth [REDACTED]."
 18 Do you see that?
 19 A. I do.
 20 Q. Okay. And you have a specific memory
 21 of being told that Mr. Stamps would likely be
 22 present in the apartment that evening, is that
 23 right?
 24 A. I have a memory of them mentioning an

1 older male in the apartment. I don't recall
 2 them saying any names. I just remember them
 3 saying that someone was there, yes.
 4 Q. And do you have a memory of a
 5 reference to an aunt or an uncle that might have
 6 been in the apartment as well?
 7 A. I do not know. Right at this time I
 8 don't know.
 9 Q. But you do have a specific memory of
 10 them mentioning an elderly black man,
 11 approximately 68 years old, is that correct?
 12 A. Yes.
 13 Q. Now, you will see here where it says
 14 "Eurie Stamps," and it gives his date of birth,
 15 it says [REDACTED]
 16 Do you have a recollection of being
 17 told at the planning meeting that -- what Eurie
 18 Stamps' [REDACTED]?
 19 A. I don't recall, no.
 20 Q. Okay. Would you have any reason to
 21 doubt what's written here in terms of that
 22 information being accurate?
 23 A. I would have no reason to doubt it. I
 24 don't know anything specific about it really.

1 Q. But do you have a specific
 2 recollection of any discussion at the planning
 3 meeting of Mr. Stamps' [REDACTED] if
 4 any?
 5 A. I don't recollect.
 6 Q. But you knew he was there? You also
 7 knew that he was not one of the suspects alleged
 8 to have -- being involved in any criminal
 9 activity, is that right?
 10 A. I just remember them saying that there
 11 was an elderly black male that was probably in
 12 the apartment also. I don't recall anything
 13 else about that meeting.
 14 Q. All right. During the planning
 15 meeting, were you or any other officer provided
 16 with any information that Mr. Stamps was armed
 17 or dangerous?
 18 A. Not specifically, no.
 19 Q. Were you provided with any information
 20 that Mr. Stamps was involved in the selling of
 21 drugs?
 22 A. No.
 23 Q. Were you provided any information that
 24 he was involved in any criminal activity at all?

1 A. No.
 2 Q. Did you -- were you presented with any
 3 information at the planning meeting that
 4 Mr. Stamps posed a threat to the safety of the
 5 police?
 6 A. Specifically Mr. Stamps?
 7 Q. Right.
 8 A. No.
 9 Q. Now, you would agree with me that it
 10 was important for you and the other SWAT team
 11 members to know who might be in the house and
 12 posed a danger to police because of their past
 13 criminal background, is that correct?
 14 A. Yes.
 15 Q. And it was important because the
 16 police needed to protect themselves against any
 17 injury, or even death, during the execution of
 18 the search warrant, is that correct?
 19 A. Yes.
 20 Q. You would also agree with me that it
 21 was important for you and the other members of
 22 the SWAT team to know about other individuals
 23 who might be in the house that were not suspects
 24 of any crime and had no history of any criminal

1 activity or violent behavior?
 2 MR. DONOHUE: Objection.
 3 A. I would agree that it's important for
 4 us to know everybody that's in the house, yes.
 5 BY MR. MUSACCHIO:
 6 Q. Correct.
 7 And that includes people who are
 8 suspects, who are known to be dangerous, and
 9 people who might be in the house who are not
 10 suspects and the police don't have any reason to
 11 be -- to believe that they're dangerous?
 12 A. I would agree with that. To some
 13 degree I would agree with that.
 14 Q. Okay.
 15 A. My --
 16 Q. Well --
 17 A. My -- in my opinion, that anyone in a
 18 house during a search warrant when the police
 19 are involved, anything could happen. So
 20 everyone potentially is dangerous at that time.
 21 Q. Correct.
 22 But it was important for you to know
 23 going in what the police knew about the suspects
 24 [REDACTED] correct?

1 A. Of course.
 2 Q. And it was important for the police to
 3 know about who might otherwise be in the house
 4 who were not suspects?
 5 A. Absolutely.
 6 Q. And you want to know those things
 7 because when you execute a search warrant there
 8 may be children there, correct?
 9 A. There could be, sure.
 10 Q. Young children?
 11 A. Depending on where you're going and
 12 the circumstances.
 13 Q. Sure.
 14 And there could be parents of criminal
 15 suspects, violent people who may be in the
 16 house, right?
 17 A. Depending on where you were going, of
 18 course, there could be.
 19 Q. Yes.
 20 And there could be elderly people in
 21 the house as well, is that correct, who have no
 22 connection to the criminal activity that's being
 23 investigated, right?
 24 A. Sure.

1 Q. Now, as you stated, the execution of a
 2 search warrant involving drug distribution and
 3 [REDACTED] is
 4 an extremely dangerous event, is that right?
 5 You would agree with that?
 6 A. Yes.
 7 Q. And there are -- and as we've been
 8 discussing, there are -- there's often times,
 9 and in this particular case at 26 Fountain
 10 Street, [REDACTED]
 11 [REDACTED]
 12 and there were people in the house that when the
 13 police entered didn't have any reason to believe
 14 that they were criminals or dangerous, is that
 15 correct?
 16 MR. DONOHUE: Objection.
 17 A. That's a -- that's a difficult
 18 question to answer. We discussed that, and that
 19 is -- I don't know what's going through people's
 20 minds when they're in that house. I have to
 21 assume that everyone in that house is dangerous
 22 when we provide -- and move forward. I can't --
 23 I can't make the assumption that someone isn't
 24 dangerous and have something happen to me.

1 BY MR. MUSACCHIO:
 2 Q. I understand that.
 3 But before going into the house,
 4 before you make a -- I understand that when you
 5 execute a warrant that there's a potential that
 6 anybody in the house could be dangerous. I
 7 understand that.
 8 But I'm just asking you; during the
 9 planning stages, it was important for you to
 10 know and the other SWAT members to know who was
 11 dangerous, who had a violent criminal
 12 background, and who didn't?
 13 A. Yes.
 14 Q. Right.
 15 You wanted to know that?
 16 A. Of course.
 17 Q. You wanted to know who was going to be
 18 in the house that was a suspect of distributing
 19 drugs, and who in the house was not a suspect of
 20 being involved in drugs?
 21 A. Sure.
 22 Q. Those were important things to know
 23 before you even step in there?
 24 A. Yes.

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1 Q. Right.
2 And the reason you want to know that
3 is that you want to -- you want to protect
4 yourselves and the other police officers from
5 any danger that you might encounter, right, when
6 you enter?
7 A. Yes.
8 Q. You also want to protect the people
9 who are in the house who are not suspects, and
10 not dangerous, from this event of entering a
11 house, you know, in the wee hours of the
12 morning, to protect their safety as well, is
13 that not correct?
14 A. Yes.
15 Q. And you were trained on how to protect
16 these people who happened to be in the house who
17 are not suspects and the police have no reason
18 to believe that they're dangerous, other than
19 the fact that they're there?
20 A. Sure.
21 Q. You want -- the police want to protect
22 those people?
23 A. Of course they do.
24 Q. Yes.

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1 And you were trained how to protect
2 those people, is that correct?
3 A. Yes.
4 Q. And you were trained on how to
5 confront and deal with people who are not
6 suspects of the criminal behavior and are not
7 known to be dangerous? You wanted -- you were
8 trained in how to deal and confront them, is
9 that correct?
10 A. Yes.
11 Q. Right.
12 And you learned things such as the
13 contact/cover procedure, is that correct?
14 A. Yes.
15 Q. And one of the purposes of the
16 contact/cover procedure is to protect the police
17 officer from harm; it's also designed to protect
18 the people who are in the house, is that
19 correct, who may be detained?
20 A. The people that are being detained,
21 yes.
22 Q. Yes.
23 So it has a two-fold purpose; protect
24 the police, and protect the people who are in

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1 the house who are not criminal suspects and are
2 not known to be dangerous, correct?
3 A. Yes.
4 Q. And you're also trained on -- now,
5 your rifle was an M-4 rifle, is that right?
6 A. Colt M-4, yes.
7 Q. Colt M-4.
8 And that's a semi-automatic rifle, is
9 that right? It's has an automatic and a
10 semi-automatic setting?
11 A. That particular rifle, to the best of
12 my recollection at this time, yes, it had a
13 semi-automatic position and an automatic
14 position.
15 Q. Okay. And if you were to describe
16 this weapon to a lay person, how would you
17 describe it? Would you describe it like a
18 machine gun?
19 A. To describe it to a lay person?
20 Q. Yes.
21 A. Yes. I mean you could describe it
22 that way because tech -- I don't know what
23 technically a machine gun is, but I mean if I
24 were a lay person I would assume that any gun

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1 that you can pull the trigger on and it just
2 rapidly fires and fires and fires would be
3 considered a machine gun.
4 Q. And that's what this gun does?
5 A. It has the option of doing that. It
6 didn't always do that, but there was an option
7 for the weapon system to do it.
8 Q. And you were trained in the use of
9 that rifle, obviously, correct?
10 A. Yes.
11 Q. And your training -- and you received
12 training as to when to have the weapon on safe
13 and off safe, is that right?
14 A. Yes.
15 Q. And when we say -- there was a setting
16 on the weapon, correct? There's a safety, is
17 that correct? And you can switch it on safe,
18 which means the gun can't fire, right?
19 A. Correct.
20 Q. And if you take it off safe, the gun's
21 capable of firing?
22 A. That is correct.
23 Q. And you were trained regarding the
24 trigger guard, is that correct?

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1 A. Could you be more specific?
2 Q. You were trained as to what the
3 purpose of the trigger guard is, is that right?
4 A. The trigger guard, yes.
5 Q. Yes.
6 And the purpose of the trigger guard
7 is to keep your finger away from the trigger
8 during times when you're not ready to fire?
9 A. Correct.
10 Q. And you were trained that in order to
11 fire the weapon you have to depress the trigger,
12 is that correct?
13 A. That is true.
14 Q. And the gun cannot fire unless the
15 trigger is depressed, is that right?
16 A. The weapon shouldn't fire unless it's
17 depressed. I can't tell you that it would never
18 fire if it wasn't depressed.
19 Q. Assuming a properly functioning M-4
20 rifle, it does not fire unless the trigger is
21 depressed, is that correct?
22 A. That is my understanding, yes.
23 Q. Now, you're also trained to keep the
24 gun on safe when -- unless you were actively

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1 clearing a room or you perceived a threat, is
2 that right?
3 A. The weapon, yes. The weapon was on
4 safe until the mission was a go.
5 Q. Right.
6 What I'm asking you specifically; were
7 you trained to keep the gun on safe when
8 actively -- unless you were actively clearing a
9 room or you perceived a threat?
10 A. Yes.
11 Q. Okay. And all of these things we've
12 been talking about, contact/cover rule -- and
13 we'll get into more detail later --
14 contact/cover rule, when to keep your weapon off
15 safe or on safe, these are all designed to
16 protect people who may be present during the
17 execution of a search warrant who don't pose a
18 danger to the police and are not suspect of any
19 crime, is that correct?
20 A. They're meant to protect the people
21 and the police, yes.
22 Q. Yes.
23 And this is why it was important for
24 all officers to know that Eurie Stamps was in

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1 the apartment that evening and who the suspects
2 were, who the dangerous people were, and who
3 were the people there who in all likelihood were
4 not dangerous or not involved in criminal
5 activity? That was important for you to know?
6 MR. DONOHUE: Objection.
7 A. It's important to know who may have
8 been involved in the criminal activity.
9 BY MR. MUSACCHIO:
10 Q. Okay.
11 A. But they mention it because everyone
12 in a house is dangerous during a search warrant.
13 Q. Everyone. But going in as a police
14 officer, it was important for you to know
15 beforehand what information the police had about
16 who was dangerous, and what information the
17 police had about other people in the house who
18 may not be dangerous?
19 MR. DONOHUE: Objection.
20 A. It's important for us to know who was
21 in the house, and who are the targets of the
22 search warrant, and other people that are also
23 in the house, yes.
24 BY MR. MUSACCHIO:

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1 Q. Now, when the SWAT team entered 26
2 Fountain Street, you and the other officers had
3 a right to detain all the people in the home, is
4 that right?
5 A. Yes.
6 Q. This is true even if the people that
7 are being detained are not believed to be
8 involved in illegal activity or not believed to
9 be dangerous before you went into the house? In
10 other words, you can detain everybody in the
11 house, suspects and non-suspects, is that right?
12 A. Yes.
13 Q. Now, detaining people protects the
14 police and possibly innocent people who might be
15 in a home at the time of the execution of the
16 search warrant, designed to protect you and the
17 people being detained, is that right?
18 A. Yes.
19 Q. Now, are you familiar with the concept
20 of a seizure of a person?
21 A. Yes.
22 Q. Would you agree with me that a seizure
23 occurs when a person is no longer free to move?
24 A. Yes.

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1 Q. In the context of the execution of the
2 search warrant at 26 Fountain Street, none of
3 the occupants of that apartment were free to
4 move, is that correct?
5 A. Yes.
6 Q. They're not free to move about,
7 they're not free to have their hands moving
8 about, any of those things, right?
9 A. I would say that that's accurate.
10 Q. They had to be still, in place?
11 A. Yes.
12 Q. And that's perfectly legal and
13 violates nobody's rights, as far as you're
14 concerned, right?
15 A. Not under those circumstances.
16 Q. Correct. I'm not disputing that.
17 A. Yes.
18 Q. Now, police officers exhibit some show
19 of force when they're trying to restrict
20 movement or seize a person, is that correct?
21 They can exhibit some degree of force to do
22 that, right?
23 A. Depending on the circumstances,
24 certainly.

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1 Q. Right. An officer -- probably the
2 mildest way to do it, an officer can give a
3 verbal command to freeze or not to move, is that
4 right?
5 A. Yes.
6 Q. And by giving that verbal command not
7 to move or to freeze, that's a show of force,
8 right?
9 A. Sure.
10 Q. An officer can point his weapon at a
11 person. That's a show of force, too, right?
12 A. Yes.
13 Q. He can physically touch the person or
14 restrain their movement, and that's another
15 level of force, is that correct?
16 A. Yes.
17 Q. He can handcuff them. That's a show
18 of force, is that correct?
19 A. Yes.
20 Q. Now, at this time what I'd like to do
21 is go through, using the floor plan that you
22 have in front of you -- can we mark this as
23 Exhibit? What is it, 47?
24 THE STENOGRAPHER: It's actually 46.

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1 MR. MUSACCHIO: 46.
2 (Whereupon, Duncan Exhibit Number 46,
3 Floor plan of 26 Fountain Street,
4 Framingham, was marked for
5 identification.)
6 BY MR. MUSACCHIO:
7 Q. Now, I just want to go through what
8 you did that evening that led you ultimately
9 into the kitchen. Okay?
10 A. Okay.
11 Q. This is the front entry of the house
12 (indicating), is that correct?
13 A. Yes.
14 Q. And is that where you made entry into
15 the house, along with the other officers?
16 A. Yes.
17 Q. And when you made entry into the
18 house, you went into an area which we're calling
19 the front entry, but just for brevity we'll call
20 it a hallway, a common hallway. Is that what
21 you remember this area to be is a common hallway
22 (indicating)?
23 A. Yes.
24 Q. And when you made entry into the

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1 common hallway with the other officers to
2 execute the search warrant, what setting was
3 your gun on?
4 A. Safe.
5 Q. So when you're in the hallway, the gun
6 was on safe?
7 A. Yes.
8 Q. Okay. And as I understand it, your
9 mission was to breach this door on the right
10 that leads into the living room, which was
11 actually a makeshift bedroom, is that right?
12 A. Correct.
13 Q. And with you during -- with you making
14 entry into the makeshift bedroom was Officer
15 Sebastian and Sergeant Stuart. Is that your
16 recollection?
17 A. I recall Sergeant Stuart. And I
18 recall Officer Sebastian was going to be with
19 me, but I never saw him there. You don't see
20 who's behind you, and I don't know if it was
21 Officer Sebastian.
22 Q. So --
23 A. During the briefing I recall it was
24 supposed to be Officer Sebastian.

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1 Q. So there was one team that was going
2 to make entry into the right door off of the
3 hallway into the makeshift bedroom, is that
4 correct?
5 A. Correct.
6 Q. And as you understand it, that was
7 yourself, Sergeant Stuart, and Officer
8 Sebastian, is that correct?
9 A. Correct.
10 Q. And you understood from the planning
11 that there was a second team that was going to
12 enter into the common hallway and make their way
13 to the door at the end of the hallway that led
14 to the kitchen, is that correct?
15 A. Yes.
16 Q. And that was Officer O'Toole and
17 Officer Sheehan?
18 A. I believe it was, yes.
19 Q. All right. And do you know if
20 Lieutenant Downing was a part of that group as
21 well?
22 A. I believe during the briefing he was
23 supposed to be. I don't know if he ever made it
24 there.

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1 Q. Now, when you made entry into the
2 hallway, you were the breacher, is that correct?
3 A. That is correct.
4 Q. And you were carrying a battering ram?
5 Is that a proper term to describe it?
6 A. I would describe it as that, yes.
7 Q. So you had the battering -- that takes
8 two hands to hold?
9 A. Two hands to swing. You can hold it
10 with one hand, but if you're going to swing at a
11 door, you would need two hands, yes.
12 Q. When you had the battering ram in your
13 hand or hands before making entry into the right
14 door into the makeshift bedroom, where was
15 your gun? Where was your M-4 rifle?
16 A. It was on a sling and pushed over to
17 my left side.
18 Q. And what setting was it on?
19 A. Safe.
20 Q. Okay. Stuart -- so you were the first
21 in line, right, going into -- as you were going
22 to make entry into the makeshift bedroom, you
23 were the first in line with the battering ram?
24 A. Yes, yes. There was no real line per

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1 se, but yes.
2 Q. Or stack?
3 A. Stack.
4 But, yes, I was posted right here on
5 that part of the door, yes (indicating).
6 Q. Okay. And it was your understanding
7 that you would breach the door, and behind you
8 when you were breaching it would be Sebastian
9 and Sergeant Stuart, is that correct?
10 A. Behind me would be Officer Sebastian,
11 and Sergeant Stuart would be to the opposite
12 side here (indicating).
13 Q. Now, Sergeant Stuart knocked on the
14 right door into the makeshift bedroom by
15 pounding on the door, is that right?
16 A. Yes.
17 Q. And he announced "police, search
18 warrant," or something to that effect?
19 A. Correct.
20 Q. And nobody answered the door?
21 A. No.
22 Q. And then you heard an order to
23 execute, is that right?
24 A. Yes.

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1 Q. And when you got the order to execute,
2 that's when you used a battering ram to break
3 through the door, is that correct?
4 A. Yes.
5 Q. Now, after you broke through the door,
6 who was the first one to make entry into the
7 makeshift bedroom?
8 A. I was.
9 Q. And once you got inside the bedroom,
10 what did you do with the battering ram?
11 A. I just threw it down on the ground.
12 Q. And what did you do with your M-4
13 rifle?
14 A. I reached over and held it in my hand.
15 Q. And did you -- what was the setting on
16 when you did that?
17 A. Safe.
18 Q. And you made -- I want you to show me
19 what you recall doing when you entered the
20 makeshift bedroom. I want to know what your
21 movements were in that bedroom.
22 A. I can't recall if I went left or
23 right. I remember making entrance into there,
24 makeshift bedroom which is designated as the

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1 living room here (indicating). I can't recall
2 if I went to the left or to the right, but I do
3 remember dropping the ram and then scanning the
4 room. I can't recall exactly which side I went.
5 I just don't remember right now.
6 Q. So when you were scanning the room,
7 describe to me what that is.
8 A. Once you make entrance into the room,
9 depending on how many operators you have in your
10 stack, which is a line of officers, I went in
11 either left or right, I can't remember. It
12 would be the job of the other SWAT operator to
13 go the opposite direction, and you make sure
14 that there are nothing in the deep corners, any
15 threats in the deep corners of the room.
16 And then you almost cut the pie and
17 making sure along this way that it's safe for us
18 to be in there. And the other person would do
19 the same in the other direction.
20 Q. So you recall going into the room,
21 scanning the room, and walking around to make
22 sure that there's no other people in that room,
23 is that correct?
24 A. Yes.

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1 Q. But you don't recall specifically what
2 your movements were, where you first came in,
3 what side you went to, what corner you went to?
4 A. No.
5 Q. But you remember scanning the room?
6 A. Yes.
7 Q. And when you were scanning the room,
8 what's the position of your rifle?
9 A. In the low ready.
10 Q. And describe what a low ready is.
11 A. A low ready would -- you'd have the
12 rifle with both hands. It would be pointed
13 semi-toward the ground to see -- you know, so
14 that your line of sight is visible and you can
15 see any threats in the room so that you're not
16 focused on the weapon being up. So you have to
17 keep it low, keep your eyes around, and scan
18 just to make sure that -- to see in the deep
19 corners or any parts of the room if there are
20 any threats.
21 Q. So you were, quote, clearing the room,
22 is that right?
23 A. Yes.
24 Q. Okay. And when you were clearing the

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1 room, checking out the corners, making sure no
2 one was in there, your gun's at low ready, what
3 was the setting on on your gun?
4 A. It was on semi-automatic.
5 Q. Okay. So at some point you removed
6 your gun from on safe to off safe, right?
7 A. Correct.
8 Q. When did you do that?
9 A. When I dropped the ram, I transitioned
10 from the ram to my long rifle. Once I
11 transitioned to my long rifle and began to scan
12 the room, I placed it on semi-automatic.
13 Q. Now, once -- you didn't find any
14 threats in the makeshift bedroom, is that right?
15 A. I don't believe so, no.
16 Q. There were no people in there?
17 A. No, I don't believe so.
18 Q. And then at that point the next part
19 of your assignment was to make entry into the
20 den, is that right, which is referred to here?
21 A. Yes.
22 Q. And do you recall that there was a
23 black curtain covering this entranceway from the
24 makeshift bedroom into the den?

