

Memorandum

To: Chief Steven Carl

From: Lieutenant Michael Hill

Date: May 31, 2011

Subject: Internal Review of Narcotics Investigation and Officer Involved Shooting at 26 Fountain Street on January 5, 2011

On 03/31/11, I received a Compact Disc with the name "Stamps" handwritten on it. This CD was left in my office the previous evening by Assistant to the Chief, Brian Simoneau. After receiving it, I requested a meeting with you to discuss how I would proceed with my investigation. We subsequently met on 03/31/11. During that meeting, you instructed me to review all material relevant to the narcotics investigation at 21 Fountain Street, Apartment #1, including the controlled narcotics buys, the search warrant affidavit, the execution of the search warrant by members of the Framingham Police Department SWAT Team and Narcotics Unit and the officer involved shooting. You also instructed me to determine whether or not policies and procedures were followed by all members of the FPD involved in the above investigation and operation

I have reached the opinion that all involved members of the Framingham Police Department were in compliance with policies and procedures during the narcotics investigation and the execution of the search warrant at 21 Fountain Street Apartment #1.

I have reviewed the following relevant policies for compliance.

- Use of Confidential Informants #100-18 **(See Exhibit I-1)**
- Search and Seizure #100-1 **(See Exhibit I -2)**
- Swat Team #100-23 **(See Exhibit I-3)**
- Firearms and Weapons #50-4 **(See Exhibit I-4)**
- Use of Flash Sound/Diversionsary Devices #100-29 **(See Exhibit I-5)**
- Evidence and Property Control #600-2 **(See Exhibit I-6)**

I also reviewed the CD that I received from Brian Simoneau, which contained written transcripts of interviews conducted by Lieutenant Edward Forster and Detective Lieutenant Thomas Sullivan from the Massachusetts State Police Detective Unit – Middlesex. Those transcripts included interviews of the members of the FPD SWAT Team involved in the service of the search warrant at 26 Fountain Street,

Apartment # 1 on 01/05/11. Also included were interviews of Tactical Emergency Medical Services (TEMS) personnel, FPD Narcotics Unit members, Deputy Chief Craig Davis, and Lieutenant Kevin Slattery (Bureau of Criminal Investigation Commander). Additionally included on the CD were the Affidavit in Support of the Search Warrant for 26 Fountain Street Apartment #1 authored by Detective Dinis Avila, the report on the arrests of Joseph Bushfan and Devon Talbert authored by Detective Felipe Martinez, and SWAT training records from 2003-2010.

In addition to reviewing the above mentioned material, I reviewed the following.

- Recorded Interview of Joseph Bushfan conducted by Trooper Jeffrey Saunders and Detective Darren Crawford
- Written Interview of Joseph Bushfan conducted by Trooper Jeffrey Saunders and Detective Darren Crawford
- Written Interview of Erika Sales conducted by Trooper Erik Gagnon and Detective Darren Crawford
- Written Interview of Thalin Reyes (Gagnon and Crawford)
- Written Interview of Norma Bushfan Stamps (Gagnon and Crawford)
- Crime Scene Photographs from 26 Fountain Street (taken by Massachusetts State Police)
- Narcotics Search Warrant Photographs (taken by Massachusetts State Police)
- Neighborhood Canvas Reports (by Lieutenant Forster & Trooper Gagnon MSP)
- Ballistics Report (MSP Firearms Identification Section)
- Crime Scene Affidavit and Search Warrant Application authored by Lieutenant Edward Forster
- Narcotics Search Warrant for 26 Fountain Street Apartment #1 obtained by Detective Avila
- Narcotics Search Warrant Return
- SWAT After Action Report authored by Deputy Chief Craig Davis
- Detective Bureau Reports, Logs, Ledgers, Informant Files, related to the Narcotics Investigation at 26 Fountain Street Apartment #1
- FPD Firearms Records (Range Master Pro)

Review

According to the Affidavit of Detective Dinis Avila, I learned the following. Within the past four weeks of 01/04/11, a reliable and confidential informant, whose identity is known to Avila, referred to as CS, provided information to Avila that a Black male known to CS as Dwayne Barrett was selling crack cocaine

from a house on Fountain Street in Framingham. CS described the house as a white, two story house, which is the second house on the left of Fountain Street from Waverly Street. CS said that Barrett accesses the house through the front door and distributes crack cocaine from the first floor apartment. CS described a second black male whom CS believes also resides in that apartment as approximately twenty years old and having a tattoo on his face. CS claimed to have purchased cocaine from Barrett by calling a cell phone number that he gave to CS, after which time CS meets Barrett in front of the house on Fountain Street . CS said that Barrett is frequently in the company of the young Black male with the tattoo on his face.

Within the past four weeks of 01/04/11, a reliable and confidential informant, whose identity is known to Avila, referred to as CI, provided information to members of the narcotics unit. The information was that a Black Male known as Dwayne was selling crack cocaine from 26 Fountain Street Framingham, MA. CI claimed to have purchased crack cocaine from Dwayne in the past by calling him at a cell phone number and then meeting him at Waverly and Fountain Streets (close to 21 Fountain Street). The detectives conducted an independent investigation on the information that they received from CI. They learned that the cell phone number that CI called Dwayne at was registered to T-Mobil out of Framingham, MA; however, no personal information was attached to that account. The detectives also obtained a FPD booking photograph of Dwayne Barrett, DOB 11/11/90. CI identified Barrett from that photo as the person known to CI as Dwayne. Within the past two weeks of 01/04/11, CI agreed to contact Dwayne at the cell phone number and make arrangements to buy crack cocaine from him. In Detective Martinez' presence, CI called the cell phone number. Martinez heard a male voice on the line that CI claimed to recognize as Barrett. CI claimed that Barrett told CI to meet him at the Gulf Station at Fountain and Waverly Streets. CI was searched by Martinez and was found to have no money or contraband. Martinez drove CI to the area of the buy location, followed by Detective Avila. Detective DeRosa established a surveillance of 26 Fountain Street, where he observed Barrett and an unknown Black male enter that residence, prior to CI's and Martinez' arrival. Martinez gave CI an amount of prerecorded funds and instructed CI to purchase crack cocaine from Barrett. CI then exited the vehicle and was kept under constant surveillance by the detectives. The detectives observed an unknown Black male exit the front door of 26 Fountain Street and meet with CI. They observed a hand to hand transaction and a short conversation between CI and the Black male. CI then returned to meet with Martinez. The Black male entered 26 Fountain Street through the front door.

