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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

FLORENTINA PELAYO, )  
individually, and as successor )  
in interest to decedent PETRICA )  
MUNTEAN, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
CITY OF ANAHEIM, KENNETH )  
JOHNSON, ALEXANDRIA )  
GONZALEZ, DARREN LEE, PETER )  
WANN, MICHAEL FLEET, BRENDAN )  
THOMAS, HEATHER SCAGLIONE, )  
BARTMAN HORN, and DOES 1 through )  
10, inclusive, )  
 )  
Defendants. )  
\_\_\_\_\_ )

No. 8:19-cv-02318  
MCS (ADSx)

DEPOSITION BY ZOOM OF BRENDAN THOMAS, taken on behalf  
of the Plaintiff, commencing at 1:10 p.m., on  
December 17th, 2020, before Michael G. McMorran, CSR  
No. 13735.

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I N D E X

WITNESS: Brendan Thomas

EXAMINATION	PAGE
By Mr. Steering	4

E X H I B I T S

EX.	DESCRIPTION	PAGE
202	Officer Safety Bulletin	8
203	E-mail dated 04/12/18	6
346	Officer Thomas's DA interview transcript	13
356	Officer Thomas's body-worn camera footage	16
359	Series of photographs	15
360	Officer Thomas's DA interview audio file	14

I N F O R M A T I O N R E Q U E S T E D

None.

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DECEMBER 17TH, 2020; 1:10 P.M.

\* \* \*

BRENDAN THOMAS,

having been first duly sworn, was examined and testified as follows:

-oOo-

EXAMINATION

BY MR. STEERING:

Q Good morning, Officer Thomas.

A Good morning, sir.

Q This isn't going to be too long. I'm not going to plow over dirt that's already been plowed. Hopefully. I suppose I might do it a little bit.

Anyway, can you state your full name, please?

A It's Brendan Thomas.

Q Do you have a middle name?

A Oh, sorry. Brendan Richard Thomas.

Q Okay. What's your date of birth, Officer Thomas?

A April 11, 1990.

Q Okay. And you're employed as an Anaheim Police Department police officer, sir?

A Yes.

Q And how long have you been employed as an Anaheim Police Department police officer?

1           A     Been at Anaheim for four years and a couple of  
2 months.

3           Q     And your present rank is police officer?

4           A     Yes.

5           Q     And are you assigned to patrol duty, sir?

6           A     Yes.

7           Q     Okay. And have you been assigned to patrol  
8 duties throughout your tenure with Anaheim PD?

9           A     Yes.

10          Q     Okay. And have you worked for any other law  
11 enforcement agency, sir?

12          A     Yes.

13          Q     Okay. And what other law enforcement agency  
14 have you worked for, sir?

15          A     The Alhambra Police Department.

16                   (Reporter clarification.)

17 BY MR. STEERING:

18          Q     And was that as a sworn police officer, sir?

19          A     Yes, sir.

20          Q     Okay. And when did you for -- from when to  
21 when did you work for Alhambra PD, sir?

22          A     It was September of 2013 until July of 2016, I  
23 believe.

24          Q     Okay. So why did you leave Alhambra PD?

25          A     Great place to work. It was just small. And

1 I'm from Orange County; so come closer to home and more  
2 opportunity at Anaheim.

3 Q I'm not going to ask where, but did you grow  
4 up in Orange County, sir?

5 A Yes, sir.

6 Q Okay. I'm not going to -- I have no desire to  
7 bother your personal -- I have no desire to bother you.  
8 I just represent a client in a case. That's all.

9 Okay. All right. Do you -- well, let me do  
10 this. I'm just going to spend some time identifying  
11 some documents.

12 Don't worry. If I try to pull any fast ones,  
13 Mr. Johnson will be all over me.

14 A Sure he will.

15 Q Oh, he will. He's a -- he's a -- he's not --  
16 I shouldn't say he's a mean guy. He's not a mean guy.  
17 He's actually a very nice man.

18 Well, I don't want to say he's too nice  
19 because you guys might get upset about that, but he's  
20 very diplomatic. How about that?

21 MR. STEERING: Let's see. Okay. Okay. Let  
22 me show you Exhibit 203.

23 (Exhibit 203 was marked.)