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1 A. No.
2 Q. You don't.
3 So what do you -- what do you call --
4 what do you recall existing, if anything, that
5 was blocking this entranceway from the makeshift
6 bedroom into the den?
7 A. I don't recall anything blocking that
8 particular doorway.
9 Q. So as far as you -- as far as what
10 your recollection is, that it was open?
11 A. As far as I can recall, this
12 particular doorway here was open, yes.
13 Q. And you went -- and then the next
14 thing you did after you cleared, scanned,
15 determined no threats in the makeshift bedroom,
16 you went into the den, is that correct?
17 A. Yes.
18 Q. Do you know if you were the first
19 officer in the den?
20 A. I don't remember.
21 Q. But did Officer Stuart follow you into
22 the den?
23 A. There was somebody behind me. I don't
24 know who it was.

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1 Q. And when you entered the den, was your
2 gun on semi-automatic?
3 A. Yes.
4 Q. And what did you do in the den?
5 A. I cleared the den.
6 Q. So you did essentially the same thing;
7 you scanned the den?
8 A. Yes.
9 Q. With your gun at low ready?
10 A. Yes.
11 Q. With the semi-automatic on?
12 A. Yes.
13 Q. And you checked corners and behind
14 furniture and things to make sure whether
15 anybody was in there, is that correct?
16 A. Yes.
17 Q. Do you recall specifically your
18 movements in the den? Do you know if you went
19 to the left, to the right, where you stood,
20 where you walked?
21 A. No.
22 Q. Okay. So it wouldn't be useful for me
23 to ask you to sketch out here your path in the
24 den, is that correct?

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1 A. No.
2 MR. DONOHUE: Objection.
3 BY MR. MUSACCHIO:
4 Q. It wouldn't be useful?
5 MR. DONOHUE: Objection.
6 A. I don't recall whether I went left or
7 right. I remember being in the room. I don't
8 recall in which direction I entered the room.
9 BY MR. MUSACCHIO:
10 Q. Okay. Now, when you were in the den
11 you heard officers, other officers that were in
12 the kitchen, it's this room right here, telling
13 somebody to get down on the ground, is that
14 correct?
15 A. I could hear noise from this part of
16 the house.
17 Q. Correct.
18 A. I don't know exactly what area in the
19 house they were in, but it was from this area in
20 here, yes (indicating).
21 Q. Okay. And you've pointed to the
22 kitchen area?
23 A. Yes.
24 Q. Okay. So I want you -- can you tell

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1 me this. Can you tell me where you were
2 standing in the den when you first heard
3 officers in this kitchen area telling somebody
4 to get down?
5 A. No.
6 Q. So you don't know whether you were in
7 this corner of the den, next to the door, or
8 over here (indicating)?
9 A. No.
10 Q. But you do recall specifically hearing
11 people, hearing officers in the kitchen area
12 telling somebody to get down on the ground?
13 A. Yes.
14 Q. And did you -- would you describe what
15 you heard as like a command?
16 A. Yes.
17 Q. And was it quite loud? I mean could
18 you hear it pretty clearly?
19 A. It was very loud, yes.
20 Q. Okay. Now, when you heard that, those
21 commands being made for somebody to get down on
22 the ground, do you know where Sergeant Stuart
23 was?
24 A. Not specifically, no.

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1 Q. Do you know whether he was in the den?
2 A. I believe he was in the den, only
3 because I think I hear -- I remember hearing his
4 voice.
5 Q. Okay. And what do you remember
6 hearing his voice saying?
7 A. "Blue."
8 Q. Blue.
9 Okay. Do you recall at any point
10 Officer Stuart telling you to go into the
11 kitchen where you heard the voices of officers
12 telling people -- someone to get down?
13 A. Yes.
14 Q. So Officer Stuart ordered you -- I'm
15 going to ask you.
16 Is it your recollection that Officer
17 Stuart ordered you to leave the den to go into
18 the kitchen to assist the officers who were
19 ordering somebody to get down on the ground?
20 A. Sergeant Stuart said something to the
21 effect of "get in there" or "we're going in
22 there" or "get in there," meaning to cross from
23 the den area into the kitchen area.
24 Q. Okay. And what did you understand

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1 your purpose of going into the kitchen area was?
2 A. To assist the other SWAT operators.
3 Q. And those operators were the people
4 that were yelling to somebody to get down on the
5 ground?
6 A. I would assume so, yes. I wasn't in
7 there.
8 Q. But your role in going into the
9 kitchen was to assist those officers who were in
10 the kitchen who obviously confronted somebody?
11 A. Correct.
12 Q. Okay. And when you entered the
13 kitchen, what setting was your gun on?
14 A. It would still be set to
15 semi-automatic.
16 Q. Now, when you -- do you recall the
17 path you took when you were in the kitchen?
18 Where did you first go to when you entered the
19 kitchen?
20 A. I believe I came through this
21 entranceway into the kitchen. And at that time
22 my attention was drawn in this direction here to
23 the right, but I do not remember my exact route.
24 I just remember coming into the kitchen and

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1 pausing for a moment and just trying to scan the
2 area.
3 Q. Okay. Can you just mark with an X
4 where you came in? Can you mark with an X where
5 you came into the kitchen and where you remember
6 pausing, if you can?
7 A. I specifically don't remember where I
8 paused.
9 Q. Right.
10 A. I came in from this direction through
11 this doorway here, and at some point paused
12 maybe in this area right here, but that's not
13 specific. I don't recall exactly the spot that
14 I was in (indicating).
15 Q. Okay. And when you came in, did you
16 scan the room at that point?
17 A. Yes.
18 Q. And was your attention called to
19 anything in particular?
20 A. My attention was called to several
21 things. But I mean if you're looking for
22 something more specific --
23 Q. Well, let me ask you this.
24 You saw on -- when you came in and you

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1 -- this position here, to your right you saw two
2 officers in the hallway, is that correct?
3 A. They were in this area someplace right
4 here. I don't remember exactly where they were.
5 But, yes, they were right in this area
6 (indicating).
7 Q. Okay. Can you mark that area in --
8 well, so when you -- so you saw two police
9 officers in this area in the hallway, and that
10 would be to the left of the doorway into the
11 hallway?
12 A. Yes.
13 Q. Okay. So it would be in this area
14 right here (indicating)?
15 A. Yes.
16 Q. Is that correct?
17 A. Correct.
18 Q. Can you just -- and we now know that
19 that was Officer O'Toole and Officer Sheehan?
20 A. I believe so.
21 Q. Okay. Well, I'm going to represent to
22 you that those are the two officers that were in
23 the hallway.
24 A. Okay.

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1 Q. Can you just write -- how am I going
2 to do this. Can you just draw an oval in the
3 area where you remember first seeing the two
4 officers in the hallway?
5 A. I can't be very specific about it. It
6 was -- it was dark. It was dark in there.
7 Q. Okay. So...
8 A. I can see bodies and, yes, I can see
9 their bodies in there, but I don't know exactly
10 where they would be.
11 Q. Fair enough. I won't ask you to
12 indicate it then.
13 Now, at some point while you're in the
14 kitchen looking towards the hallway, did you see
15 those two officers leave the hallway and go into
16 another room?
17 A. Yes.
18 Q. And where were you standing when you
19 saw that?
20 A. I believe I was making my way in this
21 direction right here. So probably somewhere
22 right around here (indicating).
23 Q. Okay. So can you just continue to
24 draw your path to that area where you remember

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1 where you were -- where you recall where you
2 were standing when you saw the two officers
3 leave the hallway and go into -- do you know
4 what room they went into? Do you know what --
5 you didn't know whether it was a bathroom or a
6 bedroom. In other words, they just went into
7 another room?
8 MR. DONOHUE: Objection.
9 BY MR. MUSACCHIO:
10 Q. Right?
11 A. They took off very quickly down the
12 hallway and disappeared into the dark.
13 Q. Okay. When you were at this position,
14 did you notice anybody on the ground or on the
15 floor in the hallway?
16 A. Yes.
17 Q. Did the two officers that disappeared,
18 as you describe it, into one of these back
19 rooms, did they know you were there?
20 MR. DONOHUE: Objection.
21 A. I don't know.
22 BY MR. MUSACCHIO:
23 Q. So you don't -- you didn't make any
24 contact with them, verbal contact with them, to

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1 let them know that you were there?
2 A. I don't remember doing that.
3 Q. Okay. So you don't know whether they
4 saw you, is that correct?
5 A. I don't know.
6 Q. Okay. So from this, as I understand
7 it, from this position you've marked with an X,
8 you saw an individual lying on the floor in the
9 hallway, is that correct?
10 A. Yes.
11 Q. And he was lying on his stomach, is
12 that correct?
13 A. Yes.
14 Q. Yes, after you first observed him, did
15 you move closer to him?
16 A. At some point I moved closer to him.
17 I don't remember how fast or how rapid that was,
18 but yes.
19 Q. All right. So you observed the man
20 lying in the hallway on his stomach, is that
21 correct?
22 A. Yes.
23 Q. And you were standing approximately in
24 that position when you first saw him?

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1 A. Somewhere around there. I can't give
2 you a specific area where I was standing. It's
3 been three years.
4 Q. I understand. I understand.
5 And the kitchen was lit, is that
6 right?
7 A. I remember the kitchen being lit, yes.
8 Q. And was there any light coming from --
9 that was lighting the hallway in any way? Was
10 there any light coming from what's been marked
11 as the bedroom?
12 A. I remember the hallway having some
13 ambient light in it, yes.
14 Q. And do you know where that ambient
15 light was coming from?
16 A. No.
17 Q. So the hallway wasn't what we would --
18 pitch black? It wasn't pitch black, is that
19 correct? There was some light?
20 A. There was some light, yes.
21 Q. And there was light in the kitchen, is
22 that correct?
23 A. There was some light in the kitchen.
24 I don't recall how lit the kitchen was, but I

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1 remember some light being in there, yes.
2 Q. There was clear -- there was enough
3 light for you to actually see a man lying on his
4 stomach in the hallway, and you knew it was a
5 black male, is that correct?
6 A. The closer I got obviously, yeah, I
7 could see that it was a black male, yes.
8 Q. Now, after you first observed him for
9 the very first time, did you move closer to him?
10 A. Yes.
11 Q. Okay. Can you show me where -- how
12 close you got? Now, this is before you crossed
13 the threshold at any point. Show me how close
14 you got to the individual on the ground.
15 A. Probably -- prior to crossing the
16 threshold --
17 Q. Yes.
18 A. -- are you asking if I stopped
19 anywhere and --
20 Q. Right.
21 A. I guess you could -- I'm not sure how
22 to answer.
23 Q. Well, at some point you moved, you got
24 closer to him, is that correct?

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1 A. I don't remember if I got closer
2 before. I don't remember if, closing in on the
3 threshold, if I stopped specifically prior to or
4 if I entered the hallway. I can't remember if I
5 made any more stationary stops prior to moving
6 into the hallway.
7 Q. Now, you realized that you were seeing
8 a male lying on his stomach. That's what you
9 first saw, right?
10 A. A person. I mean when I first saw him
11 from this position, I remember seeing a figure
12 lying there, and as I get closer I can see that
13 it's a male, yes.
14 Q. Okay. As you got closer and you could
15 see it was a male, did it register to you that
16 it was the individual that was discussed at the
17 planning meeting as being an elderly man,
18 approximately 68 years old? Did that register
19 in your mind?
20 A. Initially when I saw him, no, because
21 I couldn't see his face.
22 Q. But as you got closer to him, did it
23 register in your mind that that was the
24 individual that was discussed in the planning

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1 meeting as being a 68 year-old man, black man?
2 A. No.
3 Q. It did not register with you at that
4 time?
5 A. No.
6 Q. Okay. Now, when you saw this
7 individual -- and we now know it's Mr. Stamps,
8 so I'll refer to him as Mr. Stamps. Is that
9 fair enough?
10 A. Sure.
11 Q. Okay. When you saw Mr. Stamps lying
12 on his stomach, his elbows are resting on the
13 floor, is that correct?
14 A. I believe his elbows were resting on
15 the floor, yes.
16 Q. And his hands and fingers were in the
17 air?
18 A. They were hovering. I would say they
19 were hovering over his head.
20 Q. Okay. So you see an individual. You
21 saw Mr. Stamps lying on his stomach with his
22 elbows on the floor with his hands hovering
23 around his head, is that correct? So you saw
24 his hands?

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1 A. Yes.
2 Q. And was his head looking up at you?
3 A. As I came closer, to some degree I saw
4 his head pop up and look at me, yes.
5 Q. So he was looking at you while you
6 were in the kitchen, is that right?
7 A. I don't remember where he made
8 contact. We made eye contact at some point. I
9 don't remember where exactly I was standing.
10 Q. But you recall making eye contact with
11 Mr. Stamps, is that right?
12 A. Yes.
13 Q. So if you were in the kitchen, his
14 eyes had to have been able to look into the
15 kitchen, is that correct?
16 A. Yes.
17 Q. I want you to mark for me in green, if
18 you could -- and this is based on the
19 observations you made, not at any particular
20 time, but as you got closer to Mr. Stamps -- I
21 want you to mark with this green magic marker
22 where his head was in relationship to the
23 threshold, if you recall.
24 Let me ask you this question first.

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1 How far was his head in relationship to the
2 threshold?
3 A. How far toward the threshold was his
4 head?
5 Q. Yes. What was the distance between
6 his head and the threshold? Was his head on the
7 threshold?
8 A. No. I would say it was probably two
9 or three feet in from the threshold.
10 Q. Okay. So why don't you mark on there
11 where you remember seeing his head in
12 relationship to the threshold.
13 A. (Witness complies).
14 Q. Understanding that it's not going to
15 be --
16 A. So it's not to -- right, I mean this
17 isn't to scale, and I don't know --
18 Q. No.
19 A. -- what --
20 Q. I just want you to do the best you can
21 to mark where his head was.
22 A. (Witness complies). That's a -- I
23 mean I'm really trying to --
24 Q. That's fine.

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1 A. -- be as accurate as I can about it.
2 Q. That's fine.
3 So his head was here, and you said
4 that his head would bob up and he would look up
5 and he would see you. So he was looking into
6 the kitchen, is that correct?
7 MR. DONOHUE: Objection.
8 A. His face was facing towards the
9 kitchen.
10 BY MR. MUSACCHIO:
11 Q. His face was facing towards the
12 kitchen?
13 A. Yes.
14 Q. Okay. So, essentially, so if his face
15 is facing towards the kitchen, he's essentially
16 looking in this direction into the kitchen, is
17 that correct?
18 A. Well, he had the ability to do it.
19 Because we -- at some point he raised his face
20 and I saw him. So at some point he did, yeah.
21 He had the ability to see into the kitchen, yes.
22 Q. So that when you say he lifted his
23 head, did he just lift it straight up?
24 A. Well, he was -- his face was down

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1 facing toward the ground, and at some point he
2 lifted his head up.
3 Q. So he lifted his head straight up?
4 A. He lifted it up. I mean I could see
5 his -- I could see the top portion of his face.
6 Q. You could see his eyes?
7 A. I could see his eyes, yes.
8 Q. Yes. And you said you and he made eye
9 contact, is that correct?
10 A. I'd classify it as eye contact. More
11 like we recognized that we're each standing
12 there. I never -- I mean we weren't close
13 enough to look into each others' eyes, but we
14 recognized face-to-face that there were two
15 individuals there, yes.
16 Q. Do you recall where his feet were?
17 Now, let me ask you this question
18 first. When he was -- was he lying straight
19 out, or was he bent in any manner at all? Was
20 his body bent, or was he lying straight out?
21 A. To the best of my recollection, he was
22 a little cockeyed. I can't recall exactly if he
23 was straight along, but I recall him being --
24 something tells me, and I remember him being to

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1 some degree a little bit off.
2 Q. Off angle?
3 A. Off angle, yes.
4 Q. Can you show me, just to get an idea
5 of the angle of his body, was his body straight
6 as opposed to being like in a fetal position or
7 something? Do you see the distinction I'm
8 trying to make?
9 A. Yes, I do.
10 Q. Was his body straight?
11 A. His legs, his torso and his legs were
12 out straight.
13 Q. Out straight.
14 Do you -- your best recollection,
15 where were his feet in relationship to his head?
16 I just want to get an idea of the angle of his
17 body.
18 A. I can't give you -- I can't give you a
19 good recollection on that. I recall him being
20 in there. I recall him lying with his feet
21 pointed in this direction towards this closet
22 area, but I don't recall if he was straight or
23 if he was at an angle.
24 Q. All right. So -- but you recall his

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1 feet being pointed to the closet area?
2 A. His feet --
3 MR. DONOHUE: Objection.
4 A. -- being down to the back, meaning --
5 BY MR. MUSACCHIO:
6 Q. Right.
7 A. -- that's where his feet -- yes. They
8 weren't up towards this threshold. His head was
9 here (indicating).
10 Q. His feet were back towards the closet
11 area?
12 A. His feet were back towards -- meaning,
13 yes, towards that direction of the house.
14 Q. As opposed to being towards the
15 bedroom or towards the --
16 A. I'm using this -- I'm using a generic
17 term, meaning that he wasn't lying this way.
18 His feet weren't coming into what is designated
19 a bathroom here (indicating).
20 Q. Right.
21 A. They were -- and to some degree,
22 whether it was angled or parallel with this wall
23 here, they were facing this direction here
24 someplace (indicating).

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1 Q. Toward the closet?
2 A. To my recollection, his feet were
3 going that way, yes. What I'm trying to say is
4 they weren't coming towards the bathroom.
5 They're going in towards this direction here. I
6 don't know if it was angled. I don't recall if
7 it was straight with the wall.
8 Q. All right. Can you mark in green the
9 -- I know you can't pinpoint it exactly where
10 his feet were and where his legs were, but can
11 you just give me the area in which his feet were
12 pointed by making lines here and a line here
13 (indicating)? Can you do that?
14 A. I couldn't do it with any accuracy,
15 because I can't recall if he was directly
16 parallel with the wall or if he was angled, and
17 that would change the entire dynamics of how
18 much area he was taking up. So I can't.
19 Q. But you do recall that he lifted his
20 head straight up and he -- and you made eye
21 contact with him?
22 A. Yes.
23 Q. While you were in the kitchen?
24 A. I think it was still in the kitchen,

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1 yes.
2 Q. Now, you make -- did you make
3 observations of the area around Mr. Stamps?
4 What I think you described -- was it cluttered
5 in any way?
6 A. Yes.
7 Q. Were there items there? Why don't you
8 just -- so do you recall seeing bins or boxes,
9 plastic bins and things in this area here
10 (indicating)?
11 A. I recall seeing clutter. I don't
12 recall exactly where the clutter was at this
13 point. I just recall the room being dark and
14 cluttered.
15 Q. And it was -- do you recall what it
16 was cluttered with? Do you have a memory of
17 whether there were plastic bins or boxes, or
18 what they were?
19 A. No. They just looked to me to be
20 objects.
21 Q. So it was cluttered and dark in the
22 hallway?
23 A. Yes.
24 Q. And you discussed that there was some

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1 ambient light, but how would you describe it?
2 Was it dark in the hallway?
3 A. Yes.
4 Q. Okay. Do you have a specific memory
5 of where this clutter was in relationship to
6 Mr. Stamps?
7 A. Not anymore, no. I mean I don't know
8 where the objects are. Looking back at it now
9 in this picture, no.
10 Q. Now, when you saw Mr. Stamps, you
11 didn't say anything to him, right?
12 A. I don't remember saying anything to
13 him, no.
14 Q. You didn't give him any commands?
15 A. No.
16 Q. But you would -- he was looking up at
17 you, though, right?
18 A. He did look up at me, yes. I don't
19 remember if his head went back down after. I
20 don't recall. I just remember he did look up at
21 one point, yes.
22 Q. And you pointed your rifle at him,
23 right?
24 A. My rifle was pointed at him, yes.

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1 Q. And when your rifle was pointed at
2 him, it was in a semi-automatic setting, is that
3 right?
4 A. Correct.
5 Q. It was off safe --
6 A. Yes.
7 Q. -- correct?
8 And you intended to point your rifle
9 at him, right?
10 A. Yes.
11 Q. Now, pointing your rifle at someone is
12 not something you do casually, is that right?
13 A. No, it's not.
14 Q. You had a reason and purpose to point
15 your rifle at him, is that right?
16 A. Yes.
17 Q. And you were pointing it at his head?
18 A. I was pointing it in the direction of
19 his body. His head just happened to be the
20 closest thing to me. I did not specifically
21 point it at his head at all, no.
22 Q. You were sending Mr. Stamps a message,
23 is that correct, by pointing your rifle at him?
24 A. I would assume so, yes.

1 Q. What you're telling him is that "don't
 2 move or don't do anything threatening," is that
 3 correct?
 4 A. I would assume that that's what he was
 5 thinking, yes.
 6 Q. That was the purpose of pointing the
 7 rifle at him, was to send him the message that
 8 "don't move, don't do anything threatening, I'm
 9 on you," right?
 10 A. No.
 11 Q. No?
 12 A. No.
 13 Q. So what was the purpose of pointing
 14 the rifle at him?
 15 A. To protect myself.
 16 Q. To protect yourself.
 17 And you also were sending him a
 18 message not to move or do anything threatening,
 19 is that right?
 20 A. Yes.
 21 MR. DONOHUE: Objection.
 22 BY MR. MUSACCHIO:
 23 Q. Correct?
 24 A. Yes.