CI then provided Martinez with a knotted corner baggie with a substance that appeared to be crack cocaine. It was later field tested and reacted positive for cocaine. CI was again searched and found to have no money or contraband. CI told Martinez that Barrett was not the person who sold CI the crack cocaine. CI provided a description of the Black male who sold the crack. That description was consistent with that of the Black male observed entering 26 Fountain Street by Detective DeRosa. CI claimed that the Black male who sold the crack cocaine gave CI a phone number and stated that CI could call him in the future.

Detectives subsequently conducted a follow up investigation. They learned that the telephone number that the person gave to CI during the controlled buy of crack cocaine was listed to Joseph Bushfan of Framingham. They further learned that Bushfan had been arrested by the Natick PD on 08/24/10 at which time he provided Natick Officers with an address of 26 Fountain Street Apartment #1 Framingham, MA. He also provided his phone number to Natick officers. This was the same cell phone number that CI was given during the controlled buy. Detectives obtained a booking photo of Bushfan from Natick PD. CI was not able to identify Bushfan from that photo as the person who sold the crack cocaine.

Approximately two weeks after the first controlled buy, CI met with detectives and was instructed to contact Dwayne Barrett at the cell phone number that he had previously given to CI. CI called that number and claimed to have arranged a meeting to buy crack cocaine from Barrett. CI and the vehicle CI was driving were searched, before and after the controlled buy and CI was given pre recorded funds by Detective Martinez, as before. CI was followed to the buy location near 26 Fountain Street by Detectives Avila and Martinez and kept under constant surveillance. Martinez observed two Black males exit the front door of 26 Fountain Street and he recognized one of them as Dwayne Barrett. Martinez observed both Black males approach the driver's side of CI's vehicle and engage CI in what he described as a hand to hand transaction. When CI and the two males parted, Martinez observed the two males enter 26 Fountain Street through the front door.

Detectives Avila and Martinez then met with CI and CI provided Avila with an amount of white substance that appeared to be crack cocaine. It was later field tested and reacted positive for cocaine. CI told the Detectives that Barrett was the person who sold the crack cocaine. CI also claimed that the second male present was the one who had previously sold the crack cocaine during the controlled buy.

Approximately six days later, and within forty eight hours of applying for a search warrant, detectives again met with CI, who was instructed to contact the unidentified Black male, believed to be Joseph

Bushfan, at the cell phone number that he provided CI with. CI called that number in the presence of detectives and claimed to have arranged a meeting to buy crack cocaine. CI and the vehicle CI was driving were searched, before and after the controlled buy and CI was given pre recorded funds by Detective Martinez, as before. CI was followed to the buy location near 26 Fountain Street by Detectives Avila and Martinez and kept under constant surveillance. Detective DeRosa set up a surveillance of the buy area prior to CI's arrival. DeRosa saw two Black males exit the front door of 26 Fountain Street. One of the males remained on the front porch and the other went to the driver's side window of CI's vehicle. DeRosa observed the male and CI engage in a hand to hand transaction. After the buy was completed, DeRosa saw both Black males enter the front door at 26 Fountain Street.

Detectives Avila and Martinez then met with CI, who provided Martinez with an amount of white rock substance that appeared to be crack cocaine. It was later field tested and reacted positive for cocaine. CI told the two detectives that the male who sold the cocaine was the same male depicted in the photograph that was previously shown to CI. CI was referring to the photograph of Joseph Bushfan. CI told the detectives that the male who sold the crack cocaine on that date had a tattoo on the left side of his face. The detectives noted that in his photo, Bushfan had a tattoo on the left side of his face.

Detective Avila subsequently met with FPD Street Crimes Officer Timothy O'Toole, who told him the following. During December 2010, he went to 26 Fountain Street and attempted to locate Joseph Bushfan regarding outstanding warrants. Bushfan was not present; however, persons there verified that Bushfan did reside there in the first floor apartment. The entire first floor was one apartment.

Detective Avila and other detectives obtained Joseph Bushfan's Board of Probation Record. They learned that on 01/04/11, amongst other entries on his BOP, Bushfan had open cases in Middlesex Superior Court for Armed Robbery with a Knife, Larceny from a Person, Assault with the Intent to Rob, and Assault with a Dangerous Weapon (knife). They also learned that Bushfan received a CWOFF on a charge of Assault with a Dangerous Weapon (knife) in West Roxbury District Court on 09/17/08.

Detective Avila and other detectives obtained Dwayne Barrett's Board of Probation Record. They learned that on 01/04/11, Barrett had amongst other entries two pending cases in Framingham District Court, for the charges of Assault and Battery with a Dangerous Weapon (board) and Assault and Battery. They also learned that Barrett's BOP showed numerous other charges including Assault and Battery, Attempted Murder, Assault and Battery with a Dangerous Weapon, Theft of Firearms, and Unlawful Possession of Firearms, that had previously been dismissed or nol prossed.

Based primarily on the above information, Detective Avila applied for and obtained a search warrant to search 26 Fountain Street, Apartment #1, Framingham, MA. The warrant was issued by Framingham District Court Clerk Magistrate George Marinofsky on 01/04/11. It was a warrant to search for Cocaine and other items including money, records, and paraphernalia. The warrant authorized a nighttime search. The warrant did not authorize entering without announcing or searching any person present. The warrant named Dwayne Barrett and Joseph Bushfan as being occupants or people in possession of the premises.

Based primarily on the violent histories of Bushfan and Barrett, Lieutenant Kevin Slattery contacted or caused the contact of Deputy Chief Craig Davis, to request the assistance of the SWAT unit in serving the search warrant at 26 Fountain Street. A short time later, Deputy Chief Davis arrived at the FPD and he was briefed further by Detectives Avila, Martinez, and DeRosa. In addition to the information on the subjects' criminal backgrounds, D/C Davis learned from DeRosa that there was foot traffic to and from the apartment throughout the night. He also learned that much of that foot traffic was coming from Wings Over Framingham, a nearby restaurant. Davis then contacted Chief Steven Carl and obtained authorization to mobilize the SWAT Team to secure the first floor apartment at 26 Fountain Street and turn it over to the detectives to conduct their search.