24 BY MR. STEERING:

25 Q And I'll ask you if you recognize -- let me

1 make the type a little bit bigger. And I can move -- I  
2 slide it back and forth so you can read the full text.

3 Can you see the text on that now,  
4 Officer Thomas?

5 A Yes, sir.

6 Q Okay. I assume that I'm going to have to move  
7 this back and forth. Do you recognize this e-mail of  
8 April 12th, 2018?

9 A Yes.

10 Q Okay. Did you -- were you sent that e-mail on  
11 April 12, 2018, by Officer Valdiserra?

12 A Yes, sir.

13 Q Okay. Did you read it on either August 12th,  
14 2018, [sic] or before you encountered Mr. Muntean on  
15 August 13th, 2018 [sic]?

16 A Yes, sir.

17 MR. JOHNSON: Objection. Vague.

18 BY MR. STEERING:

19 Q Okay. Mr. -- just in case -- and you haven't  
20 been through this kind of thing before. Mr. Johnson is  
21 going to make all kinds of objections. And there's no  
22 judge here to rule on the propriety of the objections.

23 So unless he tells you not to answer, he wants  
24 you to answer. But if he tells you not to answer, he,  
25 obviously, doesn't want you to answer. Okay? And

1 usually it's things about privilege or maybe your  
2 personal affairs, that kind of stuff.

3 But don't worry, I'm not going to get into all  
4 that. Okay?

5 A Sounds good.

6 MR. STEERING: Okay. Now, let's bring up the  
7 next exhibit. That was 203.

8 (Exhibit 202 was marked.)

9 BY MR. STEERING:

10 Q And then here's Exhibit 202. Now, there's a  
11 photo on the bottom of Petrica Muntean. And then  
12 there's some text on the top that's not all that  
13 different from that other e-mail.

14 Do you recognize Exhibit 202, Officer Thomas?

15 A Yes.

16 Q Okay. Do you remember this document being  
17 associated with the begin-of-shift briefing on  
18 April 13th, 2018?

19 MR. JOHNSON: Objection. Vague.

20 THE WITNESS: Yes.

21 BY MR. STEERING:

22 Q Okay. And when you had your briefing at the  
23 beginning of your shift on April 13th, 2018, do you  
24 remember -- well, do you remember any -- any Anaheim PD  
25 personnel discussing the incident with Petrica Muntean



1 that happened the evening before?

2 A Yes.

3 Q And what do you recall -- in terms of what you  
4 actually remember, what do you recall about that  
5 briefing, that is what you were told?

6 A I just remember they went over the facts of  
7 the e-mail, real brief of what happened the night  
8 before. And then I was -- from what I remember, that  
9 was pretty much it.

10 Q Okay. Did any Anaheim Police Department  
11 officer, including any of the briefing officers mention  
12 anything to you about Petrica Muntean's mom and dad  
13 telling Anaheim PD officers the evening before, that is  
14 this incident referenced in 202 and 203, that the gun  
15 that Mr. Muntean had was a fake gun?

16 Did anybody mention anything about that to  
17 you, sir?

18 MR. JOHNSON: Objection. Lack of foundation.  
19 Calls for speculation.

20 BY MR. STEERING:

21 Q Go ahead.

22 A No, they did not.

23 Q Okay. Did anyone mention anything to you  
24 about Petrica -- well, when I say "did anybody mention  
25 to you" -- the time period I'm talking about is, you

1 know, between the time of this April 12th, 2018,  
2 incident, that is the night before, and the time when  
3 you encountered Mr. Muntean the next day. Okay?

4 So between those two times, did anyone mention  
5 anything to you about Petrica Muntean being mentally  
6 ill?

7 MR. JOHNSON: Objection. Lack of foundation.  
8 Calls for speculation.

9 THE WITNESS: Not that I recall.

10 BY MR. STEERING:

11 Q Okay. Did you -- had you ever heard about --  
12 had you ever heard the name "Petrica Muntean" prior to  
13 the -- I guess these e-mails that we just looked at,  
14 the e-mail on the officer safety memo, and the briefing  
15 on April 13th, 2018?