1 Q. And when you pointed your weapon at
 2 Mr. Stamps, that was a show of force, was it
 3 not?
 4 A. Yes.
 5 Q. It was a forceful statement to
 6 Mr. Stamps that you were in control, right?
 7 A. I would assume so.
 8 Q. It was a forceful statement to
 9 Mr. Stamps not to move, is that correct?
 10 A. I'm assuming it was, yes. I don't --
 11 I'm not Mr. Stamps. I don't know.
 12 Q. That was your intent, right?
 13 A. My intent to point my rifle at him?
 14 Q. Mm-hmm.
 15 A. It was to protect myself, yes.
 16 Q. By making sure that he did not move or
 17 do anything threatening?
 18 A. It's to protect myself, and I'm hoping
 19 he's not going to do anything to make a move or
 20 do anything threatening, yes.
 21 Q. Yes.
 22 By pointing your gun at him, you're
 23 sending him a pretty strong message not to move?
 24 A. Yes.

1 Q. That would also put you in a position
 2 to react if he did anything threatening, is that
 3 correct?
 4 A. Yes.
 5 Q. If you were -- if he reached for
 6 something or engaged in some threatening
 7 behavior, you were in a position to fire at that
 8 point, weren't you?
 9 A. Yes.
 10 Q. And you were concerned about him
 11 reaching for something or grabbing for
 12 something, isn't that right?
 13 A. Of course.
 14 Q. And you were frightened for your own
 15 safety, weren't you?
 16 A. Concerned.
 17 Q. Concerned for your own safety?
 18 A. Certainly.
 19 Q. And it -- wasn't it -- this is an
 20 intense situation, isn't that right? You've got
 21 a gun on somebody?
 22 A. Yes.
 23 Q. You know, you don't -- search warrant,
 24 [REDACTED] that's an intense

1 situation, isn't it?
 2 A. Certainly.
 3 Q. Now, Lieutenant Downing testified that
 4 he was in the kitchen when your gun fired.
 5 A. Okay.
 6 Q. Okay. Do you have any -- do you
 7 recall seeing anybody else in the kitchen when
 8 you came in, any other police officer?
 9 A. I don't recall, no.
 10 Q. Well, Lieutenant Downing testified
 11 that he was in the kitchen when your gun fired.
 12 You don't have any reason to disagree with that,
 13 do you?
 14 A. No.
 15 Q. He testified that he was facing the
 16 threshold from the kitchen into the hallway when
 17 he heard the gunfire from your weapon, when he
 18 heard your gun fire. Do you have any reason to
 19 doubt his testimony?
 20 A. No.
 21 Q. And he testified that after your gun
 22 went off, the first thing he saw was that you
 23 were walking towards him. Do you have any
 24 reason to doubt that testimony?

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1 A. The first thing that he saw?
2 Q. He said that after he was sure -- he
3 testified, Lieutenant Downing testified that he
4 was standing approximately in this area by the
5 door leading to the cellar facing the hallway
6 when he heard your gun fire.
7 A. Okay.
8 Q. That's what he testified to. Do you
9 have any reason to doubt that?
10 A. No.
11 Q. And he testified that the first thing
12 he saw after your gun firing was you walking
13 from here, from this area, across the kitchen
14 heading towards the front entry (indicating).
15 Do you have any reason to doubt that testimony?
16 MR. DONOHUE: Objection.
17 A. I don't doubt what he says. I don't
18 know what he saw.
19 BY MR. MUSACCHIO:
20 Q. Okay. Officer Sebastian testified
21 that he was in the kitchen when your gun fired.
22 Do you have any reason to doubt that testimony?
23 A. No.
24 Q. He testified that he was standing in

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1 this area again by the door leading to the
2 stairs to the basement (indicating). Do you
3 have any reason to doubt that testimony?
4 A. No.
5 Q. He testified that he immediately
6 turned when he heard your shot, like immediately
7 turned. The second he heard your shot he
8 immediately turned. Do you have any reason to
9 doubt that testimony?
10 A. No.
11 Q. And he testified that when he
12 immediately turned, the first thing he saw was
13 you walking out of the kitchen. Do you have any
14 reason to doubt that testimony?
15 A. No.
16 Q. Okay. Officer Riley testified that he
17 was in the kitchen when your rifle was fired.
18 Do you have any reason to doubt that testimony?
19 A. No.
20 Q. He testified that, again, he was
21 standing in this area by the door leading into
22 the cellar in the kitchen. Do you have any
23 reason to doubt that testimony?
24 A. No.

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1 Q. He testified that he turned
2 immediately when he heard your gun fire. Do you
3 have any reason to doubt that testimony?
4 A. No.
5 Q. He said he saw you on your feet on --
6 he saw you -- when he saw you, and he
7 immediately turned after he heard the gunfire,
8 he saw your -- he saw that your feet were on the
9 ground. Do you have any reason to doubt that
10 testimony?
11 MR. DONOHUE: Objection.
12 A. I don't know what he saw. No, I
13 don't.
14 BY MR. MUSACCHIO:
15 Q. Do you have any reason to doubt his
16 testimony?
17 A. No.
18 Q. Okay. Officer Duncan, I'm going to
19 show you what's been marked as Exhibit Number 21
20 (handing).
21 Have you ever seen that photograph
22 before?
23 A. Yes.
24 Q. And that's the photograph of

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1 Mr. Stamps, showing the entry of the bullet into
2 his cheek out his -- below his jawbone, the exit
3 wound, and the re-entry of the bullet wound into
4 his neck. Have you seen that picture before?
5 Do you agree with me that's what it depicts?
6 MR. DONOHUE: Objection.
7 A. It appears to be, yes.
8 BY MR. MUSACCHIO:
9 Q. Okay. And it has a stick that shows
10 the path of the bullet into Mr. Stamps' cheek
11 out below his -- the exit wound below his jaw,
12 and the re-entry wound of the bullet into his
13 lower neck and upper chest area. Is that
14 correct?
15 A. Yeah. Yes.
16 Q. I'm sorry. Yes?
17 A. Yes.
18 Q. You would agree with me, Officer
19 Duncan, that this photograph and the depiction
20 of these wounds and the path of the bullet is
21 consistent with your rifle having been fired
22 while you were standing in front of Mr. Stamps
23 with your rifle pointed at him and before you
24 approached him?

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1 MR. DONOHUE: Objection.
2 A. Could you say that again?
3 BY MR. MUSACCHIO:
4 Q. No.
5 Do you agree with me that this
6 photograph that depicts the path of the bullet
7 through Mr. Stamps' left cheek, the bullet entry
8 through his cheek, the exit wound below his
9 jawbone, and the re-entry wound into his lower
10 neck, is consistent with your gun being fired
11 while you were standing in front of Mr. Stamps
12 and before you even approached him?
13 MR. DONOHUE: Objection.
14 A. No. I absolutely do not agree with
15 that.
16 BY MR. MUSACCHIO:
17 Q. You don't agree with that?
18 A. Of course not.
19 Q. Officer Duncan, isn't it true that you
20 fired your rifle while you were standing in
21 front of Mr. Stamps in the kitchen near the
22 threshold with your rifle pointed at his head
23 and before you approached him?
24 A. That's absolutely not true.

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1 Q. Okay. Let's talk about what you say
2 happened that evening.
3 MR. DONOHUE: If that's a question, I
4 object to it.
5 MR. MUSACCHIO: Well, that's what I'm
6 --
7 MR. DONOHUE: I'm not --
8 MR. MUSACCHIO: I'm just going to tell
9 you, I'm moving on.
10 MR. DONOHUE: Just talking here. Go
11 ahead.
12 We've been going over an hour. Is now
13 a good time to take a quick break?
14 MR. MUSACCHIO: Sure. Let's take a
15 break.
16 THE VIDEOGRAPHER: We're going off the
17 record. The time is 11:13.
18 (Whereupon, a recess was taken.)
19 THE VIDEOGRAPHER: Back on the record.
20 The time is 11:28.
21 BY MR. MUSACCHIO:
22 Q. Officer Duncan, according to what you
23 stated in your January 6th, 2011 interview with
24 the state police, you were not satisfied with

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1 simply holding your gun on Mr. Stamps, you
2 approached him, is that correct?
3 A. Yes.
4 Q. You were not satisfied that by simply
5 holding your gun on him, pointing your gun at
6 him would prevent him from reaching for
7 something, is that right?
8 MR. DONOHUE: Objection.
9 BY MR. MUSACCHIO:
10 Q. Isn't that what you said in your
11 interview?
12 MR. DONOHUE: Objection.
13 A. I never said anything of holding. I
14 don't believe I said anything about holding my
15 gun.
16 You mean pointing my --
17 BY MR. MUSACCHIO:
18 Q. Yes.
19 A. -- weapon in his direction?
20 Q. Yes.
21 A. Yes.
22 Q. You, in other words, you made the
23 decision that simply pointing the gun at
24 Mr. Stamps was not sufficient in your mind to

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1 prevent the possibility that he could do
2 something threatening?
3 A. Correct.
4 Q. Now, according to what you said in
5 your interview, you wanted to take the
6 possibility that Stamps might reach for
7 something out of the equation, is that right?
8 A. Yes.
9 Q. According to what you said in your
10 interview, you wanted to physically restrain
11 Mr. Stamps' hands by kneeling down on him and
12 tightening up his hands, is that right?
13 A. Yes.
14 Q. So according to your statement that
15 you gave to the state police, you approached
16 Mr. Stamps for the purpose of further
17 restraining him by physical force, is that
18 right?
19 A. Yes.
20 Q. And when you did that, your M-4
21 rifle -- when you approached Mr. Stamps, your
22 M-4 rifle was off safe and on a semi-automatic
23 setting, is that right?
24 A. Yes.

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1 Q. I'm going to show you what's been
2 previously marked as Exhibit Number 11
3 (handing). I'm going to represent to you that
4 Officer Simoneau, Lieutenant Downing, Sergeant
5 Stuart, and Deputy Chief Davis have testified
6 that Exhibit Number 11 is a document that
7 memorializes a meeting that occurred on
8 September 21st, 2011 concerning your conduct and
9 the training you received in relationship to the
10 shooting of Mr. Stamps.
11 Have you ever seen this document
12 before?
13 A. I don't believe so, no.
14 Q. Why don't you take a moment just to
15 read through it.
16 A. Okay.
17 MR. DONOHUE: Take your time.
18 (Witness reviewing document.)
19 A. Okay.
20 BY MR. MUSACCHIO:
21 Q. I want to refer you to the third
22 paragraph. It states "Sergeant Stuart and
23 Lieutenant Downing" -- let me back up.
24 Have you ever seen this document

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1 before?
2 A. Not to my knowledge, no.
3 Q. Were you aware that a meeting took
4 place on September 21st, 2011 regarding the
5 training you received and your conduct leading
6 to the shooting of Mr. Stamps?
7 A. No.
8 Q. So this is the first time you've ever
9 heard of such a meeting?
10 A. Specifically, yes.
11 Q. If you look at the third paragraph, it
12 states, "Sergeant Stuart and Lieutenant Downing
13 claimed that officers are trained to keep their
14 rifles on safe unless the officer perceives a
15 threat or is actively clearing rooms/danger
16 area."
17 Did I read that correctly?
18 A. Yes.
19 Q. Do you agree that you received that
20 training?
21 A. I believe so, yes.
22 MR. MUSACCHIO: Can we mark this as
23 Exhibit 48?
24 THE STENOGRAPHER: 47.

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1 (Whereupon, Duncan Exhibit Number 47,
2 Firearms and Service Training
3 document, was marked for
4 identification.)
5 BY MR. MUSACCHIO:
6 Q. Officer Duncan, this is a Firearms and
7 Service Training Patrol Rifle Class, Sequential
8 Outline of Materials Covered. This is a
9 document we received from the Town of Framingham
10 relating to materials regarding the training of
11 Framingham police officers.
12 Have you ever seen this document
13 before?
14 A. I don't recall.
15 Q. Do you see where it says about halfway
16 down the page "low ready"?
17 A. Yes.
18 Q. And it states "The weapon is off
19 safe."
20 Do you see that?
21 A. I see, yes.
22 Q. Yes. And it states "If officer
23 perceives a threat, a weapon comes up on to
24 target, weapon comes off safe, eyes align

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1 sights, acquire proper sight picture."
2 Did I read that correctly?
3 A. You did.
4 Q. "If officer is actively" -- and then
5 it states "If officer is actively clearing
6 room/danger area."
7 Did I read that correctly?
8 A. Yes.
9 Q. Now, would you agree with me that this
10 is training material that essentially states
11 that the weapon is off safe only when the
12 officer perceives a threat, or if an officer is
13 actively clearing a room or danger area? Is
14 that correct?
15 MR. DONOHUE: You're asking what the
16 document says?
17 MR. MUSACCHIO: I'm asking if it's his
18 understanding of --
19 BY MR. MUSACCHIO:
20 Q. If what I just read means to you as an
21 officer that the weapon is off safe, in other
22 words in a semi-automatic setting, only if the
23 officer perceives a threat or if the officer is
24 actively clearing rooms or a danger area.

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1 MR. DONOHUE: Objection.
2 A. That's what it states here.
3 BY MR. MUSACCHIO:
4 Q. Okay. And is that what you were
5 trained?
6 A. I don't recall seeing this particular
7 document. I don't know when this particular
8 document came into effect.
9 Q. All right. Well, putting aside the
10 document. I just wanted to show you that to
11 show that there's training materials that exist.
12 Do you recall being trained prior to
13 January 5th, 2011 that the weapon comes off safe
14 only if the officer perceives a threat or is
15 actively clearing a room or danger area?
16 A. Based on my recollection, it is once
17 the mission is a go and we proceed on the
18 mission and we are actively pursuing the
19 mission, and my weapon is in hand and we have --
20 we begin to clear those rooms, that my weapon is
21 off safe.
22 Q. Okay. Let's go back to what Sergeant
23 Stuart and Downing -- it says "Sergeant Stuart
24 and Lieutenant Downing claim that officers are

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1 trained to keep their rifles on safe unless the
2 officer perceives a threat or is actively
3 clearing rooms/danger area."
4 Do you agree with that, that that's
5 what you're trained?
6 A. Where again are you?
7 (Witness reviewing document.)
8 A. Okay. It would appear that I would
9 agree to it, yes, up until it says -- up until
10 that point, yes.
11 BY MR. MUSACCHIO:
12 Q. Yes. And the next sentence says "This
13 means that Duncan should have had his weapon on
14 safe because neither of the above two conditions
15 existed."
16 Did I read that correctly?
17 A. You did.
18 Q. Deputy Chief Davis has testified that
19 you should have had your weapon on safe before
20 you approached Mr. Stamps. Sergeant Stuart and
21 Lieutenant Downing has shared that opinion, that
22 you should have had your weapon on safe before
23 you approached Mr. Stamps.
24 Do you agree with that?

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1 A. Hindsight being 20/20, I agree with
2 that.
3 Q. Okay. You can put that aside, Officer
4 Duncan, for a moment. We may -- we're going to
5 go back to that at some point.
6 Now, I want you -- after you made your
7 decision to further restrain Mr. Stamps by
8 taking his hands and putting them behind his
9 back, I want to go through step-by-step what you
10 did.
11 When you entered, crossed the
12 threshold from the kitchen into the hallway,
13 show me exactly where you first stepped when you
14 stepped into the hallway.
15 A. Well, I would have stepped through the
16 threshold here (indicating).
17 Q. Right.
18 A. And attempted to move around his right
19 side.
20 Q. Okay. So you -- in other words, when
21 you stepped across the threshold, you went to
22 your right. You stepped to your right, is that
23 correct?
24 A. I don't know if I stepped directly to

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1 my right. I crossed the threshold, and my
2 intention was to pass him on his right side,
3 come across his right side.
4 Q. Okay. Can you just draw a line in red
5 the path you took, as best as you can recall?
6 And I know it's not an exact science, but I just
7 want in relationship to where Mr. Stamps' head
8 and body was, I want to know where you went when
9 you first entered the hallway.
10 A. All I remember is going to the right
11 side. I don't remember exactly where my feet
12 went.
13 Q. Fair enough.
14 And tell me what happened once you
15 went to the right side of the hallway.
16 A. I started moving alongside Mr. Stamps.
17 And at some point I had stepped on something or
18 my foot moved a certain way, and I had to step
19 again with my left foot another direction, and I
20 lost my balance.
21 Q. And you started to fall?
22 A. Yes.
23 Q. And you started to go backwards, is
24 that correct?

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1 A. Backwards and to the left.
2 Q. Okay. Can you pinpoint for me in the
3 hallway where you were standing when you first
4 started to fall backwards to your left?
5 A. No, because I was falling backwards.
6 Q. Okay. At some point did you make
7 contact with a wall?
8 A. Yes.
9 Q. What wall did you make contact with?
10 A. I wound up in the corner here between
11 this wall and the corner of the threshold
12 (indicating).
13 Q. So you stepped to your left. And you
14 can't tell me how far to the left you were in
15 relationship to Mr. Stamps' body?
16 A. I came into the right. As I began to
17 move forward, for some reason I had to step
18 backwards and to the left. That's when I
19 started to fall over. I don't remember exactly
20 where along Mr. Stamps I was when I started to
21 fall over.
22 Q. And can you mark where you first
23 struck the wall?
24 A. I can mark where I ended up at the

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1 wall. I don't know at what point I hit the wall
2 where. I was falling backwards.
3 Q. Okay. Show me as best you can where
4 you first made impact with the wall.
5 A. I don't know where I first made impact
6 with the wall. I just know where I ended up.
7 Q. Okay. But can you show me -- was
8 it -- could you mark just a general area where
9 the -- you know, was it this corner? Was it
10 along here? Was it along here (indicating)?
11 A. Are you asking where I ended up, or
12 where I first made contact with the wall?
13 Q. First made contact with the wall.
14 A. I don't know where I first made
15 contact with the wall. I know where I ended up.
16 Q. Well, do you know -- okay.
17 But it was either -- it could have
18 been this portion of the wall right by the
19 threshold, or it could have been this long wall
20 right here (indicating)?
21 A. It was somewhere along the wall. I
22 can't tell you where I was. I was falling
23 backwards.
24 Q. And what part of your body first hit

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1 the wall? Was it your back, or was it your hip,
2 your shoulder?
3 A. I don't remember what part of my body
4 hit the wall first. It was somewhere behind me,
5 my left side or my back.
6 Q. According to what you said in your
7 interview on January 6th, 2011, your gun
8 discharged when you either first started to go
9 over or when you first made impact with the
10 wall, is that correct?
11 A. To the best of my recollection, what I
12 said was somewhere between beginning to fall and
13 impact with the wall is when it discharged, yes.
14 Q. And when you were going over, your
15 rifle was pointed at Mr. Stamps, is that right?
16 A. When I was going over, my rifle was --
17 it depends on what point I was going over.
18 Q. And the gun was in your right hand
19 throughout the event?
20 A. Yes.
21 Q. Okay. So you're very clear about that
22 in your interview. The gun was in your right
23 hand throughout the event, is that correct?
24 MR. DONOHUE: Objection.

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1 A. What part of the event are we talking
2 about?
3 BY MR. MUSACCHIO:
4 Q. When you lost balance and began to
5 fall and made impact with the wall, your gun was
6 secured in your right hand, is that correct?
7 A. Yes.
8 Q. Okay. You never dropped your rifle,
9 is that right, before it went off?
10 A. No.
11 Q. So just so I'm clear, your gun
12 discharged either when you first started going
13 over or when you first made impact with the
14 wall, is that correct?
15 A. Between the point where I first
16 started to fall over and impact with the wall,
17 it discharged. I don't know at what point it
18 discharged.
19 Q. And you never put your rifle on safety
20 before approaching Mr. Stamps, is that right?
21 A. Approaching him, no.
22 Q. Now, according to your interview, you
23 fell, and your rear end was on the floor at some
24 point, is that right?

1 A. Correct.
 2 Q. And that was after the gun discharged,
 3 right?
 4 A. Well, I wound up, my rear end was on
 5 the ground. I don't know from what point
 6 falling and what point landing the weapon
 7 discharged. I don't know that point.
 8 Q. Well, you testified that your gun
 9 discharged either when you first started going
 10 over or when you first made impact with the
 11 wall, correct?
 12 A. Between those points, yes.
 13 Q. Right. Okay.
 14 Can you show me where you landed after
 15 you fell to the floor?
 16 A. My back side. My rear end was here.
 17 I was in the corner of the room (labelling). My
 18 back was in the corner of the notches.
 19 Q. Okay. Can you just mark this -- so
 20 this is where your rear end was, is that correct
 21 (indicating)?
 22 A. To the best of my recollection, yes.
 23 Q. Okay. And --
 24 A. Well, yeah, I mean I'm -- as close to

1 my rear end can get to a corner of a room, yes.
 2 Q. So your -- and your back was up
 3 against the wall, right?
 4 A. In the gaps, yes.
 5 Q. So you're essentially sitting on the
 6 ground, is that right? Is that what you were
 7 doing?
 8 A. I wound up on the ground, yes.
 9 Q. Yes.
 10 And your rear end was on the ground,
 11 but your torso and your body was leaning against
 12 the wall, is that right?
 13 A. Yes, but I don't know. I mean I can't
 14 recall exactly the structure of how much my body
 15 was leaning. I just know that my rear end was
 16 on the ground, and I don't know what angle I was
 17 at, just that the back side was resting into the
 18 corner of the -- the corners of the wall.
 19 Q. And where were your feet in
 20 relationship to where your buttocks was on the
 21 floor?
 22 A. I don't remember anymore.
 23 Q. And you were still holding your gun in
 24 your -- in the right hand when you ended up with

1 your buttocks on the ground, is that right?
 2 A. Yes.
 3 Q. Now, this gun was tested after the
 4 incident. Did you know that?
 5 A. Yes.
 6 Q. Okay. And it was functioning properly
 7 as a result of the testing. You know that, too,
 8 right?
 9 A. Yes.
 10 Q. Okay. It was completely sound working
 11 order, is that correct?
 12 A. To the best of my knowledge, yes.
 13 Q. And it was tested by the Framingham
 14 Police Department, is that right?
 15 A. I don't know who tested it. I thought
 16 it was the state police.
 17 Q. Okay.
 18 A. I have no idea.
 19 Q. All right. So it was either state
 20 police or the Framingham Police Department that
 21 tested it, is that correct?
 22 A. I know it was. I have no idea who
 23 tested it. I don't know.
 24 Q. But you knew it was the state -- you

1 think it's the state police, is that correct?
 2 A. Well, they were doing the
 3 investigation, so, yes, I'm assuming it was the
 4 state police.
 5 Q. Now, the gun did not make contact with
 6 the wall or the floor before it discharged, is
 7 that right?
 8 A. I really don't know.
 9 Q. You don't know?
 10 A. If the weapon made any contact with
 11 the wall or the floor while I was falling over?
 12 Q. Correct.
 13 A. I don't know if it made any contact
 14 with the wall or the floor, no.
 15 Q. Okay. As you sit here today, do you
 16 have a memory of your gun that was in your right
 17 hand making impact with the wall or the floor
 18 before the gun discharged?
 19 A. No, I don't remember.
 20 Q. You don't remember or --
 21 A. I don't recollect my weapon making any
 22 contact with the wall or the floor. I don't
 23 remember if it happened at some point falling.
 24 I just don't remember.