Members of the SWAT were notified to report to the FPD. Specific Assignments were given to members of the SWAT Team including TEMS Medics. A very thorough briefing was also given, including a description of the premises, the narcotics history, and criminal histories of people believed to be at the residence. The briefing also included information that Eurie Stamps DOB 03/02/42 and an unidentified female in her forties, who was believed to have been Bushfan's or Barrett's aunt, may be present. (See Deputy Chief Craig Davis' After Action Report, Attached).

After the briefing, the SWAT Team left the FPD at approximately 12:20AM on 01/05/11 by way of Concord Street to Waverly Street to Fountain Street. They travelled in a convoy which included the armored vehicle in the lead, followed by the equipment truck, an AMR Ambulance, Deputy Davis' vehicle, and Lieutenant Slattery's vehicle. While the convoy was travelling, Detectives DeRosa and Gutwill, who had been on surveillance of the house, observed Joseph Bushfan and two young females (Erika Sales and Thalin Reyes) exit 26 Fountain Street and begin walking toward Waverly Street. Gutwill knew that the convoy was on the way and was concerned that when Bushfan and the others saw the vehicles that the mission would be compromised. Gutwill called over the radio to "Stand down." Several people in the vehicles heard Gutwill but they did not know where it was coming from nor apparently did

they have time to react. As the vehicles turned onto Fountain Street, Gutwill saw Bushfan looking at the trucks going toward his house and "like getting ready to make a move back toward the house." Gutwill approached and took Bushfan to the ground. Gutwill was joined by Deputy Chief Davis and Officer Murtagh. Bushfan told one of the females to go and get his mother and she started to run back to the house. Gutwill stopped her and placed her against a car. Lieutenant Slattery arrived at Bushfan's location and Gutwill left to go to the house. Slattery pat frisked Bushfan and found a plastic bag with 8 smaller bags of a substance which later field tested positive for the presence of cocaine. He also located approximately 397.00 on Bushfan. D/C Davis picked up a cell phone that was on the ground next to Bushfan. This cell phone had the same phone number that was given to CI by Bushfan during the first controlled buy.

While Bushfan and the two young females were being detained, the SWAT Team continued to 26 Fountain Street to execute the warrant. As they first approached, a female later identified as Norma Bushfan Stamps (Joseph's mother and Eurie's wife) was observed standing on the front porch. She was ordered to the ground and detained until Officer Gutwill arrived at the house. He then walked her to the location where her son and the two females were being detained.

When all of the SWAT members took their positions, entry was executed. It had been discussed during the planning stages that there was a common front door and hallway leading to the first and second floor apartments. There were two doors from that hallway leading into the first floor apartment. One of the doors, at the far end of the hallway lead into a kitchen and that door opened outward toward the hall. The other door, immediately on the right, lead into a living room or bedroom and that door opened inward to the apartment from the hallway. The entry team found that the common outer door was unlocked so they made easy access to the hallway. Once inside, Lieutenant Downing, Officer Sheehan, and Officer O'Toole went to the kitchen door. Sergeant Stuart, Officer Duncan and Officer Sebastian went to the living room/bedroom door. As planned during the briefing, Sergeant Stuart knocked three times and announced, "Framingham Police, search warrant, open the door." When there was no response, Stuart gave the command to the others to "execute." Officer Casey, who was with Officer Langmeyer (Rake and Break Team) at the B Side window (left side of house) broke a kitchen window with the bang pole and deployed a flash bag diversionary device.

Officer Sheehan found the kitchen door to be unlocked so he pulled the door open and he made entry, followed by Lieutenant Downing and Officer O'Toole.

Officer Duncan breached the bedroom/living room door with a battering ram. The door did not open as expected. According to Duncan's statement to Lieutenant Forster, "it felt like the middle of the door just disintegrated." Duncan then pushed his way through the door so that other people could get through causing him to be the first person through that door rather than the last as planned. He was then followed by Sergeant Stuart and Officer Sebastian.

Sergeant Sibilio and Officer Riley were the Rake and Break Team assigned to the front window of the room which Duncan, Stuart, and Sebastian entered. Sibilio and Riley decided not to deploy a flash bang device when they saw that those officers had entered the room.

Officers Sheehan and O'Toole made their way through the kitchen to a hallway leading to the rear of the apartment. They encountered Eurie Stamps in that hallway, coming out of a bathroom or a bedroom. Both officers started shouting commands for Stamps to get down on the ground. Both officers also observed another subject in a bedroom beyond where Stamps was standing. As Sheehan described it, that second subject was "sneaking a peek" toward them. "He would pop up, look, and then pop back down." Sheehan and O'Toole continued to command Stamps to get down on the ground and he eventually complied by lying face down in the hallway with his head facing toward the kitchen door. O'Toole followed by Sheehan then moved around Stamps and entered a bathroom on the right side of the hallway. Both officers described the hallway as being very cluttered. O'Toole had to move several bins that were on the right side of the hallway so that they would have a better entrance to the bathroom. Both Officers were aware that someone was in the rear bedroom, beyond the bathroom. They went into the bathroom first because O'Toole saw something go in there. As they went into the bathroom, O'Toole called out that there was someone in the bedroom. The officers discovered nobody other than a cat in the bathroom.

Officer Langmeyer arrived in the kitchen area and saw O'Toole and Sheehan standing in the rear hallway, near the door to the kitchen. He also observed that Stamps was lying on the floor. After Langmeyer watched O'Toole and Sheehan step over Stamps and enter the first door on the right, a bathroom, he either stepped on Stamps or got around him and went to the second door on the right, which was a bedroom. Langmeyer described Stamps as "totally taking up the hallway space." He also described the hallway space as being "very tight." Langmeyer found a male subject in the bedroom, identified as Devon Talbert.

When Officer Duncan entered the apartment, he brought his M-4 Long Rifle to the low ready position and placed it on Semi Auto (safety off). He then began scanning the room, which was a bedroom,

followed by Sergeant Stuart. Officer Sebastian entered this room briefly and then went back out into the common hallway through the door and reentered the apartment through the kitchen door. Duncan and Stuart came upon a blanket that was attached to a doorway leading into another room. Duncan could hear voices from somewhere beyond the blanket that he believed were saying, "Come out, come out." Duncan and Stuart then began yelling, "blue, blue" as a signal to officers on the other side of the blanket that they were police officers. Duncan claimed to have torn the blanket down and walked into another room that led to the kitchen. He could still hear voices yelling, "Come out, get down" but he couldn't see anyone. He had a line of sight into the kitchen from that room. It sounded to him like the voices were coming from the right side of the kitchen. He believed that Sergeant Stuart told him to "go with them" meaning the officers that were shouting. He saw two SWAT Operators (O'Toole and Sheehan) in a hallway and they made entry into a room on the right.