16 Had you ever heard Mr. Petrica Muntean's name  
17 prior to that date?

18 A Not that I recall, no.

19 Q Had you ever had an incident with him?

20 A No, not that I can recall.

21 Q Did anyone -- any of your fellow Anaheim PD  
22 officers mention anything to you about anything they  
23 knew about Petrica Muntean other than what's mentioned  
24 in the two memos that we looked at?

25 A Kenneth Johnson may have in briefing, but I

1 don't recall anything of what he said.

2 Q Was Ken Johnson involved in the briefing of  
3 the officers for that shift, your shift on April 13th?

4 A Yeah, he was there.

5 Q I know he was there, but what I'm asking is  
6 was he involved in briefing other officers?

7 MR. JOHNSON: Objection. Vague.

8 THE WITNESS: Could you rephrase?

9 BY MR. STEERING:

10 Q In other words -- okay. Obviously, you know,  
11 your department wants officers on the next shift to be  
12 aware about something significant that happened the  
13 evening before. Okay? That seems pretty reasonable.

14 For your safety and the safety of the other  
15 person, I assume. So all I'm trying to find out is did  
16 Ken Johnson say anything either to you or say anything  
17 to someone else that you heard that indicated that he  
18 had some knowledge about Petrica Muntean?

19 MR. JOHNSON: Objection. Asked and answered.

20 THE WITNESS: Yeah. Like I said earlier, I  
21 remember him speaking in briefing that morning, but I  
22 couldn't tell you what he said. I don't remember.

23 BY MR. STEERING:

24 Q Okay. And do you remember what shift you  
25 worked on April 13th, 2018, sir?

1 A It was day shift.

2 Q Okay. And what are the hours of day shift,  
3 sir?

4 A 6:00 a.m. to 6:30 p.m.

5 Q Did you and Anaheim police officers work 12  
6 and a half hour shifts?

7 A Yes, sir.

8 Q And was that, like, three days a week or four  
9 days a week?

10 A Three days a week.

11 Q Okay. Okay. Okay. Do you recall giving an  
12 interview to -- looks like to James -- Detective  
13 James Monsoor, M-o-n-s-o-o-r, and Julissa Trapp of the  
14 Anaheim Police Department on April 19th, 2018,  
15 regarding the April 13th, 2018, incident with  
16 Mr. Muntean?

17 A Yes.

18 Q Okay. What documents and recordings did you  
19 review in preparation for your testimony today?

20 A The document in front of me of my interview  
21 and then also the body-worn camera footage.

22 Q Of yours, your body-worn camera footage?

23 A Yes. And then the one the district attorney  
24 released.

25 Q Okay. I mean, I could go through all this,

1 and just keep on scrolling. It's 30 pages. And I'll  
2 scroll as slow as you want or as fast as you want, but  
3 I just need you to identify this document as the  
4 document that you reviewed of your interview.

5 This is the document that is the transcript of  
6 your interview, sir?

7 A Yes.

8 Q Okay. And when you read it over, did it seem  
9 accurate to you?

10 A Yes.

11 Q Okay.

12 MR. JOHNSON: Objection. Overbroad.

13 BY MR. STEERING:

14 Q Okay.

15 MR. JOHNSON: What exhibit number is this,  
16 Jerry?

17 MR. STEERING: 346.

18 (Exhibit 346 was marked.)

19 MR. JOHNSON: Thank you.

20 MR. STEERING: 346.

21 BY MR. STEERING:

22 Q Okay. And when you sat for this interview on  
23 April 19th, 2018, did you do your best to tell the  
24 truth as best as you believed it to be?

25 MR. JOHNSON: Objection. Overbroad.

1 THE WITNESS: Yes.

2 BY MR. STEERING:

3 Q Okay. Let's see here.

4 MR. STEERING: Okay. We'll call this 360.

5 (Exhibit 360 was marked.)

6 BY MR. STEERING:

7 Q Can you hear this recording, or do I need to  
8 reset it?

9 MR. JOHNSON: When you share screen either  
10 with video or audio, there's boxes you got to check.

11 MR. STEERING: Yeah. Okay. It's checked;  
12 so . . .

13 MR. JOHNSON: Why don't you try it again,  
14 Jerry?

15 MR. STEERING: I'll try it again.

16 BY MR. STEERING:

17 Q Okay. I mean, I could play it if you want to.  
18 I stopped it at a minute and 24 seconds of Exhibit 360  
19 because I just need you to identify that that's your  
20 voice on the recording.