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1 Q. Okay. Now, in order for the rifle to
2 discharge, your finger had to be inside the
3 trigger, trigger guard, is that correct?
4 A. Yes.
5 Q. Okay. And you would agree with me
6 that you -- so you agree with me that your gun
7 discharged because your finger was inside the
8 finger guard and you pulled the trigger, is that
9 correct?
10 A. No.
11 Q. Well, let me ask you this.
12 You'd agree with me that your gun
13 would not have discharged during this event
14 unless you had your finger inside the finger
15 guard, is that right?
16 A. At some point, yes.
17 Q. Right.
18 A. It would have to be depressed to fire,
19 yes.
20 Q. Right.
21 And you agree with me that at some
22 point before this gun discharged, your finger
23 had to depress the trigger to cause the gun to
24 fire, is that right?

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1 A. Yes.
2 Q. Now, tell me the next thing that
3 happened after your gun discharged.
4 A. I remember hearing voices coming from
5 the kitchen. I remember looking down from my
6 position between my legs and seeing blood.
7 Q. And did you call for medics at that
8 point?
9 A. I remember somebody yelling something
10 to the degree of "what do you have" or "what do
11 you got," and in my memory I remember saying
12 "man down, man down." I didn't call for medics
13 specifically for me.
14 Q. Okay. After your gun discharged and
15 Mr. Stamps was shot, did you see Officer Stuart
16 in the kitchen -- or Sergeant Stuart in the
17 kitchen or anywhere near you?
18 A. I don't remember who I saw.
19 Q. Did you say anything to anyone after
20 your gun fired?
21 A. At one point I believe it was
22 Lieutenant Downing asked me what happened, and I
23 said that it was an accident, or I tripped, or I
24 fell.

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1 Q. And you were taken into the den area,
2 is that correct?
3 A. I was brought from this area here into
4 here, yes (indicating) .
5 Q. And how long were you in the den?
6 A. I have no idea.
7 Q. Did you talk to anybody in the den?
8 A. Sergeant Sibilio came into the den and
9 asked if I was okay, and at that time I think we
10 left this area here and exited somehow, but I
11 don't remember how.
12 Q. Okay. Did you talk -- while you were
13 in the den, did you talk to anybody about how
14 the shooting occurred?
15 A. I remember Lieutenant Downing asking
16 me what happened, but I don't remember if I was
17 right here or in here, or where I was, or how
18 fast they asked me. I just remember him asking
19 me.
20 Q. And what's the full conversation you
21 had with Officer Downing as to how you explained
22 the shooting of Mr. Stamps?
23 A. It was very brief. And I can remember
24 saying something to the effect of I fell or I

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1 tripped, but I can't remember exactly the words
2 that I used.
3 Q. You said nothing more to him other
4 than you fell or tripped?
5 A. No.
6 Q. And he didn't ask you anything more at
7 that point as to what happened?
8 A. Not that I can recall, no.
9 Q. And then you went outside. You were
10 taken outside of the apartment. And did you
11 have a conversation with Officer Eliadi --
12 A. Eliadi.
13 Q. Eliadi.
14 Did you have a conversation with
15 Officer Eliadi outside of 26 Fountain Street?
16 A. I remember talking to him. I don't
17 think we had a real conversation. I was more
18 just standing there.
19 Q. So do you remember what the
20 conversation was at all?
21 A. No.
22 Q. Now, Officer Eliadi was a personal
23 friend of yours, right?
24 A. Yes.

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1 Q. Did you tell him at any point during
2 that evening what happened and how Mr. Stamps
3 was shot?
4 A. I believe that I told him that I fell.
5 It was an accident.
6 Q. Do you recall anything else you said
7 to him?
8 A. No. We were together for a long time
9 after that. I don't -- but I don't remember
10 talking about the incident itself much, no.
11 Q. You say you "were together for a long
12 time afterwards." We're talking about relating
13 to this evening, this event?
14 A. Yes.
15 Q. Okay. And during that long time you
16 had with your friend, Officer Eliadi, did you
17 describe to him what happened and how Mr. Stamps
18 ended up getting killed?
19 A. No, I don't think I did.
20 Q. You don't think you did, or you know
21 you didn't?
22 A. It's been three years. I don't think
23 I did.
24 Q. You don't think you did. Okay.

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1 Now, at some point you were taken away
2 from the scene by -- in the police car, is that
3 right? You drove to the police station, is that
4 right?
5 A. It was -- it wasn't a police car like
6 a regular police car. It was like a little
7 unmarked something. I don't know what it was.
8 But, yes.
9 Q. And who was in the car?
10 A. Myself, Officer Eliadi, and I believe
11 it was Sergeant Stuart that was driving. Yes.
12 Q. And how long of a ride was it to the
13 station?
14 A. I don't know. It shouldn't -- I mean
15 at that time of night, I can't remember.
16 Probably a few minutes.
17 Q. And while you were in the car, you
18 told Officer Stuart what happened, right?
19 A. I don't remember.
20 Q. Tell me what you remember about the
21 conversation you had in the car going -- with
22 Sergeant Stuart and Officer Eliadi when you were
23 going to the station.
24 A. Nothing.

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1 Q. You don't remember anything?
2 A. No.
3 Q. You don't remember telling them how
4 Mr. Stamps ended up getting killed?
5 A. No.
6 Q. And when you arrived at the station,
7 tell me what occurred at the station when you
8 got there.
9 A. We went upstairs to the -- we went in
10 the building and went upstairs to the chief's
11 conference room. And once we were up there,
12 Sergeant Stuart took my rifle.
13 Q. And while you were at the station, did
14 you have any conversation with Sergeant Stuart
15 explaining to him how it was that Mr. Stamps was
16 killed?
17 A. I don't remember.
18 Q. So we have a situation here where
19 Mr. Stamps was killed during the execution of a
20 search warrant by the Framingham Police
21 Department. You're with Sergeant Stuart on the
22 way to the station and at the station. And is
23 it your testimony that you had no conversation
24 with anyone regarding how it was that Mr. Stamps

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1 was killed?
2 MR. DONOHUE: Objection.
3 A. No, I didn't say that. I said I don't
4 recall. I don't remember.
5 BY MR. MUSACCHIO:
6 Q. So you have no memory of discussing
7 with Sergeant Stuart or anybody else at the
8 police station or en route to the police station
9 explaining how this accident -- how this
10 shooting occurred?
11 MR. DONOHUE: Objection.
12 A. No. I was in shock.
13 BY MR. MUSACCHIO:
14 Q. Are you familiar with the
15 contact/cover procedure?
16 A. Yes.
17 Q. And it's a procedure used by police
18 officers to physically restrain a person, is
19 that correct, and to frisk them for weapons?
20 A. Yes.
21 Q. And the procedure involves two
22 officers, is that correct?
23 A. Yes.
24 Q. Under the contact/cover procedure, one

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1 officer covers a person with his rifle in the
 2 low ready position, is that correct?
 3 A. Yes.
 4 Q. Another officer makes contact with a
 5 person to restrain him by either holding his
 6 hands together or handcuffing him, is that
 7 correct?
 8 A. Yes.
 9 Q. And he's the so-called contact
 10 officer, is that correct?
 11 A. Correct.
 12 Q. Now, the officer making contact with
 13 the person, before making contact with the
 14 person under the procedure, will sling his rifle
 15 over his shoulder and put -- with the safety on,
 16 is that correct?
 17 A. If he was holding a rifle, yes.
 18 Q. The purpose of this procedure is to
 19 ensure that the officer making hands-on contact
 20 with the officer does not accidentally fire his
 21 weapon, is that correct?
 22 A. I would assume so, yes.
 23 Q. It's also the procedure to protect the
 24 police, because if the person grabs for your

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1 rifle it's on safe, is that correct?
 2 A. Yes.
 3 Q. The procedure is designed, at least in
 4 part, to protect the person who's being
 5 physically restrained, is that correct?
 6 A. It would be, yes.
 7 Q. Yes. And it protects the person being
 8 physically restrained, because the person making
 9 physical contact with the person who is about to
 10 be frisked or searched, that officer either has
 11 his pistol in his holster or his rifle on safe
 12 and slung over his shoulder, right?
 13 A. At the time they make contact, yes.
 14 Q. And you received training on these --
 15 on that procedure, is that correct?
 16 A. Yes.
 17 Q. And you went to the Worcester Police
 18 Academy, is that correct?
 19 A. I did.
 20 Q. You graduated second in your class?
 21 A. I did.
 22 Q. And so you were trained at the police
 23 academy in the procedure of contact/cover, is
 24 that right?

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1 A. Yes.
 2 Q. And you received training at the
 3 Framingham Police Department on the procedure of
 4 contact and cover, is that correct?
 5 A. Yes.
 6 Q. And you received training at the
 7 Framingham Police Department as part of your
 8 SWAT training on the procedure of contact and
 9 cover, is that correct?
 10 A. Yes. I'm assuming I did, yes.
 11 Q. Now, Officer Riley and Sebastian
 12 testified in their depositions in this case that
 13 they were in the kitchen with Officer Duncan
 14 when his gun discharged, when your gun
 15 discharged.
 16 Do you have any reason to doubt that
 17 testimony?
 18 A. (Nodding in the negative).
 19 Q. You have to answer --
 20 A. No, I don't know what -- I don't know
 21 what they saw.
 22 Q. Okay. But you don't have any reason
 23 to disagree with that?
 24 A. Repeat the question.

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1 Q. Officer Riley and Sebastian testified
 2 that they were in the kitchen with you or near
 3 you when your gun discharged.
 4 MR. DONOHUE: Objection.
 5 BY MR. MUSACCHIO:
 6 Q. Do you have any reason to disagree or
 7 doubt that testimony?
 8 A. That they were with me, or near me?
 9 Q. That they were in -- let me rephrase
 10 it.
 11 Officer Riley and Sebastian testified
 12 that they were in the kitchen when your gun
 13 discharged. Do you have any reason to doubt or
 14 disagree with that testimony?
 15 A. I don't know where they were. No.
 16 Q. Do you remember seeing Officer
 17 Sebastian or Riley in the kitchen at any time
 18 from the moment you entered the kitchen to the
 19 moment Mr. Stamps was killed? Do you remember
 20 seeing them in the kitchen?
 21 A. No.
 22 Q. Now, Lieutenant Downing testified that
 23 he was in the kitchen as well when your gun
 24 discharged. Do you have any reason to doubt or

1 disagree with his testimony?
 2 A. No.
 3 Q. Lieutenant Downing testified that if
 4 you asked anyone to act as the cover officer or
 5 the contact officer, he would have ordered
 6 someone to assist you, or would have done it
 7 himself. Do you have any reason to doubt that
 8 testimony?
 9 A. No.
 10 MR. MUSACCHIO: Can we mark this as
 11 the next exhibit.
 12 (Whereupon, Duncan Exhibit Number 48,
 13 Transcript of 1/6/11 interview with
 14 state police, was marked for
 15 identification.)
 16 BY MR. MUSACCHIO:
 17 Q. Officer Duncan, I'm going to represent
 18 to you that this is a transcript of your
 19 interview on January 6th, 2011 with the state
 20 police. Can you just peruse that, and let me
 21 know whether you agree with that?
 22 (Witness reviewing document.)
 23 A. I mean it seems to be.
 24 BY MR. MUSACCHIO:

1 Q. Okay. Now, if you can turn to
 2 Page 35, Line 7 -- I'm sorry, line 4, there's
 3 what -- it's Line 4.
 4 "Question: To the far right, your far
 5 right, and then in the left."
 6 Do you see that?
 7 A. I do.
 8 Q. And then your answer. "So if I enter
 9 this kitchen area from that door, which is like
 10 a living room, I looked, I scanned quick. The
 11 door they entered is in -- is over here.
 12 "Question: The right?
 13 "Answer: The second team is on my
 14 left. The door that the second team --
 15 "Question: Yes, the left. Okay."
 16 Did I read that correctly?
 17 A. I believe so.
 18 Q. Okay. On Line 11 when you say "the
 19 second team is on my left," isn't it true that
 20 you saw members of the second team in the
 21 kitchen when you entered the kitchen?
 22 A. I would have to read the rest of it to
 23 see what context this is in. I don't even know
 24 where in the interview I am here. If you want

1 to give me that time, I'd be happy to do it.
 2 Q. Well, I just want to ask you a very
 3 specific question.
 4 When you entered the kitchen, as you
 5 sit here today do you remember seeing Officers
 6 Riley, Sebastian, and Lieutenant Downing in the
 7 kitchen?
 8 A. To be specific, I wouldn't know if
 9 they were right in front of me. We all are
 10 dressed the same and we all have goggles or
 11 masks and different things on. I wouldn't
 12 recognize them.
 13 Q. Let me rephrase the question.
 14 When you entered the kitchen, did you
 15 see other SWAT team members in the kitchen?
 16 A. As I remember it now, when I entered,
 17 the only thing I can remember seeing right now
 18 at this time are the operators in what we
 19 classified as the hallway here where Mr. Stamps
 20 was.
 21 Q. But you don't have any reason to doubt
 22 or disagree with Officer Sebastian's, Officer
 23 Riley's, and Lieutenant Downing's testimony that
 24 they were in the kitchen when your gun fired?

1 A. I said I don't know where they were.
 2 If that's where they say they were, then I have
 3 no reason to say they weren't.
 4 Q. You have no reason to doubt their
 5 testimony that they were actually in the kitchen
 6 and saw you enter the kitchen before your gun
 7 fired?
 8 A. I don't understand that question.
 9 Q. Well, you don't have any -- they've
 10 testified that they were in the kitchen when you
 11 entered the kitchen. Do you have any reason to
 12 doubt that testimony?
 13 MR. DONOHUE: The testimony as you're
 14 interpreting it?
 15 MR. MUSACCHIO: Yes.
 16 A. Let me try and be specific here.
 17 Are you asking when I first enter from
 18 the den into the kitchen?
 19 BY MR. MUSACCHIO:
 20 Q. Right.
 21 A. You're asking me when I first enter in
 22 here if I see other people in there?
 23 Q. Yes, other officers.
 24 A. Other officers?

1 Q. Right.

2 A. And what I'm telling you is, to my

3 memory now, the only thing I can remember at

4 this time is when I'm in here seeing the two

5 SWAT operators in what we've classified as the

6 hallway. Now, I know there's somebody with me

7 because somebody entered this room with me, but

8 I'm not focused on that. I don't know. I just

9 remember those two in here.

10 Q. But you knew another officer had

11 entered the kitchen with you, is that correct?

12 Is that what you just said?

13 A. Yes. When we came in here, yes

14 (indicating).

15 Q. Okay. And do you know who that

16 officer was?

17 A. I believe it was Sergeant Stuart.

18 Q. Okay. Isn't it true that you never

19 asked another officer to help you by acting as

20 the contact officer or the cover officer when

21 you attempted to physically restrain Mr. Stamps?

22 A. True.

23 Q. True?

24 A. Yes.

1 Q. You decided to be both the contact

2 person and the cover person, is that correct?

3 A. Essentially I would be the contact

4 person, not the cover person.

5 Q. Okay. You decided to be the contact

6 person without getting -- without asking for the

7 assistance of any other officer, is that

8 correct?

9 A. Yes, I did not ask for the assistance

10 of anyone else. Yes, that's correct.

11 MR. MUSACCHIO: Maybe we should take a

12 break. We can take a break now.

13 THE VIDEOGRAPHER: This concludes

14 videotape number one in the November 6, 2013

15 deposition of Officer Paul K. Duncan. Going off

16 the record. The time is 12:08.

17 (Whereupon, a recess was taken.)

18 (Attorney Petrini now present.)

19 THE VIDEOGRAPHER: Here marks the

20 beginning of videotape number two in the

21 November 6, 2013 deposition of Officer Paul K.

22 Duncan. Back on the record. The time is

23 12:18 p.m.

24 BY MR. MUSACCHIO:

1 Q. Officer Duncan, I want you to take

2 another look at Exhibit Number 11, if you would.

3 That's the memorandum that was prepared

4 regarding the opinions and statements of Officer

5 Downing, Lieutenant Downing, and Sergeant Stuart

6 regarding your conduct and your activities that

7 led to the killing of Mr. Stamps.

8 I want to call your attention to the

9 fourth paragraph. If you could just refresh

10 your memory of the content of that paragraph, if

11 you would.

12 (Witness reviewing document.)

13 A. Okay.

14 BY MR. MUSACCHIO:

15 Q. I want to call your attention to the

16 last sentence of the fourth paragraph. It

17 states "Further, if Officer Duncan perceived

18 Stamps as having posed a threat, he should have

19 maintained his position as a cover officer and

20 waited until another contact operator was

21 available to search and/or secure Stamps."

22 Did I read that correctly?

23 A. Yes.

24 Q. Do you agree with that statement?

1 A. Is it do I agree with that opinion are

2 you asking me?

3 Q. Yes.

4 A. Yes. In a perfect world, yes.

5 Q. So you would agree with me that when

6 you approached Mr. Stamps to make physical

7 contact with him, you failed to follow the

8 contact/cover procedure because you acted as the

9 contact officer while your gun was in a

10 semi-automatic setting, is that correct?

11 A. I don't know that I agree with that,

12 no. I had not made contact with Mr. Stamps.

13 Q. Well, you would agree with me that

14 before you approached Mr. Stamps for the purpose

15 of making physical contact with him, that under

16 the contact/cover rule you should have had your

17 weapon on safe and slung over your shoulder, is

18 that correct?