Duncan then described stepping onto the threshold from the kitchen into the hallway. He stated that it was dark and that there were obstacles in the hallway. He saw a man (Eurie Stamps) lying on his stomach in the hallway, approximately two or three feet beyond the threshold. The following are excerpts from the transcribed interview of Officer Duncan, which was conducted by MSP Lieutenant Edward Forster. For full transcript of Duncan's interview, (**See Exhibit H**).

As I approach, I can see that the hallway's dark. I can see that there's SWAT operators in front of me and I can see a light at the end of that hallway, on the right-hand side, a doorway that's lit, on the right-hand side.

Q Inside the hallway?

A Inside the hallway, toward the back of it. Just before I got to those operators, or as I got to those operators, I'm not sure. They take off and they make a-- they take off down that dark hallway and make entry into a room down there. I think it was the lit room. I'm not-- I'm not a hundred percent sure. But they take off and now they're entering a room and they're gone. I don't even see them. As I step in onto the threshold, I could see that it's dark. There seems to be obstacles in the hallway, disheveled, appeared disheveled to me. I see a man laying on his stomach somewhere in the hallway, probably, if I were to guess, a couple of feet passed the threshold, maybe two, three feet passed the threshold. I-- that's trying to recollect distance in darkness. So, as I-- now, the other two SWAT operators are gone. I look down. I see the individual laying there. At that time, his-- he's laying on his stomach. His hands are, I believe, above his-- I believe his elbows were resting on the floor. His hands and fingers were open, and they were not on his head. They were hovering by his head. So I see-- I see that. As I-- as I approach

him at the threshold, I recall his-- I recall his head moving up towards me and his hands moving like in a motion of, you know, who's this, what's coming in here. So I see the hands move and the head go up, not a great distance, just enough where my attention automatically went to his hands and his head.

Q How far do you think you were from him then?

A Probably the-- probably the two feet.

Q Probably-- were you inside? You had just crossed the threshold?

A I probably just crossed-- crossed the threshold.

Q Alright.

A So I see the movement. So, at that time, I see the movement. I-- I have my long rifle in the low ready. I point it in his direction. At this time, I know-- I could-- I can hear-- I can still hearing yelling coming from that room down there. So I'm assuming, because I hear that yelling, that they have contact with something at that end of the room, out of my sight, in another room at the end of that hallway. He looks up to some degree. The hands move. My attention's focused on him. Long rifle pointed at him at that time, basically, because I didn't-- I don't know, at that point, you know, what's around him. The movement automatically draws my contact. So I have him. I know now-- I'm in this position. I know now the other SWAT operators move quickly. They went in for the other threat. I'm looking at the other room. It's disheveled in the area that he's in. I know that those SWAT operators had not checked him for any weapons. I know that there was no check of the area for any weapons, other than maybe a quick one with their eyes. And whether they saw something or-- I don't know. So I make a decision at that point. My options are focus on him like this and say, "Don't move. Don't move." But what happens if there's a gun or something hidden anywhere and he just reaches quick? What happens? Well, I'm still in a position where I got to make a decision. Do I fire? Do I not fire? And in my mind, as quickly as it was going, I made the decision, I'm going to take that out of this equation. I decided I'm going to go on the side of him, get his hands behind his back; not handcuff him, but just tighten up on his hands and kneel down on him so that I know he can't reach for anything at all, period. It takes-- in the back of my mind, it takes any threat that may be someplace I can't see, someplace I can't see, out of the equation, as far as any firearms or weapons. So, at that point, he's on the ground. I don't recall if he's-- I don't recall the way that he's laying; if he was directly straight, parallel with the wall, or if he was cockeyed. I can't remember. It seems to me that he was-- he may have been laying at an angle, where his head was towards me, but his body may have been coming towards the right side of the hallway. I-- it was dark.

At that time, I come around the right side of him. I take a couple of steps and I come around the right side of the-- of the-- of the man on the ground, on the floor. For some reason, I don't know if-- I think I was somewhere around his shoulders, or just passed his shoulders, I don't know if I stepped on something with my right foot, or whatnot, but, for some reason, I had to step backwards with my left foot, or not backwards, but to my left, which is essentially the spot-- the area I had come from. So I step with my right. I started to make that motion and, all of a sudden, I felt, for some reason, I had to step left. So, as I stepped to my left, I just-- I lose my-- for some-- some way, I lose my balance. I start to fall over. I'm-- I'm going backwards. I remember it was very quickly, but I start going backwards. This-- I think my right foot's coming off the floor. We-- with our tactical equipment and everything, it's just awkward. I start-- I start going backwards. I think that I lose, or let go of, my grip on my long gun because I'm falling over. And I don't know if, in the back of my mind, I'm trying to reach and trying to hit the wall, so I don't go all the way over. But I find myself falling back and to the left or-- and my arms out like this, or just out, trying to say, basically, "Oh, shit. Here I go," factor. So I'm going over. As I'm going over, at some point, my long rifle's pointing in the direction of the person on the floor. I'm trying to consciously, as I'm falling over, say to myself-- when I'm saying the oh shit factor, pull my gun, my long rifle, away, but I'm going over. At some point, I hear the discharge of a firearm. I don't know if it's-- I don't know if it's when I first start going over or when I impact, but I do impact with the wall, the corner of that-- somewhere between the wall and the corner of the threshold, I impact with the wall. I'm laying there. Now I'm laying on the ground. I'm laying on the ground in front of the person that I was trying to secure. I don't recall exactly where my entire make-up of my body was, but my-- my-- my ass is on the ground. My back is somewhere against the wall. The long rifle-- I want to-- I think the long rifle was resting somewhere on me. And I'm not sure if even a part of it landed anywhere on top of him or whatnot. For a second, the discharge-- I heard the discharge. It was almost like there was a shot fire. And it took a second for it to settle in that, you know, Jesus, was that my rifle? Now I'm resting on the ground on my rear-end. I look down at-- I'm literally almost on top of him, I think. I can see his head. I looked down at him and now I can see under his-- under his, what would essentially be his left shoulder, which was still-- now is like this. I can see-- now I start to see blood come out from somewhere under the-- somewhere under the left shoulder area. I hear a voice from out in the hall, or out-- not in the hall, from out in the kitchen area, or what I believe is a kitchen. I can't tell you that it is. I think it was, wherever that room is behind me. I hear a voice, you know, "What was that? What happened? What's going on" something to that affect. At that time, I yell, "Man down. Man down. Man down," two or three times. I don't remember if somebody-- I was trying to get up. I don't remember if somebody