21 Is that your voice on the recording, sir?

22 A Yes.

23 Q Okay. And this is -- does this sound like the  
24 interview that you gave on April 19th, 2018?

25 A Yes.

1 Q Okay.

2 MR. STEERING: Mr. Johnson -- Moses Johnson,  
3 that is -- do we have a stipulation on the authenticity  
4 of that recording?

5 MR. JOHNSON: Yes, sir.

6 MR. STEERING: Okay. Thank you.

7 BY MR. STEERING:

8 Q Okay.

9 MR. STEERING: I'm going to have to e-mail  
10 something to myself; so just bear with me for a second.

11 MR. JOHNSON: Okay. No problem. Take your  
12 time.

13 MR. STEERING: I have to take my drive out and  
14 switch it; so just bear with me for a second, please.

15 MR. JOHNSON: No problem.

16 (Off-the-record discussion held.)

17 MR. STEERING: Okay. Okay. I'll show you  
18 Exhibit 359.

19 (Exhibit 359 was marked.)

20 BY MR. STEERING:

21 Q And, again, we're just identifying things.  
22 Let's see. Is that a picture of you, Officer Thomas?

23 A Yes.

24 Q Okay. So I'm just going to zip down. There's  
25 20 -- 37 pages of pictures of you and your equipment.

1 I'll zip through them.

2 Okay. I just showed you 37 frames of  
3 photographs. Is that -- do those photographs show you  
4 the way you were dressed on April 13th, 2018, and the  
5 equipment you had with you that day, sir?

6 A Yes.

7 MR. STEERING: Okay. That's 359. Okay. And  
8 I'm going to open Exhibit 356, which is your body-worn  
9 camera.

10 (Exhibit 356 was marked.)

11 BY MR. STEERING:

12 Q Back to opening it up. I'll put it down to  
13 zero. Okay.

14 Officer Thomas, on April 13th, 2018, you had a  
15 body-worn camera that was worn on your -- in your  
16 sternum area; is that correct?

17 A I wore it on my duty belt.

18 Q Oh, on the belt. Okay. And that's the Axon  
19 body camera, sir?

20 A Yes.

21 Q Okay. Now, was your camera set such that when  
22 you activate the record switch or the button on the --  
23 on the body-worn camera, that it retains some amount of  
24 time of video only before you activated the on switch  
25 and then records both video and audio?



1                   Is that how your body cam works, sir?

2                   MR. JOHNSON:  Objection.  Lack of foundation.  
3                   Calls for speculation.

4                   THE WITNESS:  Yeah.  As long as the camera is  
5                   on and buffering, it goes back.

6                   BY MR. STEERING:

7                   Q       Was there some way you could make it not on  
8                   and buffering and then turn it back -- turn it on to  
9                   record?

10                  MR. JOHNSON:  Objection.  Lack of foundation.  
11                  Calls for speculation.

12                  THE WITNESS:  If your camera is turned all the  
13                  way off and then turned on, it wouldn't go back.

14                  BY MR. STEERING:

15                  Q       Right.  Because there's nothing to go back to,  
16                  right?

17                  A       Correct.

18                  Q       Okay.  Okay.  When you gave that interview on  
19                  six days after the incident -- do you know if there was  
20                  a reason why there was a delay in six days after the  
21                  incident that you gave that interview?

22                  MR. JOHNSON:  Objection.  Lack of foundation.  
23                  Calls for speculation.

24                  THE WITNESS:  I remember scheduling errors  
25                  with the attorneys and detectives.

1 BY MR. STEERING:

2 Q Okay. How did you end up over at the scene of  
3 that Carl's Jr. and the alley going west from  
4 Carl's Jr.?

5 MR. JOHNSON: Objection. Vague.

6 BY MR. STEERING:

7 Q That morning on April 13th?

8 A Could you rephrase that? I think I missed the  
9 beginning part of that.

10 Q Yeah. How did it end up that you went over  
11 and joined this pursuit of Mr. Muntean?

12 A Officer Johnson put over the radio that he was  
13 out with the subject there. And myself and my partner  
14 were just south of him at Harbor and Broadway at the  
15 red light.