19 A. No.

20 Q. Why is that incorrect?

21 A. Because I was not hands-on with

22 Mr. Stamps. Had I been hands-on with

23 Mr. Stamps, that would have happened.

24 Q. So -- but you agree with the

1 statement, though, that "If Officer Duncan
 2 perceived Stamps as having posed a threat, he
 3 should have maintained his position as a cover
 4 officer and waited until another contact
 5 operator was available to search or secure
 6 Stamps"? Do you agree with that?
 7 A. I agree that that's the opinion of
 8 these officers, yes.
 9 Q. Do you agree with that opinion?
 10 A. I agree that in a perfect world it
 11 would be, yes.
 12 Q. So what you should have done in this
 13 circumstance before you decided to go hands-on
 14 with Mr. Stamps is that you should have -- you
 15 should have asked for the assistance of another
 16 officer to act as the cover officer before you
 17 approached Mr. Stamps and go hands-on with him,
 18 is that correct?
 19 A. Are you telling me or asking me?
 20 Q. I'm asking you.
 21 A. Ask me again then.
 22 Q. Okay. You agree with me that
 23 before -- that under the contact/cover rule,
 24 before you approached Mr. Stamps you should have

1 asked another officer to assist you in either
 2 acting as the contact officer or the cover
 3 officer, is that correct?
 4 A. I could have done that, yes.
 5 Q. Yes.
 6 And you didn't do that, correct?
 7 A. Correct, I did not do that.
 8 Q. And Mr. -- and Officer Stuart,
 9 according to your testimony, was in the room at
 10 that time, is that correct?
 11 A. We entered the room together. I have
 12 no idea where Sergeant Stuart was.
 13 Q. Okay.
 14 A. I don't know where he went after that.
 15 Q. Now, as I understand it from your
 16 testimony, when you entered the hallway it was
 17 cluttered, is that correct?
 18 A. Yes.
 19 Q. It was -- I think you testified there
 20 was some ambient light in there, but it was
 21 fairly dark in there, is that correct?
 22 A. Yes.
 23 Q. And you made the decision to enter
 24 into a cluttered hallway with an individual

1 lying on the ground on his stomach in the dark,
 2 and to step into that hallway without putting
 3 your gun on safe first, is that right?
 4 A. Correct.
 5 Q. And as a result of that, you ended up,
 6 according to your testimony, tripping and
 7 falling and having your gun go off, is that
 8 correct?
 9 A. As a result of going into the hallway,
 10 is that what you're asking me?
 11 Q. Yes.
 12 A. As a result of losing my balance and
 13 falling backwards, yes.
 14 Q. Okay. And will you agree with me that
 15 the more prudent action would have been, in this
 16 case, for you to put your gun on safe before you
 17 even entered the hallway?
 18 A. Three years later, and hindsight being
 19 20/20, and having that option, yes.
 20 Q. I want you to -- I'm going to call
 21 your attention to the second to the last
 22 sentence of the fourth paragraph of Exhibit 11.
 23 A. Can I write on this, if I can? I
 24 don't want to --

1 Q. You can.
 2 A. Just so I can see it.
 3 Q. You can write on that.
 4 A. Okay. Thank you. I want -- just so I
 5 can mark the right sentence. Go ahead. Say
 6 again.
 7 Q. The sentence begins "According to both
 8 Downing and Stuart," the second to the last
 9 sentence in the fourth paragraph.
 10 A. Not this one?
 11 Q. (Indicating).
 12 A. Okay.
 13 Q. It states "According to both Downing
 14 and Stuart, Officer Duncan's training instructed
 15 him to place his weapon on safe and sling it
 16 prior to assuming the role of the contact
 17 officer."
 18 Did I read that correctly?
 19 A. You did.
 20 Q. Do you agree with that opinion?
 21 (Witness reviewing document.)
 22 A. I agree that that is their opinion,
 23 and, yes, I understand what they're saying, yes.
 24 BY MR. MUSACCHIO:

1 Q. And do you agree with their opinion?
 2 A. In a perfect world, yes.
 3 Q. Yes.
 4 So you agree that before you entered
 5 the hallway to make physical contact with
 6 Mr. Stamps, you should have had your weapon on
 7 safe? Do you agree with that?
 8 A. I agree that that's what they're
 9 saying I should have done, yes.
 10 Q. Right.
 11 But do you agree with what they're
 12 saying you should have done?
 13 A. Under the circumstances, at the time,
 14 no. Looking back on it now, I wish I had.
 15 Q. But do you feel that your training
 16 required you to put your weapon on safe before
 17 you approached and made physical contact with
 18 Mr. Stamps? Is that correct?
 19 A. I didn't make physical contact with
 20 Mr. Stamps.
 21 Q. Well, you would agree with me that
 22 it's the more prudent action, the more
 23 reasonable action would have been for you to put
 24 your weapon on safe before you stepped into a

1 dark, cluttered hallway with no room to move
 2 around, to put your weapon on safe before you
 3 did that, is that correct?
 4 MR. DONOHUE: Objection.
 5 A. Not necessarily, no. Had I agreed
 6 with it at the time, I would have done it.
 7 BY MR. MUSACCHIO:
 8 Q. I'm asking you, did your training
 9 require you first to ask for assistance from
 10 another officer to cover Mr. Stamps before you
 11 attempted to make physical contact with him? Is
 12 that correct?
 13 A. We could call for trailers, yes.
 14 Q. Yes.
 15 And you didn't do that here?
 16 A. No, I did not.
 17 Q. And you agree with me that your
 18 training required you to ask for assistance
 19 before -- from another officer to act as the
 20 cover officer before you made physical contact
 21 with Mr. Stamps? You agree with that, is that
 22 correct?
 23 A. No, I don't feel that it required me
 24 to do it. I feel that it was an option for me

1 to do it, and in hindsight a better option.
 2 Q. But doesn't the contact/cover rule
 3 specifically say that you have two officers; the
 4 first officer acts as the cover officer, points
 5 the gun at the person who is about to be further
 6 restrained and searched, is that correct?
 7 A. Under contact and cover, yes.
 8 Q. Yes.
 9 And the second officer who is going to
 10 make contact, before he makes contact with that
 11 person puts his weapon on safe and slings it
 12 over his shoulder, is that correct?
 13 A. If he's carrying a rifle, yes.
 14 Q. And on this evening, you never asked
 15 any officer to assist you to act as either the
 16 contact officer or the cover officer, is that
 17 correct?
 18 A. That is correct.
 19 Q. And as a result of that, you stepped
 20 into a dark, cluttered hallway with Mr. Stamps
 21 lying on the floor with your gun in a
 22 semi-automatic position, and that ended up
 23 killing Mr. Stamps, is that correct?
 24 MR. DONOHUE: Objection.

1 A. Yes.
 2 BY MR. MUSACCHIO:
 3 Q. Now, you were removed from the SWAT
 4 team after the shooting, is that correct?
 5 A. Yes.
 6 Q. As a matter of fact, you were
 7 essentially fired from the SWAT team. Is that
 8 an accurate statement?
 9 A. You would have to look at those
 10 records. I have no idea how they classified it.
 11 Q. How soon after the shooting of
 12 Mr. Stamps were you removed from the SWAT team?
 13 A. After the investigation had been
 14 wrapped up and I came back to work, I was told.
 15 Q. And do you know how soon after, how
 16 long that was after the shooting event?
 17 A. I think it was four months,
 18 four months or so, I believe, after the --
 19 Q. Now, Deputy Chief Davis testified that
 20 you were removed from the SWAT team because you
 21 violated the contact/cover rule and the rule
 22 that required you to have your weapon on safe.
 23 Do you recall that that was the reason you were
 24 removed from the SWAT team?

1 A. He never told me why.
 2 Q. He never told you why?
 3 A. He never told me why.
 4 Q. So that was never conveyed to you?
 5 A. No, it was not.
 6 Q. Did you have any meetings with any of
 7 your supervisors or superiors regarding your
 8 being removed from the SWAT team?
 9 A. Yes.
 10 Q. Who did you meet with?
 11 A. Chief Carl at the time.
 12 Q. And what did Chief Carl tell you as to
 13 why you were being removed from the SWAT team?
 14 Did he give you a reason?
 15 A. He said basically because of the
 16 incident itself that I was being removed from
 17 the SWAT team.
 18 Q. Did he tell you that you violated any
 19 training or procedures or protocols that
 20 resulted in the death of Mr. Stamps, as that
 21 being a reason you were discharged?
 22 A. No.
 23 Q. Did you ever see any documents
 24 relating to your removal from the SWAT team?

1 A. No.
 2 MR. MUSACCHIO: Can I see Exhibit
 3 Number 4?
 4 MS. SHARP: Are we going to re-mark
 5 Exhibit Number 4? Because the other one was not
 6 Bates stamped.
 7 MR. DONOHUE: It's the same document.
 8 MS. SHARP: Yes, same exact document.
 9 (Bates stamped copy of Exhibit 4
 10 substituted.)
 11 BY MR. MUSACCHIO:
 12 Q. Officer Duncan, if you can refer to
 13 Page 6 of Exhibit Number 4.
 14 Before you do that, Exhibit 4 is the
 15 Policy on Firearms and Weapons of the Framingham
 16 Police Department, is that correct?
 17 A. Policy of Firearms and Weapons of the
 18 Framingham Police Department as of 4/30/2011.
 19 Q. Correct. So this was -- this was the
 20 policy that was in effect on when -- on
 21 January 5th, 2011, is that correct?
 22 A. No. It says "Revised 4/30/2011."
 23 Q. Well, okay. Well, let's -- it says
 24 effective date July 1st, 2003, right?

1 A. Yes. And then revised.
 2 Q. Right.
 3 Okay. Well, let's take a look at
 4 Page 6, if you would, under Subsection 5,
 5 "Weapon Handling." It states "Officers shall,"
 6 subsection D, "keep their finger outside of the
 7 trigger guard until ready to engage and fire on
 8 the target."
 9 Did I read that correctly?
 10 A. Section D you're asking?
 11 Q. You can't write on that one. Okay.
 12 Here, if you want to --
 13 A. No, that's fine.
 14 Q. Okay.
 15 A. "Keep their fingers outside of the
 16 trigger guard until ready to engage and fire on
 17 a target," yes.
 18 Q. Okay. "Officers shall keep their
 19 finger outside the trigger guard until ready to
 20 engage and fire on the target." Is that
 21 correct?
 22 A. That's not the -- that's not what it
 23 says. It says "Keep their fingers outside of
 24 the trigger guard until ready to engage and fire

1 on a target."
 2 Q. Yes. But up above it says "Officers
 3 shall."
 4 A. Oh. You asked me about D. Sorry.
 5 Q. Okay. It says "Officers shall keep
 6 their finger outside the trigger guard until
 7 ready to engage and fire on the target."
 8 A. That's correct.
 9 Q. Correct?
 10 And that was the policy that existed
 11 on January 5th, 2011, is that correct?
 12 A. I don't know.
 13 Q. You don't know. Okay. Well, assuming
 14 that it did.
 15 A. I don't want to assume anything. I
 16 don't know.
 17 Q. You don't know whether that was the
 18 policy on January 5th, 2011?
 19 Well, let me represent to you that
 20 officers -- Lieutenant Downing and Deputy Chief
 21 Davis have testified that that was the policy in
 22 effect --
 23 A. Okay.
 24 Q. -- on January 5th, 2011. Okay?

1 A. Sure.
 2 Q. Now, you had -- now, you've testified
 3 previously that when you began to lose your
 4 balance, at some point between the time that you
 5 lost your balance and made impact with the wall
 6 your gun discharged, is that correct?
 7 A. Yes.
 8 MR. DONOHUE: Objection.
 9 BY MR. MUSACCHIO:
 10 Q. And you testified also that your
 11 finger must have been inside the trigger guard
 12 when the gun fired, is that correct?
 13 A. We discussed that my -- that the
 14 trigger has to be depressed for the weapon to
 15 fire, yes.
 16 Q. Correct. Right.
 17 So your finger guard had to be inside
 18 the trigger at the time you fired the shot that
 19 killed Mr. Stamps, is that correct?
 20 MR. DONOHUE: Objection.
 21 A. My finger would have had to depress
 22 the trigger for the weapon to fire, yes.
 23 BY MR. MUSACCHIO:
 24 Q. Right.

1 So at the moment your gun fired, you
 2 had your finger inside the trigger guard and
 3 were depressing the trigger, is that correct?
 4 A. At some point the trigger was
 5 unintentionally depressed, yes.
 6 Q. By you?
 7 A. I was holding the weapon.
 8 Q. Right.
 9 By your finger, right?
 10 A. Yes, my finger.
 11 Q. Right.
 12 So you agree with me that you violated
 13 the policy that your finger needs to be outside
 14 of the trigger guard at all times until ready to
 15 engage and fire on a target, is that correct?
 16 A. Absolutely not.
 17 Q. Well, your finger was inside the
 18 finger guard, is that correct?
 19 A. My finger was outside the trigger
 20 guard until I lost my balance and fell
 21 backwards.
 22 Q. So it's your testimony that during the
 23 course of you falling backwards, that the gun
 24 that was in -- the gun was in your right hand,

1 that during the course of losing your balance
 2 and falling back and before impact with the
 3 wall, that somehow, some way, your finger got
 4 inside the trigger guard and you depressed it,
 5 is that correct?
 6 MR. DONOHUE: Objection.
 7 A. No. What I'm telling you is at some
 8 point between falling and impact with the wall,
 9 that my finger must have slipped into the
 10 trigger, through the trigger guard, through the
 11 trigger guard and depressed the trigger. I
 12 don't know at what point that happened while I
 13 was falling.
 14 MR. MUSACCHIO: All right. Why don't
 15 we go off the record for a moment. I might be
 16 done.
 17 THE VIDEOGRAPHER: Going off the
 18 record. The time is 12:39.
 19 (Off the record discussion.)
 20 THE VIDEOGRAPHER: Back on the record.
 21 The time is 12:44.
 22 BY MR. MUSACCHIO:
 23 Q. Officer Duncan, can you just mark on
 24 Exhibit Number 46 where you have Mr. Stamps'

1 head, can you just simply put an S inside there
 2 to represent Stamps? You can just use a pen to
 3 do that.
 4 A. (Witness complies).
 5 Q. What was that?
 6 A. You said put an H for head, didn't
 7 you?
 8 MR. FUGATE: S.
 9 A. Oh, S. I'm sorry.
 10 BY MR. MUSACCHIO:
 11 Q. That's okay. Leave that there and
 12 just write next -- write underneath it "Stamps."
 13 I'm sorry.
 14 A. I apologize.
 15 Q. And can you just write your name,
 16 "Duncan," underneath this marking?
 17 A. (Witness complies).
 18 MR. MUSACCHIO: And I have no further
 19 questions at this time.
 20 MS. SHARP: Okay.
 21 MR. FUGATE: I have some questions.
 22 MR. MUSACCHIO: Do you want -- why
 23 don't you come here. Do you want to, or can you
 24 just -- do you want me over there?

1 THE VIDEOGRAPHER: It would be best.
 2 MS. SHARP: And while he's moving, can
 3 we just mark Exhibit Number 34, or re-mark on
 4 that? Because that one was not Bates stamped,
 5 and that's the James report.
 6 (Bates stamped copy of Exhibit 34 was
 7 substituted.)
 8 MR. FUGATE: May I proceed?
 9 THE VIDEOGRAPHER: Yes, sir.
 10 BY MR. FUGATE:
 11 Q. Good afternoon, Officer Duncan.
 12 A. Good afternoon.
 13 Q. Do you have any military training?
 14 A. No.
 15 Q. Prior to becoming a member of the
 16 Framingham Police Department in 2006, however,
 17 you did belong to other law enforcement
 18 agencies, is that correct?
 19 A. Yes.
 20 Q. The first one that you belonged to is
 21 what agency, sir?
 22 A. Let's see. I became a special police
 23 officer in Shrewsbury, I believe it was 1991 or
 24 1992. I became a police officer in the Town of

1 New Braintree in 1996, and Millville in 1997.
 2 Then I went to the full-time police academy in
 3 1998. Then I worked for the Town of Mendon. I
 4 went from Mendon to Shrewsbury, and I stayed in
 5 Shrewsbury until I came to Framingham.
 6 Q. Now, you say that you were a special
 7 police officer?
 8 A. Yes.
 9 Q. Are you talking about within the city,
 10 or with the designation special police officer
 11 with the Commonwealth of Massachusetts?
 12 A. Within the Town of Shrewsbury.
 13 Q. Okay. So you did not receive any SPO
 14 training from the Massachusetts Criminal Justice
 15 Training Center, is that correct?
 16 A. Back in -- when I became a special?
 17 Q. Yes.
 18 A. No. They sent you to the
 19 Massachusetts Basic Reserve. It's the police
 20 academy now.
 21 Q. Okay. And that training was
 22 approximately how long, sir?
 23 A. The original?
 24 Q. Yes.

1 A. In the early '90s, I don't remember.
 2 Q. All right. Did they do any training
 3 with weapons there?
 4 A. No. I believe that -- I believe it
 5 was through the Town of -- when Shrewsbury did
 6 it, you qualified and did the training with them
 7 for the weapons there.
 8 Q. Okay. Now, the second police -- now,
 9 while you were at SPO, you just did basically
 10 security type?
 11 A. We did, yes. We did some minor patrol
 12 functions, and you were able to work police
 13 traffic details and things, special things like
 14 that.
 15 Q. And the next unit you went to was who?
 16 A. It would be the New Braintree Police
 17 Department.
 18 Q. Okay. Now, the New Braintree Police
 19 Department, did you go to their academy?
 20 A. No.
 21 Q. Did you go to an academy --
 22 A. I went --
 23 Q. -- at that time?
 24 A. No. At that time I worked in New

1 Braintree based on my intermittent academy.
 2 Q. Okay. All right. And did you belong
 3 to any specialized units while you were working
 4 for that particular department?
 5 A. No, it's a very small department.
 6 Q. So you were not on a SWAT team there?
 7 A. No.
 8 Q. Do they have a SWAT team there?
 9 A. No.
 10 Q. Okay. The next department you went to
 11 was what, sir?
 12 A. That would be Millville.
 13 Q. And when you went to the Millville
 14 Police Department, were you required to go to
 15 any academy?
 16 A. No. At that time I worked on the
 17 intermittent academy also.
 18 Q. Okay. And again, so as such you
 19 received no individual training with respect to
 20 weapons at that time, is that correct?
 21 A. I don't believe so, no.
 22 Q. Okay. So SPO, you were again in two
 23 different departments, and you received no
 24 specialized training in weapons, is that

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1 correct?
 2 A. Correct.
 3 Q. All right. Are you an individual that
 4 owns weapons on his own, perhaps a hunter,
 5 perhaps a shooter?
 6 A. I don't. I haven't hunted since I was
 7 a kid with my father. But, no. I mean I have a
 8 couple of guns that are mine, yes.
 9 Q. Now, the department that you went to
 10 next was which one?
 11 A. Millville. Then I went to the
 12 full-time police academy, and then I went to the
 13 Mendon Police Department.
 14 Q. Which full-time academy did you go to,
 15 sir?
 16 A. The Worcester Police Academy.
 17 Q. Okay. And you were at that academy
 18 for how long?
 19 A. 23 weeks.
 20 Q. And during the period of time you were
 21 there, that was your first introduction, first
 22 training in use of weapons, is that correct?
 23 A. In a recruit class setting, yes.
 24 Q. And the weapon that you were using at

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1 that particular time was just a handgun and
 2 perhaps a shotgun?
 3 A. Yes, I believe so.
 4 Q. And the training there was again 23
 5 weeks, they focus for approximately a week and a
 6 half, two weeks on the guns themselves, is that
 7 correct?
 8 A. I don't recall at this time. It's
 9 been a while. I don't remember.
 10 Q. Did you receive a gun when you left
 11 that academy?
 12 A. No. You -- I didn't, no.
 13 Q. But you were already -- well, you were
 14 working for the police force when they sent you
 15 to the academy, is that correct?
 16 A. Yes.
 17 Q. When you left the academy and got your
 18 training, they didn't issue you a --
 19 A. No. I had --
 20 Q. -- pistol at that time?
 21 A. I had the original weapon, the
 22 original sidearm that I had prior to the
 23 academy.
 24 Q. But this is the first academy that had

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1 ever given you any training with respect to
 2 weaponry, is that correct?
 3 A. Yes, but they didn't train us at the
 4 intermittent academy on firearms. That was the
 5 individual responsibility of the municipality
 6 that you were hired by.
 7 Q. Okay. And what weapon were you
 8 carrying at that time?
 9 A. Let's see. That would be a
 10 9-millimeter Sig.
 11 Q. And in addition to that, were you
 12 trained in any other firearms at that time?
 13 A. I can't recall.
 14 Q. Okay. The next unit that you went to
 15 after that was what, or next department rather?
 16 A. Would be the Mendon Police Department.
 17 Q. And you were with them for
 18 approximately how long?
 19 A. A year and a half.
 20 Q. Any additional academy training at
 21 that particular time?
 22 A. I don't believe so.
 23 Q. Did you work for any specialized units
 24 while you were working for that department?

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1 A. No. They had had -- they were in the
 2 midst of starting a tactical team, but it never
 3 took off, so no.
 4 Q. Okay. And from there, where did you
 5 go, sir?
 6 A. Shrewsbury.
 7 Q. All right. And you were on the
 8 Shrewsbury Police Department for how long, sir?
 9 A. Almost six years.
 10 Q. All right. And did you receive any
 11 specialized -- did you belong to any specialized
 12 units while you were at that department?
 13 A. As far as firearms go?
 14 Q. Any unit, drug patrol unit.
 15 A. Yes, I was -- when I was in the --
 16 when I was at the Shrewsbury Police Department,
 17 I was -- I spent a brief period in the traffic
 18 unit. And then at a later time I was a
 19 detective, and I worked in the narcotics unit.
 20 Q. As a detective, were you a Civil
 21 Service detective, or were you just appointed
 22 that within your department?
 23 A. It's a Civil Service police
 24 department, but I was just a detective. You

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1 didn't have to take another exam. Some places
2 you must do that, I think take exams. You don't
3 have to do that. It's an assignment.
4 Q. And you were there how long, sir?
5 A. In Shrewsbury itself?
6 Q. Yes, sir.
7 A. Close to six, maybe five and a half,
8 close to six years.
9 Q. And was it from there you went to
10 Framingham?
11 A. Yes.
12 Q. And prior to going to Framingham, did
13 you then do a full-time academy?
14 A. I did the full-time academy prior to
15 going to Mendon.
16 Q. Okay. Did you do any additional
17 training when you transferred over, or was it
18 considered just a lateral transfer, lateral
19 move?
20 A. It's a lateral transfer.
21 Q. Okay. When you went into the
22 Framingham Police Department, did you go in as a
23 patrol officer?
24 A. Yes.

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1 Q. And during the period of time you've
2 been there, you've been there since 2006, have
3 you belonged to any specialized units, with the
4 exception of SWAT?
5 A. The motorcycle unit. And I think
6 that's the only other unit that I belong to is
7 the motorcycle unit.
8 Q. Now, when you went to the SWAT unit,
9 were you invited? Did you apply for it?
10 A. You apply for it.
11 Q. All right. And when you applied for
12 it, did you get into that unit the first time?
13 A. Yes.
14 Q. And did SWAT already exist in the
15 Framingham Police Department, or was that the
16 formation of the unit?
17 A. It was there already.
18 Q. Okay. And your training there, your
19 SWAT training was specifically where?
20 A. They train -- they send you to a basic
21 SWAT school, and then they have their own
22 training every month in Framingham.
23 Q. The SWAT school that you went to,
24 which one was it?

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1 A. It was -- I believe it was called
2 Basic SWAT. I can't recall --
3 Q. It wasn't --
4 A. -- exactly the title.
5 Q. It wasn't the Smith Wesson SWAT
6 training?
7 A. No. It was put on by -- I believe it
8 was LEEDS.
9 Q. Okay. Was that in connection with the
10 NFA?
11 A. I don't know.
12 Q. National Firearm Academy?
13 A. I don't know.
14 Q. Now, the SWAT training that you
15 received from Framingham Police Department was
16 how extensive? Was it classroom as well as
17 demonstrations?
18 A. Depending on the training itself, it
19 would have been, yes.
20 Q. All right. How long was the initial
21 training, sir?
22 A. The initial -- you mean the basic SWAT
23 school?
24 Q. Yes, sir.