helped me up. I know I was on the deck and I-- I don't remember if, when I was trying to get up, if somebody came in and helped lifted me. I know, at some point, somebody was right behind me, like, "Back up. Back up," like, "Let's get you out of this room. Let's get you out of this particular room." Then I heard somebody in that room-- I don't know who it was. I believe it was Lieutenant Downing, but I'm not a hundred percent-- yelling for the TEMS, to get the TEMS in there, which the tactical medics. Once I was in the kitchen, I think it was-- I think it was Lieutenant Downing, said, "What happened? What happened?" I told him, I said, "I fell or I tripped." I can't remember exactly what I said.

Q Sure. When you're confronting the individual when he's on the floor and he's got his hands up, like you said, moving them, and you're thinking about, you know, the area, I understand, if there's weapons underneath him, whatever. You don't know. As far as you know, he hasn't been secured. You're deciding what you're going to do with him.

A Yes.

Q Right? And you said that, you know-- you said, at one point, whether fire or not. I don't know what you meant by that.

A Did I say-- I guess, what I'm trying to--

Q I don't-- just give me your interpretation because I believe that's what I heard. I could be wrong.

Q (Unknown) What I think he said was he was trying to decide if the man reached for something, what would he do. Would he fire or--

Q (Forster) There you go. Okay. Sorry. What you-- yes-- okay. Alright. I just want to clear that.

A Yeah.

Q That's in your head at that time and you decide that you want to go and secure him, you know, from the rear, whatever you're going to do. When you're in the low ready before that-- before that-- while you're discussing that, your trigger finger on the outside?

A My trigger finger is on the outside of the trigger guard.

Q The trigger guard, okay. Did it ever, at that point when you were thinking that, go into the trigger guard at all?

A No.

Officers O'Toole, Sheehan, and Langmeyer heard the gun shot from Duncan's Weapon from the rooms that they were searching. They all continued with their business in those rooms. By the time they all exited those rooms, the first things they saw were the medics attending to Stamps.

Sergeant Stuart was apparently the first person to find Officer Duncan after the shot was fired. Stuart said in his interview with MSP Detective Lieutenant Thomas Sullivan that he was in the room that Duncan made entry to the kitchen from. Shortly after Duncan went in to the kitchen, Stuart heard a gunshot. Stuart went into the kitchen and looked into the hallway toward the rear bedroom. He saw Duncan sitting against the wall with his feet out crossing the hallway. He also saw Eurie Stamps lying face down. Stuart asked Duncan, "What do you got?" Duncan told him, "I have shots fired." Stuart asked, "Are you hit?" Duncan responded, "No, he is" as he pointed at Stamps. Stuart looked down and saw some blood. He pulled Duncan away and got on the radio and said, "We have shots fired; we need medics in here right now. He then moved Duncan to another room and went on to help other officers checking the basement.

There was an AMR Ambulance staged outside of 26 Fountain Street. Also staged there were the following members of the TEMS Unit.

- Framingham Fire Department Captain Joe Hicks, TEMS Team Leader
- AMR Paramedic Dave Kay
- FFD Firefighter EMT Jeff Beckwith
- FFD Firefighter EMT Nick Ferry
- AMR Paramedic Tom Canning

Immediately after Sergeant Stuart called for medics, Hicks and Kay went to Eurie Stamps. According to Hicks' statement they found Stamps face down on the floor in the hallway. Kay and he did a rapid trauma assessment. He saw a pool of blood near Stamps' head and neck area and the pool was growing. They rolled Stamps onto his back. Hicks saw a puncture wound on his left jaw. When Hicks cut Stamps' shirt, he saw a wound on the left side of his chest, which was bleeding profusely. They packed the wound and applied pressure. Hicks found Stamps to have a weak pulse. They moved him from the hallway into the kitchen by dragging him with webbing. Once in the kitchen, they placed him on a backboard and then onto a stretcher. They moved him to the ambulance where they placed a breathing tube in his airway and notified the Metro West Medical Center Emergency Room. Stamps had gone into cardiac arrest and while travelling to the hospital, Kay was at Stamps' head, Hicks was performing chest compressions, and Beckwith was performing airway ventilations. Ferry drove the ambulance to the

hospital. Also in the rear of the ambulance were AMR paramedic Tom Canning and Detective Martinez. According to Hicks, they continued performing CPR at the hospital until the attending doctor “called code.”

Devon Talbert, DOB 08/05/90 and Eurie Stamps were the only people found inside of 26 Fountain Street, Apartment #1. Talbert identified himself as Norma Stamps’ nephew and Joseph Bushfan’s cousin. He claimed to have been watching the basketball game in the rear bedroom with Eurie Stamps when the flash bang device went off. He denied any knowledge that his cousin Joseph was selling drugs. He claimed that he resides in Boston and that he was staying at his aunt’s house for a couple of days. Talbert had been observed exiting 26 Fountain Street and engaging in what appeared to be a hand to hand transaction with another person by Detective DeRosa, earlier in the evening on 01/04/11. Talbert was subsequently charged with Possession with the Intent to Distribute Class B Controlled Substance, Possession with the Intent to Distribute Class B Controlled Substance in a School Zone, and Conspiracy to Violate the Controlled Substance Laws.

Joseph Bushfan, DOB 08/28/90 was also charged with Possession with the Intent to Distribute Class B, Controlled Substance, Possession with the Intent to Distribute Class B Controlled Substance in a School Zone, and Conspiracy to Violate the Controlled Substance Laws. Bushfan told Trooper Jeffrey Saunders and Detective Darren Crawford that he had about five pieces of crack on him when he was arrested. He also said that he and his cousin (Talbert) sell crack to take care of their kids.

Norma Bushfan Stamps, Thalyn Reyes, and Erika Sales were all interviewed and released without being criminally charged.