16 Q Okay. And -- and did you self-assign on that  
17 call?

18 A I believe so.

19 Q Okay. I forgot to ask you this.

20 Have you ever been sued in court for alleged  
21 actions or omissions by you in the course of your duty  
22 as a police officer?

23 A Yes.

24 Q How many times?

25 A Once.

1 Q Just this time?

2 A This would be second.

3 Q Okay. What was the first one?

4 MR. JOHNSON: Objection. Vague. Overbroad.

5 BY MR. STEERING:

6 Q What was the first one?

7 MR. JOHNSON: You can answer, Officer Thomas.

8 THE WITNESS: I think it was in 2017, but I  
9 don't recall.

10 BY MR. STEERING:

11 Q Was it a shooting case?

12 A No.

13 Q Was it a false arrest case?

14 A I think that might have been the claim. I  
15 don't recall.

16 Q Excessive force? Was that part of the claim?

17 A No.

18 Q Okay. Do you remember who the plaintiff was?

19 A I don't remember the name.

20 Q Do you remember what the allegations were?

21 Not saying -- you know, I'm not asking for your side of  
22 the story.

23 I'm just asking if you remember what the  
24 plaintiff alleged that you did or failed to do?

25 MR. JOHNSON: Objection. Overbroad.

1 THE WITNESS: I think they alleged I didn't do  
2 a thorough investigation, along those lines.

3 BY MR. STEERING:

4 Q Okay. I played one second of your video.  
5 It's Exhibit 356; so I'll just play it, and we'll  
6 see -- here we go.

7 Do you hear a voice saying, "Does anybody  
8 recognize is that Muntean?" Was that Officer Johnson?

9 A Yes.

10 Q And then there were two voices that said,  
11 "Looks like it." There was a first and a second one.  
12 Was the first one yours?

13 A I don't remember which one came first. One of  
14 them was mine.

15 Q One of them was yours. Okay. And at the time  
16 that you made that statement, did you suspect  
17 Petrica Muntean of a crime?

18 A From the incident the night before, he was  
19 believed to be a felon in possession of a firearm  
20 potentially.

21 Q Any other crimes that you can think of that  
22 you believed that Mr. Muntean had committed up to and  
23 including the time that you made that statement, "Looks  
24 like him"?

25 A From that day, no.

1 Q Okay. All right. We're going to pick it up  
2 at 13 seconds of Exhibit 356.

3 Okay. Now, I stopped it at two minutes, 38  
4 seconds of the recording, Exhibit 356. And a few  
5 seconds before, I heard a couple of pops.

6 Do you know what those pops were?

7 A Yes.

8 Q And what were they, sir?

9 A Beanbag rounds that were fired at him.

10 Q And do you know who shot the beanbag rounds?

11 A Heather Scaglione.

12 Q And did you see her shoot the beanbag rounds?

13 A I don't think I could see her shoot those  
14 ones.

15 Q Okay. Was she, as far as you know, around the  
16 corner from your sight from being able to see her shoot  
17 the beanbag round?

18 A Yes.

19 Q Did you see her with a beanbag shotgun prior  
20 to the time that the beanbag rounds went off?

21 A I don't recall if I saw her quite yet in the  
22 video.

23 Q Okay. So I'll pick it up at two minutes and  
24 38 seconds of the recording.

25 Now, I stopped it at two minutes and 50

1 seconds of the recording. It looks like we heard  
2 another shot.

3 Is that -- did that sound that way to you,  
4 sir?

5 A Yes.

6 Q And did it sound like a shot from a beanbag  
7 shotgun, sir?

8 A Yes.

9 Q Can you discern the difference -- like in your  
10 own experience -- well, let me back up.

11 Have you shot a beanbag shotgun?

12 A In training, yes.

13 Q Okay. Was that at the police firing range,  
14 sir?

15 A Yes, sir.

16 Q Okay. And I assume you shot a 12-gauge  
17 shotgun, a regular shotgun; is that correct?

18 A Yes.

19 Q Is there a whole lot of difference in the kick  
20 to the shooter than there is on your shoulder between  
21 firing a beanbag shotgun and a regular 12-gauge  
22 shotgun?