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1 A. I believe it was 40 hours.
2 Q. Okay. And that was done over a period
3 of how many weeks, if they were over weeks?
4 A. I believe it was one, one week. Basic
5 SWAT, I believe, is one week.
6 Q. And where was the location of that
7 training, sir?
8 A. I don't recall. It was not in
9 Framingham. We were sent someplace. I don't
10 recall where it was.
11 Q. Okay. And when you went to that
12 training, were you accompanied by any other
13 individuals that were training for that unit?
14 A. Yes.
15 Q. How many other individuals? From your
16 department I mean.
17 A. From my department, I think maybe two
18 or three. I can't recall exactly.
19 Q. Do you remember who they were?
20 A. I remember -- let's see, the only one
21 that stands out, I remember Detective Martinez.
22 He's no longer with Framingham. He's with the
23 Massachusetts State Police now. I cannot
24 remember the other people that I went with.

Officer Paul Duncan

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1 Q. While you were there, were you
2 qualified in any other weapons other than the
3 service pistol that you had been carrying?
4 A. During the -- for that class?
5 Q. That's correct.
6 A. No.
7 Q. You were not trained on the M-4?
8 A. Not at that class, no.
9 Q. You were not trained on the shot --
10 using the shotgun?
11 A. No, not at that class.
12 Q. Now, as time has gone on you've
13 indicated that you received monthly training as
14 a member of the Framingham SWAT team?
15 A. Yes.
16 Q. All right. And did you qualify on any
17 other weapons during that additional training,
18 sir?
19 A. The -- let's see. The M-4 rifle we
20 would qualify on, and then we were -- we would
21 qualify on like some less than lethal weapons.
22 Q. You were never trained with a shotgun?
23 A. I remember having some training with a
24 shotgun, but that wasn't the weapon system that

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1 was assigned to me, so I would not have had one.
2 Q. So the way the SWAT team works, to
3 your knowledge, the training, is they don't
4 train you on all of the weapons that are used
5 for SWAT, they train you on specific weapons, is
6 that correct?
7 A. I can't recall if they ever trained us
8 on all the weapons that different individuals
9 carried. I don't -- I just don't remember. We
10 trained specifically -- with whatever weapon
11 system you were given, you would do your
12 training, you carried that and qualified with
13 that. I remember having some training with
14 different weapon systems, but I don't recall.
15 Q. Would it be fair to say that
16 individuals that belong to SWAT, some carry
17 shotguns?
18 A. Yes.
19 Q. Specifically the Benelli
20 semi-automatic, correct?
21 A. Yes.
22 Q. Okay. Some carry the M-4s?
23 A. Yes.
24 Q. And all of you in unison with that

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1 carry a service pistol, is that correct?
2 A. Yes.
3 Q. And in 2011, January, what was your
4 service pistol?
5 A. A Sig .40-caliber handgun.
6 Q. Now, that's not the weapon that you
7 first started with, is it? You first started in
8 law enforcement on a Sig 9-millimeter, is that
9 correct?
10 A. Yes.
11 Q. And you went .40-caliber approximately
12 two, three years ago?
13 A. No. They've been -- I believe that I
14 got the .40-caliber in Framingham. When I first
15 transferred there they were .40 calibers.
16 Q. 2006?
17 A. 2006, yes.
18 Q. And did you receive specialized
19 training from the department itself, or were you
20 responsible for training yourself on that?
21 A. No, you would receive training from
22 the police department.
23 Q. Now, the M-4 training that you
24 received, you received that exclusively from the

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1 Framingham Police Department?
2 A. No. I did attend a class, and I don't
3 remember when I did attend it. It was put on by
4 the FBI, and it was for long rifle. It was for
5 long rifle training, yes.
6 Q. And when they trained you initially on
7 the M-4, did they train you with all the
8 different barrel lengths?
9 A. No.
10 Q. Are you familiar with the different
11 barrel lengths of the M-4?
12 A. All the different barrel lengths?
13 Q. Yes.
14 A. No.
15 Q. All right. The weapon that you were
16 carrying in January of 2011, how long was the
17 weapon -- the barrel? I'm sorry.
18 A. I don't recall.
19 Q. You don't remember if it was a 10, 14,
20 or 16?
21 A. No.
22 Q. All right. Do you remember if it was
23 a military M-4 or civilian M-4?
24 A. I believe it was -- well, I can't -- I

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1 can't recall exactly. I can't tell you.
 2 Q. Now, as a patrol officer in the Town
 3 of Framingham, you're required to qualify on a
 4 yearly basis with respect to your pistol, is
 5 that correct?
 6 A. Yes.
 7 Q. And you do that training, or you do
 8 that qualification where?
 9 A. Generally we'll do it at an outdoor
 10 pistol range. I believe it's in Wayland.
 11 Q. So the department does not have their
 12 own?
 13 A. They have a downstairs range.
 14 Q. Okay.
 15 A. Generally we don't use that for a
 16 yearly qualification. It only holds two people
 17 at a time, and just -- it's not practical.
 18 Q. Okay. So you've received training
 19 again on the M-4, initially with the Sig 9, the
 20 Sig .40. So you received quite a bit of
 21 training with firearms, is that correct?
 22 A. Yes.
 23 Q. All right. Are you familiar with the
 24 expression FOT, F-O-T?

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1 A. No.
 2 Q. Isn't it written everywhere on
 3 posters? Are you familiar with the expression
 4 "finger off trigger"?
 5 A. I understand what you're saying, but
 6 I've never seen a poster that said FOT on it,
 7 no.
 8 Q. Never seen it?
 9 A. No.
 10 Q. Now, the M-4, some departments assign
 11 a weapon to an individual very much like your
 12 service pistol. Is that how SWAT in Framingham
 13 did it?
 14 A. Yes.
 15 Q. All right. So that was your rifle,
 16 correct?
 17 A. Yes.
 18 Q. The only individual that used that
 19 rifle, other than for testing and things, was
 20 you, is that correct?
 21 A. It should have been, yes.
 22 Q. Okay. So I mean if it was quirky in
 23 any way, you would be the one that would know
 24 that, is that correct?

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1 A. Yes.
 2 Q. Now, can you tell me what the safety
 3 features are on that particular weapon?
 4 A. Looking back on it now, I believe that
 5 particular weapon has an actuator on the side
 6 that if clicked in a certain position the weapon
 7 is on safe and will not fire.
 8 Q. And that's when it's horizontal, is
 9 that correct?
 10 A. Yes, I believe so.
 11 Q. And vertical is when it's off safe, is
 12 that correct?
 13 A. I believe so.
 14 Q. This is right where your hand is, is
 15 that correct?
 16 A. It's where your thumb is.
 17 Q. Okay. And this is something that you
 18 can do in less than a second, isn't that so?
 19 A. I would assume under normal
 20 conditions, yes.
 21 Q. Well, you're trained on this. You're
 22 trained to be able to get to that quickly.
 23 Would it be fair to say that you can move that
 24 from safe to on safe quicker than I can hit a

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1 light switch?
 2 MR. DONOHUE: Objection.
 3 A. I don't know.
 4 BY MR. FUGATE:
 5 Q. Well, isn't that the expression, "we
 6 can do it quicker than you can turn a light
 7 switch on"?
 8 A. Never heard that expression either.
 9 Q. Now, this weapon had been in your
 10 hands hundreds of times, is that correct?
 11 A. Probably, yes.
 12 Q. Lights off, you can feel what mode
 13 it's in, you can feel whether it's safe on or
 14 safe off, is that correct?
 15 A. You would be able to, yes.
 16 Q. Knowing the length of your weapon, the
 17 overall length of the weapon, you know where you
 18 can move and where you cannot move with that
 19 weapon, is that correct?
 20 A. Under certain conditions, yes.
 21 Q. Now, the morning of the briefing, or
 22 the evening of -- well, let me back up a little
 23 bit.
 24 You indicated that you applied for

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1 SWAT, is that correct?
2 A. Yes.
3 Q. In the Town of Framingham, do you
4 receive extra compensation by being a member of
5 SWAT?
6 A. If they were training on your day off
7 you might get some overtime on it, or if it was
8 a situation where they called you and you
9 weren't working and you had to come in, you
10 would get some compensation for it, but as a
11 whole, it wasn't.
12 Q. There's no additional money for being
13 in SWAT --
14 A. There's no --
15 Q. -- as there is for some of the other
16 units?
17 A. There's no stipends or any extra money
18 like that, no.
19 Q. Now, on January 4th you were called
20 in, is that correct?
21 A. Yes.
22 Q. How were you called, sir?
23 A. They sent out a page or a text
24 message.

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1 Q. All right. And you received that
2 message or text approximately what time, sir, to
3 the best of your memory?
4 A. Sometime at night. Maybe sometime
5 around 9:00 o'clock.
6 Q. Okay. Do you remember what day of the
7 week this was?
8 A. No.
9 Q. All right. Do you remember what your
10 assigned tour of duty was in those days?
11 A. That would have been -- I believe that
12 would have been day shift.
13 Q. All right. And your day shift at the
14 department then, is that an 8-to-4 or 7-to-3?
15 A. Day shift would be -- I cannot recall
16 if we were operating off of the new hours then.
17 It's changed since I've been there. I don't
18 recall which time it was. So right now it's
19 7:30 in the morning until 4:25 in the afternoon.
20 At one point when I first came to Framingham it
21 was 7:45 in the morning until 4:10. And I don't
22 recall which times that changed.
23 Q. And in terms of days of the week you
24 work, do you work a four on/two off?

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1 A. Five on/three off.
2 Q. And on January 4th, do you remember
3 how many days into your five/three you were?
4 A. No.
5 Q. Would it be relatively easy to figure
6 that out?
7 A. I'd have to look at records. I mean I
8 have no idea. I know I was on a day off. I
9 don't know which day my work it was.
10 Q. So you don't believe that you worked
11 at all on the day of January 4th until you were
12 called in?
13 A. To my recollection, I was not working.
14 Q. You were off that day.
15 Do you remember where you were at the
16 time that you received the text?
17 A. Home.
18 Q. All right. Had you already eaten
19 dinner?
20 A. I would assume I did, yes.
21 Q. Do you remember what else you might
22 have done that afternoon, or that day?
23 A. No.
24 Q. Did you have a certain routine on your

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1 days off?
2 A. Not specifically.
3 Q. Okay. Do you remember exactly where
4 you were when you received the text?
5 A. Just at home. I don't recall.
6 Q. Do you remember if you were in bed?
7 A. I don't believe I was in bed, no.
8 Q. Okay. And you were called in, and it
9 took you approximately how long to get from your
10 location to the station?
11 A. I don't remember how long. Thinking
12 back, I don't remember how long it took me to
13 get there right now. At that time --
14 Q. How long does it normally take you to
15 get from your home there?
16 A. It would depend on what time I leave,
17 depending on traffic and what time I leave.
18 Q. Okay.
19 A. If I leave during -- if I leave in the
20 morning, it would probably take me 25 minutes.
21 Coming home is almost an hour, 55.
22 Q. And this was somewhere after 10:00
23 o'clock in the evening, is that correct?
24 A. The page came out before that. So I'm

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1 assuming, I'm thinking back from memory, and I
2 don't recall exactly what time the page came
3 back off from memory.
4 Q. Okay. But fair to say that when you
5 gave me the variance in terms of how long it
6 takes you to get to and from work, that in part
7 is based on the traffic conditions, is that
8 correct?
9 A. Yes.
10 Q. And based on the fact that this
11 occurred in the evening, would it be fair to
12 assume that the traffic conditions were
13 relatively light?
14 A. Yes.
15 Q. So you're probably talking about
16 getting to the department in less than a half an
17 hour, is that so?
18 A. Probably, yes.
19 Q. Now, are you required to keep any of
20 your clothing or any of the equipment that you
21 would need as a SWAT member with you at all
22 times?
23 A. No.
24 Q. All right. So none of this remains in

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1 the trunk of your personal car, is that correct?
2 A. No, that's correct.
3 Q. You come in, and then there's your
4 uniform and everything else, is that correct?
5 A. Yes.
6 Q. Now, dealing specifically with the
7 uniform that you had on that particular day,
8 what were you wearing?
9 A. The standardized SWAT uniform, camo.
10 Q. Please be specific.
11 A. Camo, it's some type of urban
12 camouflage.
13 Q. You wear a certain type of boot, is
14 that correct?
15 A. Yes.
16 Q. And that's a boot that has no-skid
17 soles, is that correct?
18 A. I have -- I really don't know what
19 kind of soles they have on them. Sorry.
20 Q. Is this the type of boot that has a
21 steel toe, to your knowledge?
22 A. I don't know.
23 Q. Do you know if it has a steel shank,
24 to your knowledge?

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1 A. I don't know.
2 Q. All right. And are they camouflage in
3 color?
4 A. No. They're brown.
5 Q. Okay.
6 A. Tan.
7 Q. All right. And you essentially wear a
8 type of jumpsuit, is that fair to say? I don't
9 want to put words in your mouth.
10 A. No, it's not a jumpsuit. It has
11 trousers and a top. It's not a one piece like a
12 jumpsuit.
13 Q. And with the trousers themselves, did
14 the cuff of the trousers go into the boot, or do
15 they remain on the outside of the boot?
16 A. I've seen people wear them either/or.
17 Q. Okay. How do you wear them?
18 A. I tend to tuck them in.
19 Q. And how did you wear it on January 4th
20 and January 5th, 2011?
21 A. I don't remember.
22 Q. Okay. But it would be fair to say
23 that your normal routine is, in fact, to tuck it
24 in?

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1 A. That's normally how I wore it.
2 Q. Okay. And most -- and these outfits
3 are just not off the rack; these are actually
4 tailored to the individual officer that's
5 wearing them, is that correct?
6 A. These weren't tailored. They were
7 just -- you would get whatever size was
8 appropriate for you. They weren't tailored.
9 Q. Okay. Did you also have armor?
10 A. Yes.
11 Q. All right. And the armor you had --
12 now, you're a right-handed individual, is that
13 correct?
14 A. Yes.
15 Q. A lot of individuals that are
16 right-handed have lighter armor on the right
17 side so they feel they're more maneuverable or
18 they can move around a little better.
19 A. Okay.
20 Q. Is that, in fact, the case with you?
21 A. No.
22 Q. All right. So you wear the same armor
23 on the right side/left side?
24 A. Yes.

1 Q. All right. Is your armor metal or
 2 non-metal?
 3 A. There's plates inside. I don't
 4 believe they're metal.
 5 Q. Well, you'd know that from the weight?
 6 A. Yes. I don't believe they're -- I
 7 don't know what their makeup of material is, is
 8 what I'm saying, but --
 9 Q. Would you describe how many plates you
 10 would have across your chest?
 11 A. I can't remember how the vest worked
 12 as far as the number of plates or how many there
 13 were.
 14 Q. Do you remember the type of vest it
 15 was?
 16 A. The brand name?
 17 Q. Yes, sir.
 18 A. No.
 19 Q. All right. And this is a vest that
 20 you always had while you were a member of the
 21 SWAT team?
 22 A. No. They had gone from a different
 23 type of vest and uniform, and we transitioned to
 24 these uniforms and that particular vest.

1 Q. Okay. Now, as -- when you're not
 2 working SWAT, you were a patrol officer, is that
 3 correct?
 4 A. Yes.
 5 Q. And did you wear a vest when you were
 6 on the street?
 7 A. Sometimes.
 8 Q. It's not required by the police
 9 department?
 10 A. No.
 11 Q. What type of vest would you wear?
 12 A. My bulletproof vest?
 13 Q. Yes, sir.
 14 A. I don't remember what the brand name
 15 is.
 16 Q. All right. Is it police issued, or
 17 this is one that you buy on your own?
 18 A. This is department issued.
 19 Q. Okay. So all patrol people carry
 20 these same vests or wear the same vests, to your
 21 knowledge?
 22 A. I can't tell you what they all wear,
 23 no. I don't know if they're all the same.
 24 Q. Okay. So when you come in on that

1 particular night, you put on your equipment,
 2 which includes your boots?
 3 A. Yes.
 4 Q. You said it's not a jumpsuit. So you
 5 put on a pair of pants, correct?
 6 A. Yes.
 7 Q. You may have, in fact, tucked the
 8 pants into the boot, is that correct?
 9 A. I may have. I don't remember.
 10 Q. All right. You also have a shirt?
 11 A. Yes.
 12 Q. Do you wear a jacket, and then the
 13 vest, and then your armor, or vice-versa?
 14 A. No. You would have a -- it's like
 15 just a shirt, like a large shirt, and then you
 16 would put the vest on the outside of that so you
 17 could have your -- you know, come into contact
 18 with whatever you needed to touch.
 19 Q. Okay. You would also wear a helmet?
 20 A. Yes.
 21 Q. And with or without goggles?
 22 A. It would depend on the person. I had
 23 a --
 24 Q. Specifically on January 4th-5th.

1 A. Not goggles, like clear lens glasses.
 2 Q. Okay.
 3 A. I would say -- I would say --
 4 Q. That would go on your face, very
 5 similar to mine go on, or ones that would be
 6 attached to elastic and pull over the face?
 7 A. I've had both since I've been on SWAT,
 8 and I don't remember if I was wearing -- it was
 9 one or the other, because I would have had them
 10 on, but I don't recall which one I was wearing
 11 on that day.
 12 Q. Okay. Now, are you in uniform
 13 complete, or would you have all your gear
 14 together prior to the briefing?
 15 A. Just going from memory, I can't recall
 16 exactly.
 17 Q. Well, what's the normal procedure?
 18 A. Normally what I would do is if I was
 19 called in, I would collect my gear and bring it
 20 to one specific area so that I had it there
 21 after I had gotten changed, but I don't remember
 22 what I did that day.
 23 Q. I'm confused, so I'm going to ask for
 24 clarification.

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1 In terms of going to a particular
2 area, do you mean going into a particular area
3 within the department or a location area?
4 A. A particular area within the
5 department.
6 Q. Okay. All right. So there's not a
7 normal location where SWAT gets together?
8 A. It -- really it may depend on the time
9 of day and who's utilizing what, so I mean as
10 far as having a specific room or where we would
11 meet.
12 Q. On January 4th, did you, in fact, meet
13 in a specific room?
14 A. Yes.
15 Q. All right. A room that you had met
16 before with SWAT?
17 A. Yes.
18 Q. Okay. Now, you were on SWAT from --
19 earlier you said you couldn't remember exactly
20 when, but we know you came on the department in
21 2006, is that correct?
22 A. Yes.
23 Q. Do you believe it was within the first
24 year that you were with SWAT?

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1 A. I don't believe so.
2 Q. All right. Do you believe it was in
3 the second year that you were with SWAT?
4 A. I don't know.
5 Q. Did the department have any
6 requirements that you had to be on the street
7 for so long or patrol first for so long before
8 you could even apply to SWAT?
9 A. They did have a -- there was a
10 standard as far as time on the road. I don't
11 know if it was -- I can't remember if it was
12 transfer time counted or if you had to have it
13 specifically there, so I can't recall.
14 Q. All right. So we're talking that you
15 were on SWAT for probably less than four years,
16 is that correct?
17 A. From memory?
18 Q. Sure. Yes, sir.
19 A. Probably.
20 Q. During that period of time, on how
21 many occasions were you called to duty as a
22 member of the SWAT team?
23 A. I can't even give you an answer. No.
24 I mean multiple times.

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1 Q. Is this something that you would be
2 called upon weekly?
3 A. No.
4 Q. Once a month perhaps?
5 A. No.
6 Q. In fact, would it be fair to say that
7 you probably only responded as a member of SWAT
8 perhaps two to three times per year?
9 A. Perhaps.
10 Q. And are there -- prior to January 4th,
11 when was the last time you had been activated in
12 a SWAT capacity?
13 A. I have no idea.
14 Q. Do you know if it was in the one year
15 period prior to that, sir?
16 A. I have no idea.
17 Q. Would I be accurate in saying that in
18 terms of a member of the SWAT team, you had been
19 activated probably less than two dozen times?
20 A. I just can't give you a number. I
21 don't know.
22 Q. Now, the briefing on that
23 particular -- by the way, as a member of SWAT,
24 do you have a partner as you do when you ride on

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1 the street on a regular basis?
2 A. One specific individual?
3 Q. One specific individual.
4 A. No.
5 Q. So it's a team?
6 A. Yes.
7 Q. All right. And you train as this team
8 as well, is that correct?
9 A. Yes.
10 Q. So it's not as though you coming into
11 training and they take this one from unit one
12 and they put it together; this team trains all
13 the time together, is that correct?
14 A. Yes.
15 Q. Part of the philosophy there is so you
16 know the movements of each other, you know what
17 to expect from each other, is that correct?
18 A. Yes.
19 Q. Earlier you said you were not certain
20 who was behind you, correct --
21 A. Yes.
22 Q. -- when you entered into the
23 apartment?
24 But the reality is you train in such a

1 way that you know who's behind you; you know
 2 who's supposed to be there, is that correct?
 3 A. I know who's supposed to be there.
 4 Q. And it's of utmost importance that the
 5 individuals that train that way are in the
 6 locations that they are supposed to be?
 7 A. Under -- in a perfect world, yes.
 8 Q. Sure.
 9 And you come to rely upon that as
 10 well, isn't that so?
 11 A. Yes.
 12 Q. Now, on this particular day, on the
 13 briefing they gave you some information, and
 14 we've spoken about earlier an exhibit.
 15 Dwayne Barrett was one of the
 16 individuals that they expected to be there, as
 17 well as Deandre Nwaford, as well as Joseph
 18 Bushfan, is that correct?
 19 A. I don't recall the names, but I've
 20 seen them since we've been here on that list.
 21 Q. Okay. And they gave a little bit of
 22 history with respect to these individuals here,
 23 is that correct? In fact, you were shown
 24 specifically this document?