The search warrant that was obtained on 01/04/11 by Detective Avila was served by members of the Massachusetts State Police. No members of the Framingham Police Department participated in the search pursuant to that warrant. The return of the search warrant was made on 01/05/11 at 12:35PM by Detective Dinis Avila. MSP Sergeant Brian Connors was listed as the person making the search. During the search, the items found included one knotted plastic bag with eight individually wrapped pieces of rock like substance, green vegetable matter, and a pill bottle with various pills. Also found were packaging materials, 3 cell phones and 3 knives.

The residence at 26 Fountain Street #1 was treated as a Crime Scene by the Massachusetts State Police Detective Unit – Middlesex. The State Police obtained a crime scene search warrant and subsequently processed and photographed the scene.

The firearms that Officer Duncan was carrying during the execution of the search warrant were taken from him and secured by Sergeant Stuart. They were subsequently given to the Trooper Stephen Walsh from the Massachusetts State Police Firearms Identification Section. Those weapons were as follows.

- Colt M-4 Commando Semiautomatic/Automatic Rifle Serial # A0230821
- 1 magazine with 26 live cartridges from the M-4 weapon
- 1 live cartridge from the M-4 weapon
- 2 magazines and 56 live cartridges for the M-4 weapon
- .40 S&W caliber Sig Sauer, Model P226, Semi automatic Pistol, Serial # UU635241

Dr. Henry Niels from the Office of the Chief Medical Examiner performed an autopsy on Eurie Stamps. He determined the cause and manner of death to be homicide resulting from a single fatal gunshot wound to the upper body, with injuries to the heart, lung, and major blood vessels. **(See Exhibit D)**

As you are aware, Middlesex County District Attorney Gerard Leone directed an investigation of the Eurie Stamps shooting. As you are also aware, District Attorney Leone concluded that the actions of Officer Duncan do not rise to the level of criminal conduct and that the shooting death of Eurie Stamps was an accident. Mr. Leone referred the matter back to the Framingham Police Department for whatever administrative review that was deemed appropriate. **(See Exhibit C)**

Analysis

Regarding the **Use of Confidential Informants Policy**, I found that members of the Detective Bureau, who were involved in the narcotics investigation at 26 Fountain Street, strictly adhered to this policy. I met with Lieutenant Kevin Slattery on 04/28/11 and 04/29/11 to review confidential informant records and other reports. I observed that the confidential informant files were kept in a secure location, within the Narcotics Unit Office in the Detective Bureau. The informant identified in Detective Avila's affidavit as CI, is well documented. Detective Slattery showed me the Informant Master File, listing the informants by names and assigned numbers. Other documentation that I observed showed this particular informant's name, assigned number and informant's history. That history included the three controlled buys of crack cocaine from 26 Fountain Street.

Lieutenant Slattery also showed me the Personal History Report and Conduct of Confidential Informant Form that was completed regarding the informant identified as CI. I also viewed the electronic ledger showing that proper accounting procedures were followed with the confidential investigations funds. The expenditure for each controlled buy was documented for the dates that they were made. Each of

the expenditures also documented the assigned CI number and the names of the targets, Barrett and Bushfan.

Additionally, Lieutenant Slattery produced copies of the police reports related to all three controlled buys. The information in those reports was consistent with the information outlined in Detective Avila's affidavit. I also observed photo copies of the currency that was provided to the CI for the controlled buys.

I believe that it is apparent from the information outlined in my summary and Detective Avila's affidavit that the detectives involved in this case established the credibility of the informant and conducted sufficient independent investigation regarding the informant's information.

I will discuss the **Search and Seizure and SWAT Team Policies** together. Detective Avila applied for and obtained the Search warrant for 26 Fountain Street from Clerk Magistrate George Marinofsky. It was Marinofsky's determination to make was to whether or not probable cause existed to issue the warrant. He apparently believed that there was probable cause to issue the warrant. I also agree that there was probable cause.

The search warrant required those serving it to knock and announce. The warrant also authorized a night time search. Sergeant Stuart stated during his interview that he knocked three times and announced, "Framingham Police, search warrant, open the door." There were at least eleven other officers or members of the SWAT and TEMS Teams who also heard Sergeant Stuart knock and announce. Those people consisted of Ruiz, Duncan, DeRosa, Reardon, Riley, Sheehan, Sebastian, O'Toole, Kay, Hicks, and Beckwith.

The search warrant did not authorize a search for all persons present. The officers were in compliance with the law and our policy to detain those present and keep them from moving about. Also, by case law and our Search and Seizure Policy, they were authorized to pat frisk people present for weapons for safety reasons. There was sufficient information documented that Bushfan and Barrett had committed numerous types of assaults with and without weapons. I believe that the analysis that should be applied is not whether or not there was reasonable suspicion that a specific person in the house may be carrying weapons, but rather it should apply to the whole situation. Certainly if Barrett or Bushfan had weapons in the house, anyone there could have access to them.

When it became apparent to Lieutenant Kevin Slattery that his detectives were obtaining a search warrant for a place where there were potentially armed and assaultive people, he made the request for activation of the SWAT Team as he should have. Deputy Chief Craig Davis (SWAT Commander) was first notified with the request. D/C Davis conducted a SWAT Threat Assessment, which included the following.

I. Suspect Assessment: Yes No Unknown Points

A. Known to use or propensity for violence:

- 1. Homicide _____
- 2. Armed Robbery _____
- 3. Assault _____
- 4. Resisting Arrest, (If Yes, 4 points) _____
- 5. Assault on Police Officer, (If Yes, 4 points) _____
- 6. Other: _____

B. Is suspect on Parole or Probation? _____

C. Is suspect a drug user? _____

If yes, what type (s)? _____

D. Is suspect an Alcohol abuser? _____

If yes, does suspect have a history of violence while intoxicated?

E. Is suspect mentally unstable? _____

If yes, describe condition

F. Does suspect have Law Enforcement/Military background? _____

(If Yes, 4 points)

If yes, describe agency, department/ branch of service, length of service, and any specialties, etc. _____

G. Is suspect currently/historically associated with an organization which is known or suspected of violent criminal actions? _____

If yes, what group or organization? _____

Can the organization be classified as:

- 1. Paramilitary _____
- 2. Terrorist _____
- 3. Religious Extremist _____
- 4. Gang _____
- 5. Other: _____

Total from "SUSPECT ASSESSMENT" = _____

"Yes" = 2 points "No" = 0 points "Unknown" = 1 point

II. Offense Assessment: Yes No Unknown Points

A. Is the offense a felony? _____

If yes, list the offense: _____

B. Is the offense a violent felony? _____

C. Was a weapon used in the commission of the offense? _____

D. Were victims injured during the commission of the offense? _____

E. Were any Law Enforcement personnel injured during the _____
commission of the offense?

Total from "OFFENSE ASSESSMENT" = _____

"Yes" = 2 points "No" = 0 points "Unknown" = 1 point

III. Weapon Assessment: Yes No Unknown Points

A. Is suspect known or believed to possess:

1. Rifle – Semi-auto or bolt/lever action _____

2. Rifle – Full-Auto _____

If Yes, MANDATORY activation of SWAT

If "Unknown" 10 points

3. Shotgun _____

4. Handgun _____

5. Explosives _____

If Yes, MANDATORY activation of SWAT

If "Unknown" 10 points

6. Knives _____

7. Other: _____

Total from "WEAPON ASSESSMENT" = _____

"Yes" = 2 points "No" = 0 points "Unknown" = 1 point

IV. Site Assessment: Yes No Unknown Points

A. Are there geographic barriers or considerations? _____

If yes, describe: (may include upstairs apartments or rooms,
terrain features, etc.) _____

B. Is the site fortified? (If Yes, 4 points) _____

If yes, describe: (may include barricaded doors/windows, bars, etc.)

C. Does the site have counter surveillance personnel or
monitoring devices? _____

If yes, describe: _____

D. Are ARMED counter surveillance personnel present? _____

If Yes, MANDATORY activation of SWAT

If "Unknown" 10 points

E. Are there more than 4 adults present at the site? _____

F. Are there children, elderly persons, or handicapped persons
present at the site? _____

If yes, describe: _____

Total from "SITE ASSESSMENT" = _____

"Yes" = 2 points "No" = 0 points "Unknown" = 1 point

IV. Miscellaneous? Points

A. No Knock = 4 points _____

B. Force required to enter (door breaching, window break and raking, etc)= 2points _____

Total from "Miscellaneous Assessment" = _____

THREAT ASSESSMENT SCORE

Total from "Suspect Assessment" = _____

Total from “Offense Assessment” = _____
Total from “Weapon Assessment” = _____
Total from “Site Assessment” = _____
Total from “Miscellaneous Assessment” = _____
Overall Total = _____

ASSESSMENT KEY:

1-16 Points = SWAT Optional
17-24 Points = Consult SWAT Commander
25 + Points = Mandatory SWAT Activation

Using the above assessment, when D/C Davis learned that Dwayne Barrett was known to possess firearms, that factor alone called for a mandatory SWAT activation (See III Weapon Assessment). D/C Davis subsequently notified Chief Steven Carl and after providing all information that he had, regarding the situation, he received authorization to mobilize the SWAT Team.

D/C Davis made the arrangements for activation of the SWAT Team. He also conducted an extensive mission briefing with the SWAT and TEMS Team members. That briefing included interior/exterior photographs of the apartment to be searched, information about the drug investigation, and the criminal histories of the suspects. It also included aerial photographs of the area around 26 Fountain Street, and suspect photographs. Very specific assignments were given to SWAT and TEMS members. Very specific details of the approach to 26 Fountain Street were also given. Those details included bringing fire extinguishers and having an ambulance staged near the residence. D/C Davis also prepared a detailed after action report of the SWAT operation. **(See Exhibit B)**

Regarding the discharge of Officer Duncan’s weapon and the death of Eurie Stamps, I concur with District Attorney Leone that this was accidental. I do not believe that the weapon was discharged as the result of non compliance with our policies. Duncan’s explanation of the events preceding the discharge is credible. Numerous officers, who passed through the hallway and climbed over Eurie Stamps before Duncan, described how cluttered, tight, and difficult it was to do so. Crime Scene photographs that were taken by the Massachusetts State Police depict the situation as described. Duncan articulated valid reasons for him to consider Stamps to be a potential threat and for making the decision to secure his hands. Duncan, as well as all members of this Department who have been trained with the M-4 rifle, was taught to have his finger on the outside of the trigger guard unless he was prepared to fire. Room clearing training has consisted of teaching officers to have the safety in the off mode (semi auto) when they are the first to enter a room and when they perceive a possible threat. Other officers and I were

instructed in this manner during refresher training with the M-4 on 05/18/11 by Sergeant Vincent Stuart. Duncan claimed that his finger was on the outside of the trigger guard before he lost control of his weapon and tried to regain control of it. He also claimed that the weapon's safety was off (semi auto) mode.

The SWAT Team Policy mandates that newly assigned members complete at least 40 hours of tactical training. Officer Duncan successfully completed five days of training specific to Barricaded Gunmen & High Risk Warrant Service August 4-8, 2008. This training was sponsored by LEAD Consultants.

The SWAT Team Policy also mandates that members attend a minimum of eight hours per month training and that all training will be documented. I obtained copies of SWAT training records for 2003-2010. Officer Duncan first appeared on the training roster during August 2007. I was advised by D/C Davis that Duncan became a member of the SWAT Team during July or August of 2007. Upon reviewing the training records from 2007-2010, I found documentation that monthly trainings were conducted. The documentation indicated that Officer Duncan was present for all monthly training sessions with the exception of 12/17/09. Duncan's On-Duty Calendar shows that he was on his second of three days off, followed by two vacation days on 12/17/09.

Records that I obtained from Lieutenant Kevin Slattery and Deputy Chief Craig Davis have documented that the Framingham Police Department obtained and served at least 72 search warrants between 12/16/06 and 01/05/11. During that time period, the SWAT Team was mobilized to assist with only 12 of those warrants. SWAT was also activated on separate occasions during that time period to search a residence and neighborhood for a suicidal male with a knife, enter a residence with an arrest warrant, and assist Ashland PD with the service of a search warrant in Framingham.

Regarding the **Policy on Firearms and Weapons**, on 01/05/11, Officer Duncan was carrying two firearms. Those firearms were a Colt M-4 Commando Semiautomatic/Automatic Rifle Serial # A0230821 and a 40 S&W caliber Sig Sauer, Model P226, Semi automatic Pistol, Serial # UU635241. Framingham Police Department records indicate that both of those are Department weapons that were issued to Duncan.