1 MR. DONOHUE: Which exhibit is it?
 2 MR. FUGATE: Does anybody remember?
 3 MS. SHARP: 13. Talking about the
 4 search warrant?
 5 MR. FUGATE: No.
 6 MS. SHARP: No.
 7 MR. FUGATE: No. I'm sorry. It's
 8 Exhibit 12. I apologize (handing).
 9 A. Thank you. Yes.
 10 BY MR. FUGATE:
 11 Q. You were asked earlier whether or not
 12 you [redacted] on these
 13 individuals, and you indicated that you did not.
 14 So is this the extent of the
 15 information that you were given with respect to
 16 these individuals?
 17 A. I recall a discussion about it, and I
 18 recall hearing some specifics. [redacted]
 19 [redacted]
 20 [redacted] That's what I recall. I
 21 don't recall what specifics they said, among
 22 other things.
 23 Q. Okay. All right. [redacted]
 24 [redacted]

1 [redacted] is that correct?
 2 A. I'd have to look again. I'm sorry.
 3 Q. Sure.
 4 A. I don't have it in front of me.
 5 Q. (Handing).
 6 A. Yes, [redacted]
 7 Q. From your experience, you know that
 8 that [redacted]
 9 [redacted], is that
 10 correct?
 11 A. Yes.
 12 Q. [redacted]
 13 [redacted]
 14 A. Yes.
 15 Q. And just based upon your knowledge,
 16 that would infer [redacted]
 17 [redacted] is that correct?
 18 A. Yes.
 19 Q. They also indicate that [redacted]
 20 [redacted] is that
 21 correct?
 22 A. Yes.
 23 Q. All right. [redacted]
 24 [redacted]

1 A. [redacted]
 2 Q. [redacted]
 3 [redacted]
 4 [redacted]
 5 A. It says [redacted]
 6 Q. And that does not indicate to you that
 7 [redacted] is it? Does it?
 8 Let me back up.
 9 A. You've got to be more specific.
 10 Q. It may have been an improperly formed,
 11 put-together question.
 12 You were aware that there's a
 13 [redacted] is
 14 that correct?
 15 A. [redacted]
 16 Q. [redacted]
 17 [redacted] is that
 18 correct?
 19 A. I believe so.
 20 Q. All right. There's also another
 21 provision in that statute under [redacted]
 22 [redacted] is that correct?
 23 A. I would have to look at the law. I
 24 can't --

1 Q. All right.
 2 A. I cannot --
 3 Q. Well, let's say that you entered an
 4 individual's home and you found a firearm on his
 5 stereo. That would not be carrying a firearm,
 6 correct? That would only be possession of a
 7 firearm?
 8 A. That's true.
 9 Q. Okay. And so you didn't have any real
 10 information [REDACTED]
 11 [REDACTED]
 12 isn't that correct?
 13 MR. DONOHUE: Objection.
 14 A. I only had what I can tell you.
 15 BY MR. FUGATE:
 16 Q. Okay. And with respect to [REDACTED]
 17 [REDACTED]
 18 [REDACTED] is that
 19 correct?
 20 A. Based on what you're giving me today,
 21 it seems to be, yes.
 22 Q. Okay. And with respect to [REDACTED]
 23 [REDACTED] is that
 24 correct?

1 A. Yes.
 2 Q. All right. And it would appear that
 3 he had [REDACTED]
 4 [REDACTED]
 5 [REDACTED] is that correct?
 6 A. It appears so.
 7 Q. All right. At the point in time in
 8 which you were speaking -- they were speaking
 9 about [REDACTED]
 10 [REDACTED]
 11 A. I have no idea.
 12 Q. But you were aware that they presented
 13 you [REDACTED]
 14 [REDACTED] is that correct?
 15 A. I recall them [REDACTED] I
 16 don't recall which individual specifically at
 17 this point they were talking about.
 18 Q. Okay. Now, would it be fair to say
 19 that one of the purposes of the briefing is to
 20 give you all the intelligence available prior to
 21 entering the building? Is that correct?
 22 A. Yes.
 23 Q. And it would be fair to say that based
 24 upon the conversations that were had at the

1 briefing, that you believe that the real target
 2 of this was Joseph Bushfan, is that correct?
 3 MR. DONOHUE: Objection.
 4 A. I can't recall what they specifically
 5 said about who exactly they were looking for.
 6 It's been a long time.
 7 BY MR. FUGATE:
 8 Q. Now, at the point in time that you --
 9 well, from the time that you arrived at the
 10 station that night, put on your uniform, were
 11 briefed, until the time you left was
 12 approximately how long, sir?
 13 A. From the time I got to the station,
 14 changed, had a briefing, and then we left?
 15 Q. Yes, sir.
 16 A. I don't remember.
 17 Q. All right. Were you aware that
 18 members of the Framingham Police Department were
 19 actually sitting on this location?
 20 A. Yes.
 21 Q. And you're aware that they did so
 22 several hours before you were even called in?
 23 A. Yes.
 24 Q. The fact that there were individuals

1 that may have been entering or leaving that
 2 house, would it be fair to say that that would
 3 be crucial information for your unit to be
 4 advised of?
 5 A. Yes.
 6 Q. What information, to the best of your
 7 memory, were you advised of?
 8 A. I remember them saying that it was --
 9 there were people in and out of the house
 10 throughout the night. I remember that coming
 11 during the briefing.
 12 Q. Did you receive any information that
 13 any of these individuals, the three that I'm
 14 just referring to here, Dwayne Barrett, Deandre
 15 Nwaford, and Joseph Bushfan, did you receive any
 16 intel that any of those individuals was at the
 17 house?
 18 A. I don't recall.
 19 Q. Okay. And that would certainly be
 20 important information, would it not?
 21 A. I would imagine, yes.
 22 Q. I mean you're anticipating -- I'm
 23 sorry.
 24 [REDACTED]

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1 [REDACTED]
2 [REDACTED]
3 [REDACTED]
4 A. Yes.
5 Q. But if he's not there, [REDACTED]
6 [REDACTED] does it not?
7 MR. DONOHUE: Objection.
8 A. I don't believe so. I think it's --
9 there's always an element of danger involved in
10 it. I wouldn't want to classify one danger
11 being greater than the other danger.
12 BY MR. FUGATE:
13 Q. Well, search warrants are executed
14 with regularity in Framingham, are they not?
15 A. I think so.
16 Q. And the SWAT team is not always called
17 upon when those search warrants are executed, is
18 that correct?
19 A. Correct.
20 Q. It's when they determine that
21 something is high risk that they bring in the
22 SWAT team, because you're the specialized unit,
23 is that correct?
24 A. Correct.

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1 Q. Fair to say that the vast majority of
2 search warrants, SWAT is not involved at all?
3 A. I would assume. Yes, I would think
4 so.
5 Q. So if these individuals -- so the
6 reason that SWAT was involved was based upon
7 these specific individuals, is that correct?
8 A. I'm assuming. I don't make --
9 Q. Okay.
10 A. -- the call.
11 Q. I understand.
12 Who would make the -- who would be the
13 person making that call?
14 A. That would have been Deputy Chief
15 Davis.
16 Q. Okay. Now, at some point as you
17 headed over -- were you heading over in a group
18 or in separate vehicles?
19 A. There were several of us in a
20 transportation vehicle, but there are other
21 vehicles used that I don't know who was in what.
22 Q. Okay. How many individuals in total
23 went to that location?
24 A. I don't know.

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1 Q. How many teams? Your team consists of
2 approximately six people?
3 A. The team, or the individuals that were
4 making entrance into the house?
5 Q. Well, aren't you separate teams of
6 approximately six? And if I'm wrong, please
7 tell me so.
8 A. No. I think we're classified as one
9 team. There was -- I maybe would classify it as
10 a squad or a group maybe.
11 Q. Okay.
12 A. I don't really understand the
13 question.
14 Q. All right. Some places refer to the
15 teams, the individual groups, versus the unit,
16 which is the entire group of individuals that
17 would respond.
18 A. Yes, I understand.
19 Q. Okay. And so the unit itself consists
20 of approximately how many individuals?
21 A. The entire SWAT team, I can't give you
22 an accurate number now. I don't recall.
23 Q. Sure.
24 A. It's been a while. I don't recall.

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1 Q. Can you estimate -- would it be fair
2 to say that anybody that was responding as a
3 member of SWAT that night would have been part
4 of the briefing group --
5 A. Yes.
6 Q. -- when you were debriefed?
7 How many individuals were in that
8 room?
9 A. I don't know.
10 Q. Okay. In addition to those, that
11 particular unit, were there uniformed officers
12 that were assigned to respond as well?
13 A. I believe they had uniformed officers
14 that were conducting -- their position would be
15 to conduct traffic, meaning to stop traffic from
16 coming through to make -- for safety reasons at
17 some point.
18 Q. All right.
19 A. I don't know who.
20 Q. Okay. Now, when you got to that
21 location, would it be fair to say that you
22 essentially parked a short distance away so your
23 vehicles would not be seen as you exited them?
24 A. The driver did, yes.

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1 Q. Okay. And that would have been
2 approximately how far away from 26 Fountain
3 Street?
4 A. I don't know. A couple of -- a couple
5 of house lengths down the street.
6 Q. And the communication at that
7 particular point is next to nothing, isn't that
8 correct?
9 MR. DONOHUE: Objection.
10 A. Could you be more specific on that?
11 BY MR. FUGATE:
12 Q. You're not -- you know exactly what
13 your purpose is, correct?
14 A. Yes.
15 Q. You know exactly what the entrance
16 points are going to be, is that correct?
17 A. Yes.
18 Q. Every member of that particular unit
19 knows what their specific duty is, is that
20 correct?
21 A. Yes.
22 Q. And would it be fair to say since
23 surprise -- the element of surprise is important
24 that there is no conversation, and quite frankly

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1 no need for conversation?
2 A. Unless the situation dictates.
3 Q. Unless something unusual?
4 A. Yes.
5 Q. And the individual that essentially
6 speaks is the team leader, is that correct?
7 A. It would depend on the circumstances,
8 yes.
9 Q. In this particular circumstance.
10 A. If there was no reason to say
11 anything?
12 Q. Right.
13 A. Yes.
14 Q. All right. But at some point when you
15 get to that location, you were told when to
16 enter the building, is that correct? Somebody
17 gives the order, is that correct?
18 A. Someone gives the order to breach.
19 Q. Yes, sir.
20 A. Yes.
21 Q. Okay. That was given by who?
22 A. Sergeant Stuart.
23 Q. And was that given by yelling it out,
24 or were you guys on radio?

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1 A. I don't know what Sergeant Stuart did.
2 He was -- he was close to me, so I heard him say
3 it.
4 Q. All right.
5 A. I don't know if he used the radio.
6 Q. Would it be fair to say that the
7 individual members of the SWAT team on that
8 particular night are on a closed channel?
9 A. Yes.
10 Q. So you can communicate with each other
11 and nobody else outside of your unit can
12 communicate with you the same way, is that
13 correct?
14 A. Unless they change their radio --
15 Q. Right.
16 A. -- to something, yes.
17 Q. And that's done to protect you?
18 A. Yes.
19 Q. And that's basically how conversations
20 are had when you're going to breach, is that
21 correct?
22 A. You mean someone giving the command to
23 execute?
24 Q. That's correct.

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1 A. Yes.
2 Q. Now, at that particular time they had
3 already taken -- prior to entering the building,
4 or even really approaching the building, some
5 individuals were taken into custody. Were you
6 aware of that?
7 A. I remember someone saying something in
8 the back of the transport vehicle about some
9 deal going down outside the house, or something
10 to that effect.
11 Q. So you're still inside the transport
12 vehicle at the point that you hear something,
13 you don't remember exactly what, but you hear
14 something?
15 A. Someone saying that. I didn't hear
16 anything, no.
17 Q. So it is not brought to the attention
18 of your unit that Joseph Bushfan is already in
19 custody?
20 A. I never remember anyone saying that.
21 Q. Okay. Now, there were two females
22 that were also taken into custody at that time,
23 or at least detained. Were you aware of that
24 prior to leaving the transport vehicle?

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1 A. No.
2 Q. All right. During your briefing at
3 the Framingham Police Department, did the intel
4 -- through intel was it brought to your
5 attention that there were two females inside of
6 that building?
7 A. I don't remember.
8 Q. Fair to say that that's the type of
9 information that would be incredibly important
10 for a unit such as yours, is that correct?
11 A. Yes.
12 MR. DONOHUE: Objection.
13 BY MR. FUGATE:
14 Q. Now, as you approached the building,
15 did you see anyone?
16 A. Did I see anyone?
17 Q. That's right.
18 Did you see anyone on the front of the
19 building, on the porch, in a window?
20 A. Other than police?
21 Q. Other than police.
22 A. As I approached, yes. As I got to the
23 front of the house there was a woman at the
24 front of the house, and I believe she was lying

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1 on the ground.
2 Q. Was there a unit that went towards the
3 building ahead of your -- I'm sorry.
4 Was there a team that went toward the
5 building prior to your team going to the
6 building?
7 A. I don't know if there was a group. As
8 I approached, some -- there was an operator
9 outside. The woman was on the ground. There
10 was an operator standing there outside.
11 Q. And that was not an operator that was
12 specifically on your team, is that correct?
13 A. No, I don't believe so.
14 Q. So another team actually arrived at
15 the property prior to you, is that correct?
16 A. Well, there was an operator there. I
17 don't know which specific group or what his, you
18 know, what his designation was to do.
19 Q. Okay. All right.
20 A. I don't remember. I just remember
21 someone being outside, and I remember the woman
22 being on the ground.
23 Q. All right. Now, you had the battering
24 ram, is that correct?

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1 A. Yes.
2 Q. All right. And the decision was made
3 that you would have the battering ram before you
4 left the department, is that correct?
5 A. Yes.
6 Q. The individual that has the battering
7 ram is usually the first person in, isn't that
8 correct, if not always?
9 A. The first person --
10 Q. Is he the first person inside the
11 building, or just the first person to approach
12 the outside door?
13 A. No. I mean generally you're one of
14 the first people. But if you have the battering
15 ram, depending on the circumstances, there's
16 usually somebody with you because some things
17 can change where you need assistance.
18 Q. Okay. Now, when you come upon the
19 porch area, you indicate that there's a female
20 that's already on her stomach or laying down?
21 A. I believe so, yes.
22 Q. And that's in front of the front door,
23 or is that on the grassy area or --
24 A. I can't remember if it was at the

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1 porch or in front of the porch. I can't
2 remember anymore.
3 Q. And have you received any information
4 about this woman at this particular time?
5 A. I don't remember getting any
6 information, no.
7 Q. All right. So you don't remember
8 receiving any information that Joseph Bushfan
9 was already in custody down some distance from
10 the house, is that correct?
11 A. That is correct.
12 Q. You don't remember receiving any
13 information that there were two females that had
14 already been detained away from the building, is
15 that correct?
16 A. That's correct.
17 Q. And you don't remember receiving any
18 information that this woman is in front of the
19 building being detained, is that correct?
20 A. I don't remember receiving any
21 information about it.
22 Q. Okay. And at any point in time during
23 the debriefing, you don't remember seeing -- I'm
24 sorry, the briefing, you don't remember

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1 receiving any information about the woman,
2 Joseph Bushfan, or the two females, is that
3 correct?
4 MR. DONOHUE: Objection.
5 A. I don't remember the names of the male
6 parties that they were talking about. I don't
7 know if Mr. Bushfan was one of those names that
8 they had mentioned in the briefing. I don't
9 recall.
10 But as far as the females, I don't
11 remember anything about that.
12 BY MR. FUGATE:
13 Q. So you remember no information
14 regarding three females that you have -- that
15 were encountered at the location prior to coming
16 on scene, is that correct?
17 A. From my memory, correct.
18 Q. Now, what was done prior to you
19 hitting the door, by other units?
20 A. Prior to me hitting the door?
21 Q. Yes, sir.
22 A. I don't know.
23 Q. Was a stun grenade thrown?
24 A. There was supposed to be one thrown, I

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1 think, yes.
2 Q. Well, do you remember hearing it? I
3 mean these are pretty loud, aren't they?
4 A. They are loud.
5 Q. And you've been involved with them
6 before in your training and things like that?
7 A. I have.
8 Q. Do you remember hearing it?
9 A. No.
10 Q. Is there a specific individual that
11 would have been designated as the person to
12 throw the stun grenade?
13 A. Yes.
14 Q. All right. Do you remember who it was
15 on that particular morning?
16 A. No.
17 Q. All right. Is there a specific
18 location where that stun grenade was supposed to
19 enter the house?
20 A. I believe so, yes.
21 Q. Okay. And that's covered at the
22 briefing as well, is that correct?
23 A. Correct.
24 Q. Was it a specific window in front of

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1 the house, the middle of the house, the back of
2 the house? Do you remember?
3 A. I don't remember at this point, no.
4 Q. Okay. And -- but this was a
5 discussion that was had at the briefing, is that
6 correct?
7 A. Yes.
8 Q. All right.
9 A. You would be given your assignment --
10 Q. Sure.
11 A. -- at the briefing.
12 Q. And you don't -- do you carry stun
13 grenades as part of your uniform, that
14 particular uniform?
15 A. A flashbang, yes.
16 Q. Okay. So everybody has one on them,
17 if not more than one, is that correct?
18 A. You should. I don't know if everybody
19 had one, but yes.
20 Q. Okay. But there was a specific
21 individual or individuals that were designated
22 to toss them, for lack of a better word?
23 A. As far as I can remember, yes.
24 Q. Okay. And you don't remember if it

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1 was tossed prior to you hitting the door, is
2 that correct?
3 A. No, I don't recall.
4 Q. Okay. And after you hit the door,
5 were you the first one in, or was your partner
6 in, or someone working on your team?
7 A. After I hit the door, I was the first
8 one to go through the door.
9 Q. Okay. And when you went through the
10 door, you dropped the battering ram, is that
11 correct?
12 A. Yes.
13 Q. And at that particular point, would it
14 be fair to say that this is the -- this is the
15 most stressful time of an entry? The entry
16 time, the point that you enter, is the most
17 stressful time by far, is that correct?
18 MR. DONOHUE: Objection.
19 A. I would say that it's a very
20 concerning time where you're in a funnel of a
21 doorway, yes.
22 BY MR. FUGATE:
23 Q. And at this point your weapon is high
24 ready, is that correct?

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1 A. Once I drop the ram --
 2 Q. Yes.
 3 A. -- then I cross over and I take my
 4 weapon, and I activate it on semi-automatic, and
 5 go to the low ready.
 6 Q. Okay. So -- oh, you did.
 7 Okay. So you go on the low ready, and
 8 at this particular time it's safe on, is that
 9 correct?
 10 A. When it was slung it was on safe.
 11 Q. Okay.
 12 A. As I transition from the ram to my
 13 rifle, it is put on to semi-automatic.
 14 Q. Okay. You then enter what's listed
 15 here as the front entry, is that correct?
 16 MR. DONOHUE: Objection.
 17 A. No. I think we're --
 18 BY MR. FUGATE:
 19 Q. I'm sorry.
 20 A. I apologize. We're getting ahead of
 21 each other. I thought you were talking about
 22 this door here. This door?
 23 Q. Yes.
 24 A. No. We didn't have to breach that

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1 door with any force. So I had the battering ram
 2 in here. So I didn't force anything open until
 3 I got to this door (indicating).
 4 Q. Okay.
 5 A. So I apologize.
 6 Q. All right.
 7 A. I thought we were talking about
 8 something different.
 9 Q. And when you came in through that, you
 10 immediately grab your gun, turn it around, the
 11 battering ram just gets dropped to the ground,
 12 is that correct?
 13 A. Where are we talking about?
 14 Q. The second door, the one you're making
 15 reference to right here (indicating).
 16 A. This one (indicating)?
 17 Q. Yes, sir.
 18 A. Yes.
 19 Q. Okay. You come in that, and is your
 20 gun up or down?
 21 A. Once I drop the battering ram, I
 22 transition to my rifle. My rifle goes to the
 23 low ready, and I set the switch to
 24 semi-automatic.

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1 Q. Okay. Now, these rooms, you knew the
 2 size of the building, is that correct?
 3 A. Roughly.
 4 Q. Roughly?
 5 A. I'd never been in there before.
 6 Q. Not a large building, and as you
 7 mentioned not relatively large rooms, is that
 8 correct?
 9 A. I mean not really. They seemed like
 10 an average room to me.
 11 Q. Okay. And you're carrying -- and your
 12 pistol is beside -- is on your side, is that
 13 correct?
 14 A. Holstered, yes.
 15 Q. Okay. You chose to use your gun, the
 16 long rifle, as opposed to in close quarters like
 17 that pulling out your service pistol?
 18 A. Yes.
 19 Q. All right. Were you required to use
 20 your M-4 as opposed to your service pistol?
 21 A. I don't believe there was a
 22 requirement for it, no.
 23 Q. Okay. Would it be fair to say that in
 24 your experience, and perhaps even in your

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1 training, that in close quarters like that it is
 2 safer to use your hand pistol and easier to use
 3 your hand pistol than it is to use an M-4?
 4 MR. DONOHUE: Objection.
 5 A. In rooms this size, the M-4 is a
 6 functioning weapon. Close quarters, meaning
 7 very tight small places in like closets and
 8 things and such, it may be better to have a
 9 fire -- a handgun, if possible.
 10 BY MR. FUGATE:
 11 Q. And the reason for it is you can bump
 12 it? It's just easier to maneuver a pistol than
 13 it is to maneuver an M-4, correct?
 14 A. Depending on the circumstances, yes.
 15 Q. And in that particular scenario, you
 16 made the decision that you were going to use
 17 your M-4, is that correct?
 18 A. Yes.
 19 Q. All right. Now, you came into this
 20 room. You can't determine if you went left or
 21 right, correct?
 22 A. Yes.
 23 Q. You indicated that it appeared to be
 24 dark, the room itself?