The Massachusetts State Police Firearms Section Report indicates that the 5.56mm discharged cartridge casing recovered from the laundry room, adjacent to the bedroom, at 26 Fountain Street had a headstamp of "LC 08". On 05/13/11, at approximately 11:30AM, I met with Sergeant Peter Sennott from the Massachusetts State Police Detective Unit-Middlesex at his office in Woburn. Sergeant Sennott is the evidence control officer for his unit. The Firearms Identification Section turned the evidence from

this case over to Sennott after their examination was completed. During my visit with Sennott, I examined the Colt M-4 Commando and found that it was the same weapon that was issued to Duncan (Serial # A0230821). I also examined the discharged cartridge casing, the live round that was taken from the M-4's chamber, and 28 live rounds from one of the magazines. All of the casings had headstamps of "LC 08". I accompanied D/C Davis to the armory during the afternoon on 05/13/11. D/C Davis located the stored ammunition that is issued to the SWAT members for their M-4's. The boxes of ammunition were labeled Hornaday, TAP, Tactical Application Police, 5.56NA, 75gr, #8126N. This is the authorized ammunition for the M-4, which is articulated in the Firearms and Weapons Policy. I examined the ammunition in these boxes. The headstamps were "LC 08". My conclusion is that Duncan was carrying the authorized ammunition in his issued M-4 on 01/05/11.

The Firearms and Weapon policy requires yearly qualification with all issued weapons. Our training records indicated that Duncan qualified with the M-4 as follows.

- 10/17/07 Score 90
- 09/24/08 Score 85 & 90
- 06/11/09 Score 100
- 09/17/10 Score 95

Regarding the **Flash/ Sound Diversionary Devices Policy**, Sergeant Sibilio and Officer Casey, the officers assigned to deploy the flash bangs at 26 Fountain Street, completed training on proper use and deployment. Most recently prior to 01/05/11, both officers were instructed by Lieutenant Robert Downing (a certified instructor) on 02/18/10 (classroom segment) and 03/18/10 (practical segment). Sibilio and Casey were also present during a SWAT Training on 08/19/10, during which Lieutenant Downing reviewed the Flash Bang Policy and the team practiced deployment of flash bangs.

D/C Davis authorized the use of the flash bangs per our policy, which allows their use to facilitate entry, enable arrest, and potentially reduce the risk of injury during high-risk warrant service. As previously mentioned all available intelligence and information was considered in making the decision to use flash bangs, during the pre mission briefing. Considerable thought was also given during the mission, when Sergeant Sibilio decided not to deploy the second flash bang. Also as previously noted, the SWAT Team carried a fire extinguisher to the scene as required by this policy.

Regarding the **Evidence and Property Control Policy**, I found that the crack cocaine purchased during the three controlled buys was logged into evidence properly. I printed an inventory control sheet for all

evidence related to that case (1009574). The evidence was properly logged and placed in an evidence locker, prior to Detectives DeRosa, Avila, and Martinez ending their tours of duty on the dates of the controlled buys. Similarly, the evidence found on Bushfan when he was arrested on 01/05/11 and the evidence found during the execution of the search warrant were also properly logged and placed in evidence. **(See Exhibit E)**

It was noted in the State Police Firearms Identification Section report that Trooper Walsh examined and test fired Duncan's issued M-4. He found no malfunctions with that weapon. Trooper Walsh also took possession of the lead and jacket fragments recovered during the autopsy of Eurie Stamps and determined that they were "too damaged for further identification." Trooper Walsh also compared the discharged cartridge casing recovered at 26 Fountain Street with the test fired cartridge from Duncan's M-4. His conclusion was that "they both share the same class characteristic of caliber and firing pin impression shape; however, they lack sufficient agreement of unique microscopic marks to determine the source weapon." Trooper Walsh found that the result was inconclusive.

Although this was a review of the actions of many officers during the course of the narcotics investigation and execution of the search warrant at 26 Fountain Street, unfortunately, a great deal of the focus is on Officer Paul Duncan. As you are aware, Officer Duncan has been a member of the Framingham Police Department since 01/03/06, when he transferred from the Shrewsbury Police Department. He was employed by Shrewsbury PD since 07/2000. Previous to that he was a police officer with the Mendon Police Department from 01/99-07/2000. Prior to his employment in Mendon, he was a part time police officer with the New Braintree Police Department from 07/96-01/99. He was also a part time police officer with the Millville Police Department from 1997-1998.

In addition to his 40 hour training that was previously mentioned, Duncan successfully completed the U.S. Army Military Police School, Field Tactical Police Operations Course 11/15/09-11/19/09 (prior to his employment with the FPD). He also completed the CSX Police Rapid Response Team Tactical Rail Interdiction Class (24 hour class during July 2010). **(See Exhibit F)**

Officer Duncan also received the following awards from you.

- Police Commendation Award 10/14/06
- Letter of Merit 11/11/07
- Police Commendation Award 02/01/08

Officer Duncan has also received numerous letters of appreciation from citizens and the Natick Chief of Police. **(See Exhibit G)**

There has only been one citizen's complaint against Officer Duncan. That was a complaint made by a citizen that a group of five motorcycle officers, including Duncan, took a 34 minute coffee break at Dunkin Donuts on Cochituate Road. That incident occurred on 06/10/09. Duncan and the other officers received Letters of Counseling from you. Officer Duncan has not been the subject of any other disciplinary matters.

As you are aware, we are constantly reviewing and revising our policies. We have been an accredited police agency with the Massachusetts Police Accreditation Commission (MPAC) since our initial assessment during March 2005. We were reaccredited during September 2009 and we are presently preparing for a third assessment. We are one of thirty police agencies in Massachusetts that have attained accreditation with MPAC. In order to achieve accreditation, we were required to meet approximately 330 standards that are set by MPAC. Most of those standards require that our Department has written policies, that we adhere to those policies, and that we show documentation that we adhere to those policies. The six policies that I reviewed in this report have been scrutinized by the assessors from MPAC on two occasions. On both occasions, they found that those as well as all of our policies met MPAC standards.

As I stated on Page 1, I have concluded that Department policies were followed by all members of the FPD, who were involved in the narcotics investigation and search warrant service at 26 Fountain Street Framingham, MA. I believe that my conclusion is supported by the aforementioned facts.

Thank you.