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1 A. This particular room, I can't recall
2 how much light was in there.
3 Q. Now, this was nighttime you
4 approached, and it was dark, isn't that so?
5 A. Yes.
6 Q. And it would be fair to say that as
7 you approached the home, you could see that
8 there were lights on inside of the house, is
9 that correct?
10 A. I don't remember anymore.
11 Q. When you finished in that room -- and
12 you were in that room just for a matter of
13 seconds, isn't that correct?
14 A. Yes.
15 Q. You then moved into the den area, is
16 that correct?
17 A. Yes.
18 Q. And although you're not 100 percent
19 certain who was behind you, you do know who was
20 supposed to be behind you, is that correct?
21 A. Yes.
22 Q. Had you worked with that individual
23 before?
24 A. Yes.

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1 Q. Trained with that individual before?
2 A. Yes.
3 Q. Relied upon that individual, isn't
4 that so?
5 A. Yes.
6 Q. Okay. He came into the den with you
7 as well?
8 A. I'm assuming he did, yes.
9 Q. Okay. Well, you can feel it. You
10 know --
11 A. I didn't --
12 Q. -- and again, you can't see him for
13 certain --
14 MR. DONOHUE: You both can't talk at
15 the same time.
16 A. No, I understand what you're saying,
17 but --
18 MR. DONOHUE: Ask the question again,
19 please.
20 BY MR. FUGATE:
21 Q. All right. You believe that he's
22 right there, don't you?
23 A. Somebody is there, yes.
24 Q. All right. Now, you indicated that

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1 you had glasses on similar to these, except
2 they're clear, is that correct?
3 A. I can't recall which pair I was
4 wearing --
5 Q. Okay.
6 A. -- if it was the goggles or clear
7 glasses.
8 Q. Once you finished in the first room,
9 did someone yell "clear"?
10 A. Normally you would, but I don't
11 remember anyone doing it. It doesn't mean that
12 it didn't take place.
13 Q. Okay.
14 A. I just don't recall.
15 Q. Do you remember it being done at any
16 point as you -- well, when you went into the
17 den, which would have been the next area that
18 you went into, is that correct? Do you
19 remember?
20 A. Yes.
21 Q. The living room, you didn't hear it.
22 In the den you didn't hear it as well, is that
23 correct?
24 A. I don't remember hearing it.

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1 Q. Okay. All right. When you came from
2 the den, you walked into the kitchen area, isn't
3 that so?
4 A. From the den to the kitchen, correct.
5 Q. All right. And at the point that you
6 did so, you observed an individual already on
7 the floor, isn't that correct?
8 A. At some point.
9 Q. Well, how long after you went to the
10 kitchen did you look over and observe this
11 individual?
12 A. I can't tell you exact -- exactly how
13 long. I remember coming in. The SWAT operators
14 are here, and then they take -- as they're
15 taking off down the hall, I have a clearer
16 picture.
17 Q. Okay. And you were asked some
18 questions earlier in terms of what your -- what
19 you were going to do with respect to the
20 individual on the floor. Your intent was to
21 walk over to this individual. And you had the
22 gun pointed at him, is that correct?
23 A. The gun was in my hand, yes.
24 Q. All right. Was it your belief that

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1 you were going to search this individual?
2 A. No.
3 Q. Were you aware that the search warrant
4 specifically denied you the ability to search
5 these individuals?
6 MR. DONOHUE: Objection.
7 A. No.
8 BY MR. FUGATE:
9 Q. All right. Have you ever seen the
10 search warrant?
11 A. No.
12 Q. I show you what has been marked as
13 Exhibit Number 13 (handing).
14 Have you seen search warrants before?
15 A. Yes.
16 Q. All right. And on the front page of
17 the search warrant itself, it lists what you can
18 and cannot do, is that correct?
19 A. Yes.
20 Q. And it does so by indicating so in
21 boxes, is that correct?
22 A. Yes.
23 Q. Would you read the first line for us,
24 please, of that? Not that part --

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1 A. I'm sorry.
2 Q. -- the boxes, that tells you what you
3 can do.
4 A. "You are also authorized to conduct a
5 search at any time during the night."
6 Q. And it specifically indicates that
7 you're able to do that, is that correct?
8 A. It does.
9 Q. What's the next category, sir?
10 A. "You are not also authorized to enter
11 the premises without announcement."
12 Q. Okay. And that specifically requires
13 that you notify, knock and announce yourself
14 prior to entering, is that correct?
15 A. That is correct.
16 Q. All right. Did you knock and announce
17 yourself prior to entering?
18 A. That was Sergeant Stuart.
19 Q. Okay. So it was not you?
20 A. No.
21 Q. All right. He was in front of you at
22 the door?
23 A. No. I was at this position in the
24 door, and Sergeant Stuart would be standing at

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1 this position at the door (indicating).
2 Q. Okay. But you're already essentially
3 inside the house at that particular point, is
4 that correct?
5 A. Inside this common hallway here.
6 Q. Right.
7 Was there a knock and announce before
8 you entered the common area?
9 A. I don't know.
10 Q. Well, did you observe the sergeant to
11 knock and announce before entering this area?
12 A. I didn't observe Sergeant Stuart, no.
13 Q. Okay. Did you knock and announce
14 prior to entering this particular area, sir?
15 A. No.
16 Q. You then go into the living room area.
17 You do not knock and announce,
18 correct?
19 A. Prior to making entrance?
20 Q. That's correct.
21 A. No, I did not.
22 Q. And you don't remember if you heard
23 anyone else do so, is that correct?
24 A. No. From here into here, Sergeant

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1 Stuart knocked and announced, and we made entry
2 into here (indicating).
3 Q. Okay. And you don't know if the stun
4 grenade has already been thrown or let off?
5 A. I don't know.
6 Q. Okay. What is the next category
7 there, sir?
8 A. That would state "You are not also
9 commanded" -- "you are" -- "You are not also
10 commanded to search any person present who may
11 be found to have such property in his or her
12 possession or under his or her control or to
13 whom such property may have been delivered."
14 Q. And were you aware of the contents of
15 this search warrant, what you could do or could
16 not do during the briefing before you left
17 headquarters?
18 A. No.
19 Q. So you knew that -- you were not aware
20 of that?
21 A. No, I was never given a copy of the
22 search warrant.
23 Q. So you didn't know that you were
24 restricted in your inability to be able to

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1 search anyone in there, other than the targets
2 of this?
3 MR. DONOHUE: Objection.
4 A. Yes. We don't search people. That's
5 not what I'm there for. I'm not there to search
6 anybody.
7 BY MR. FUGATE:
8 Q. Okay. But were you aware that you had
9 no ability to do so legally?
10 A. No, because it would -- it's not part
11 of my position. I wouldn't search them anyway,
12 so no.
13 Q. Now --
14 MR. DONOHUE: Do you have much longer?
15 I hate to --
16 MR. FUGATE: No.
17 MR. DONOHUE: Okay. I just need to
18 take a break if we're going to go --
19 MR. FUGATE: No.
20 MR. DONOHUE: -- too much longer.
21 MR. FUGATE: Five minutes, I'm done.
22 BY MR. FUGATE:
23 Q. Now, at some point you observed this
24 individual on the floor that we later determined

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1 to be Eurie Stamps, is that correct?
2 A. Yes, sir.
3 Q. Did you recognize this individual as
4 anyone that you had ever seen before?
5 A. No, sir.
6 Q. Did you recognize this individual as
7 anyone that was wanted by either Framingham
8 Police or anyone in law enforcement?
9 A. No, sir.
10 Q. When you approached the individual,
11 was he talking?
12 A. No, sir.
13 Q. He said nothing at all?
14 A. No, sir.
15 Q. And you said nothing to him?
16 A. No, sir.
17 Q. And he's laying in the hallway, is
18 that correct?
19 A. In what we're classifying here as a
20 hallway, yes.
21 Q. Right.
22 Is this area relatively open, though?
23 A. Can you -- which area are we talking
24 about?

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1 Q. This whole -- this entire area here,
2 the kitchen into this area. Not this, the rear,
3 but this area. Is this primarily an open area
4 (indicating)?
5 MR. DONOHUE: Objection.
6 A. I don't know if there's any -- these
7 objects here, I just don't know. I don't know
8 if they were there, or why they're there.
9 BY MR. FUGATE:
10 Q. Okay.
11 A. I don't remember.
12 Q. And when -- and his head is facing
13 towards the kitchen, is that correct?
14 A. Yes.
15 Q. And I think you said earlier in your
16 testimony that his head is approximately two to
17 three feet away from the threshold, is that
18 correct?
19 A. I'm estimating, but yes.
20 Q. And you indicated earlier that you
21 were going to go down on the right side?
22 A. His right side, yes.
23 Q. Okay. Now he's laying on his stomach?
24 A. Yes.

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1 Q. So you're still referring to his right
2 side, is that correct?
3 A. No. To the right of him. His right
4 side meaning to the right, meaning -- I guess
5 technically it would be his -- his left side,
6 but to the right of his body.
7 Q. All right. So fair to say you're
8 referring to your right side, not his right
9 side?
10 A. To the right, to the right of him.
11 It's -- I'm trying to be specific.
12 Q. And I want you to be specific --
13 A. Yes.
14 Q. -- because I'm a little confused.
15 A. Okay.
16 Q. All right. This is Eurie Stamps. Are
17 you trying to get to this side of Mr. Stamps or
18 that side of Mr. Stamps (indicating)?
19 A. This side of Mr. Stamps (indicating).
20 Q. Okay. And in order to do that, and
21 there's -- you indicate that there's clutter,
22 but there's not a wall there, is there?
23 A. A wall where?
24 Q. There's no wall as you see this. It's

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1 not as though there's a wall. His body is
2 laying here, but there's not a wall as you see
3 in some hallways that have walls on both sides,
4 is that correct?
5 A. Well, these are the -- these are the
6 fixed walls here, so I mean...
7 Q. Yes, but he's here (indicating). What
8 I'm saying is there's not a wall that's very
9 close to his body, is that correct?
10 A. I don't know -- I don't want to use
11 the pen as being Mr. Stamps as it rolls, but I
12 don't remember exactly how the position of his
13 body was.
14 Q. Oh, you don't remember if his head was
15 facing the kitchen --
16 A. I remember.
17 Q. -- or facing the back of the building?
18 A. Oh, no. I remember --
19 Q. Okay.
20 A. -- his head facing toward the
21 threshold. I don't remember exactly how -- as
22 his body was lying there, how his direction was,
23 whether it was completely parallel with the wall
24 or if it was more --

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1 Q. Okay.
2 A. -- down a little bit.
3 Q. All right.
4 A. I don't remember.
5 Q. Now, it's your intent to go to the far
6 side of Mr. Stamps, to go to this side of
7 Mr. Stamps, is that correct?
8 A. Yes.
9 Q. All right. And you indicate at some
10 point you lost your balance, correct?
11 A. Yes.
12 Q. Was that before you got to that side?
13 A. No. I was on the side of Mr. Stamps.
14 Q. And that's when you lost your balance?
15 A. Yes.
16 Q. All right. So at that point in
17 time -- you are facing me right now, is that
18 exactly how you would have been with respect to
19 Mr. Stamps?
20 MR. DONOHUE: Objection.
21 BY MR. FUGATE:
22 Q. Okay.
23 A. I just don't understand looking at the
24 pen what you're talking about.

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1 Q. All right. You're on this side of
2 Mr. Stamps, correct?
3 A. Yes.
4 Q. Would it be fair to say that you were
5 facing Mr. Stamps? Also correct? I mean you
6 wouldn't have your back to him, would you?
7 A. No. I wouldn't have my back to him,
8 no. Without having -- knowing specifically how
9 he was laying, I can't tell you exactly what
10 position I was in. I was moving forward.
11 Q. Okay. How long were you on that side
12 of Mr. Stamps before you stumbled?
13 A. A second or two.
14 Q. Now, when you came through the door,
15 your safety was off and you had it in semi-aut
16 mode, is that correct? When you first entered
17 the living room area.
18 A. Would you like this back?
19 Q. I'm sorry. Thank you very much, sir.
20 A. When I first entered this area here,
21 my -- I wasn't holding a weapon. So I had the
22 battering ram, I enter here, I throw the ram
23 down, and then I reach across and take my rifle,
24 and it goes from safe, being held on safe on the

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1 slung, to being put on semi-automatic.
2 Q. Okay. And you're in that room for
3 what period of time? Seconds?
4 A. Probably.
5 Q. All right. And you find nobody or
6 anything in there of concern, is that correct?
7 A. Correct.
8 Q. You then enter the den area, is that
9 correct?
10 A. Yes.
11 Q. Your weapon is still on safe off?
12 A. It's on semi-automatic, yes.
13 Q. In safe off, right?
14 A. Yes.
15 Q. And you find nothing in that
16 particular room, is that correct?
17 A. Correct.
18 Q. You find no individuals in that room,
19 is that correct?
20 A. That is correct.
21 Q. Nothing of any concern in that
22 particular area, is that correct?
23 A. Not immediately, no.
24 Q. Okay. And you do not put your weapon

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1 on safe off at that point?
2 A. No. I can hear the activity, and
3 they're yelling commands going on here, and I
4 haven't gotten that far yet.
5 Q. Okay. And then you come into the
6 other area. You come into the kitchen first, is
7 that correct?
8 A. And then we are faced with the curtain
9 and get through the kitchen, yes.
10 Q. All right. When you walk into the
11 kitchen, you see other officers from your unit,
12 is that correct? From the unit in total, is
13 that correct?
14 A. I remember seeing the individuals down
15 here specifically, yes.
16 Q. Okay. So you can now see the
17 individuals that are talking, hear what they're
18 saying, is that correct?
19 A. The SWAT operators?
20 Q. That's correct.
21 A. I can see those two. I don't know. I
22 never saw them giving commands. I can see them
23 here (indicating).
24 Q. Okay.

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1 A. Yes.
2 Q. And at that point you still have not
3 put -- gone safe on, is that correct?
4 A. That is correct.
5 Q. And at this point there are how many
6 officers there; two, three?
7 A. I don't know.
8 MR. DONOHUE: Objection.
9 BY MR. FUGATE:
10 Q. Okay. You then walk towards the
11 hallway area, is that correct?
12 A. Yes.
13 Q. And there's no conversation, no sounds
14 coming from him, is that correct?
15 MR. DONOHUE: "Him" being Mr. Stamps?
16 MR. FUGATE: Mr. Stamps. Thank you.
17 I'm sorry.
18 A. No.
19 BY MR. FUGATE:
20 Q. All right. And do you hear any other
21 sounds, other than sounds and conversations from
22 the individuals that are with SWAT?
23 A. I don't remember hearing anything.
24 MR. DONOHUE: Objection.

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1 BY MR. FUGATE:
2 Q. And your weapon is still safe off,
3 right?
4 A. Correct.
5 Q. Are you familiar with the term "the
6 threat has been neutralized"?
7 A. I would assume I know what it means.
8 Q. At what point, if any, did you assume
9 that the threat was neutralized?
10 A. Until the mission is complete, the
11 threat is never neutralized.
12 Q. And that meaning essentially
13 individuals in custody?
14 A. Until the team commander says that the
15 mission is accomplished, meaning where it's safe
16 in here, we're okay, there is -- essentially
17 could be a threat anywhere. I don't know what
18 has been cleared and what hasn't.
19 Q. In your past SWAT experiences, did
20 your gun usually remain on safe off?
21 MR. DONOHUE: Objection.
22 A. During a mission?
23 BY MR. FUGATE:
24 Q. Yes.

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1 A. In a house clearing rooms?
2 Q. Yes, sir.
3 A. If I was in a house clearing rooms, my
4 weapon, my practice, the practice would be to
5 be, clearing rooms, to have it on
6 semi-automatic.
7 Q. I'm referring to the safety now, safe
8 on/safe off.
9 A. So am I, yes. No, the safety.
10 Q. No. You're talking about the mode.
11 You're talking about from semi to automatic,
12 correct?
13 A. No, no, no. It would not -- it would
14 be on semi-automatic.
15 Q. Okay.
16 A. If I was clearing the rooms it would
17 be on semi-automatic, not on.
18 Q. But with respect to the safety device
19 on a rifle.
20 A. Well, in a mission clearing rooms, it
21 would be off.
22 Q. Okay. So it has always been your
23 procedure in the past when clearing rooms that
24 your safety was off?

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1 A. Yes.
 2 MR. FUGATE: I have nothing further.
 3 MR. DONOHUE: You're finished?
 4 MR. MUSACCHIO: I've got a couple
 5 follow-ups.
 6 MR. DONOHUE: We're taking a break
 7 first. I'm going to use the restroom.
 8 MR. MUSACCHIO: Okay.
 9 MR. DONOHUE: How long do you have?
 10 MR. MUSACCHIO: A minute.
 11 THE VIDEOGRAPHER: Going off the
 12 record. The time is 1:53.
 13 (Off the record discussion.)
 14 THE VIDEOGRAPHER: We're back on the
 15 record. The time is 2:00.
 16 BY MR. MUSACCHIO:
 17 Q. Officer Duncan, when you first saw
 18 Mr. Stamps lying on his stomach with his hands
 19 on -- with his elbows lying on the floor and his
 20 hands hovering about his head, you still
 21 considered him to be a threat, is that correct?
 22 A. Yes.
 23 Q. And your concern was that he was going
 24 to reach for -- possibly reach for a weapon or

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1 something, is that correct?
 2 A. Yes.
 3 Q. And that is one of the reasons that
 4 you kept your weapon on semi-automatic as you
 5 were pointing your weapon at him, is that
 6 correct?
 7 A. Yes.
 8 Q. So what your plan was is that you
 9 wanted to secure his hands by kneeling on his
 10 back and grabbing his hands and pulling his
 11 hands behind his back, is that correct?
 12 A. That was my intention, yes.
 13 Q. Now, you felt he was a threat to you
 14 and to other officers until you secured his
 15 hands behind his back, is that correct?
 16 A. A limited threat, yes.
 17 Q. Okay. And so you were going to keep
 18 your weapon on semi-automatic until Stamps'
 19 hands were secured safely behind his back, is
 20 that right?
 21 A. No.
 22 Q. That was not what your intent was?
 23 A. No.
 24 Q. But you decided to -- you -- before

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1 entering the room you had your weapon on
 2 semi-automatic -- before entering the hallway
 3 you had your weapon on semi-automatic --
 4 A. Yes.
 5 Q. -- right?
 6 And you stepped into the hallway, into
 7 a cluttered dark hallway while your gun was on a
 8 semi-automatic mode, is that correct?
 9 A. Yes.
 10 MR. MUSACCHIO: No further questions.
 11 MR. DONOHUE: Officer, you're really
 12 finished now.
 13 THE VIDEOGRAPHER: This concludes the
 14 November 6, 2013 deposition of Officer Paul K.
 15 Duncan. Going off the record. This is the end
 16 of tape two of two tapes used today, and the
 17 time is 2:02 p.m.
 18 (Whereupon, the deposition was
 19 concluded.)
 20
 21
 22
 23
 24

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1 COMMONWEALTH OF MASSACHUSETTS)
 2 SUFFOLK, SS.)
 3 I, MAUREEN O'CONNOR POLLARD, RPR, CLR,
 4 and Notary Public in and for the Commonwealth of
 5 Massachusetts, do certify that on the 6th day of
 6 November, 2013, at 10:01 o'clock, the person
 7 above-named was duly sworn to testify to the
 8 truth of their knowledge, and examined, and such
 9 examination reduced to typewriting under my
 10 direction, and is a true record of the testimony
 11 given by the witness. I further certify that I
 12 am neither attorney, related or employed by any
 13 of the parties to this action, and that I am not
 14 a relative or employee of any attorney employed
 15 by the parties hereto, or financially interested
 16 in the action.
 17 In witness whereof, I have hereunto
 18 set my hand this 14th day of November, 2013.
 19
 20
 21 _____
 22 MAUREEN O'CONNOR POLLARD, NOTARY PUBLIC
 23 Realtime Systems Administrator
 24 CSR #149108

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1 INSTRUCTIONS TO WITNESS
 2
 3 Please read your deposition over
 4 carefully and make any necessary corrections.
 5 You should state the reason in the appropriate
 6 space on the errata sheet for any corrections
 7 that are made.
 8 After doing so, please sign the
 9 errata sheet and date it. It will be attached
 10 to your deposition.
 11 It is imperative that you return
 12 the original errata sheet to the deposing
 13 attorney within thirty (30) days of receipt of
 14 the deposition transcript by you. If you fail
 15 to do so, the deposition transcript may be
 16 deemed to be accurate and may be used in court.
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1 ACKNOWLEDGMENT OF DEPONENT
 2
 3 I, _____, do
 4 Hereby certify that I have read the foregoing
 5 pages, and that the same is a correct
 6 transcription of the answers given by me to the
 7 questions therein propounded, except for the
 8 corrections or changes in form or substance, if
 9 any, noted in the attached Errata Sheet.
 10
 11
 12
 13
 14
 15 _____
 16 OFFICER PAUL DUNCAN DATE
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