23 A In my opinion, yeah.

24 Q Is it a whole a lot different kick, or is it  
25 kind of somewhat less of a kick?

1 MR. JOHNSON: Objection. Vague.

2 THE WITNESS: I would say it's less.

3 BY MR. STEERING:

4 Q The beanbag shotgun?

5 A Yes.

6 Q I mean, the idea is not to kill the person,  
7 right? The idea is to kind of knock them down with the  
8 lead inside that little bag?

9 MR. JOHNSON: Objection. Vague.

10 THE WITNESS: Could you reask or rephrase?

11 BY MR. STEERING:

12 Q Right. The whole point of the beanbag gun is  
13 so that you don't have to kill somebody, right?

14 A Correct.

15 Q Okay. And so its situations where maybe use  
16 of force -- use of lethal force might be allowed, but  
17 I'm sure as a police officer you would rather not kill  
18 somebody if you can avoid it, am I correct, sir?

19 MR. JOHNSON: Objection. Overbroad.

20 THE WITNESS: Yeah. It's a tool used to gain  
21 compliance.

22 BY MR. STEERING:

23 Q And why do you say that?

24 A Because I've been on multiple calls in the  
25 past where the subject is holding a knife or whatever

1 they may be doing, and they either dropped a knife when  
2 they get hit with a round, or it causes pain and  
3 discomfort.

4 And that will be enough to get a lot of people  
5 to give up.

6 Q I mean, can't the beanbag round kill you?

7 MR. JOHNSON: Objection. Overbroad.

8 Incomplete hypothetical. Argumentative.

9 THE WITNESS: Hypothetically, yeah.

10 BY MR. STEERING:

11 Q Do you know whether or not at the time of this  
12 incident Anaheim Police Department permitted the use of  
13 beanbag shotguns on civilians by  
14 Anaheim Police Department officers in situations where  
15 lethal force was not warranted?

16 MR. JOHNSON: Objection. Overbroad.

17 THE WITNESS: It's all situational.

18 BY MR. STEERING:

19 Q Okay. But, I mean, there are standards,  
20 right?

21 A Correct.

22 Q And the standards are what you go by as an  
23 Anaheim police officer, right?

24 MR. JOHNSON: Objection. Overbroad.

25 Incomplete hypo.



1 THE WITNESS: Generally, yes.

2 BY MR. STEERING:

3 Q Okay. Okay. And do you have a recollection  
4 as to what your belief was on April 13th, 2018, as to  
5 the standards for when Anaheim Police Department  
6 officers are permitted to shoot civilians with a  
7 beanbag shotgun?

8 MR. JOHNSON: Objection. Overbroad.  
9 Incomplete hypo.

10 THE WITNESS: I have a vague recollection of  
11 the policy at the time.

12 BY MR. STEERING:

13 Q And what do you recall the policy being, sir?

14 A It was very broad. Left a lot of discretion  
15 to the officer in what they were experiencing, seeing,  
16 and knew at the time.

17 Q Well, was there kind of a, you know, bottom  
18 benchmark?

19 In other words, regardless of what the officer  
20 is seeing or hearing, unless certain conditions were  
21 met, the Anaheim Police Department would not allow the  
22 officers to shoot the beanbag gun on a civilian?

23 MR. JOHNSON: Objection. Overbroad.  
24 Incomplete hypo. And misstates the policy.

25 THE WITNESS: Could you repeat the question?

1 MR. STEERING: Could I have the reporter  
2 repeat the question, please?

3 (Record read.)

4 MR. JOHNSON: Same objections. Policy speaks  
5 for itself. Misstates the policy.

6 THE WITNESS: I don't recall --

7 BY MR. STEERING:

8 Q Go ahead. Go ahead.

9 A I'm just going to recall, like I stated  
10 earlier, I don't know that it was written in there  
11 specific circumstances that you can and can't use it.

12 Like I said, it was left fairly broad based on  
13 a reasonable officer what they knew at the time of the  
14 call and the circumstances presented to them in person.

15 Q Was it kind of an officer's discretion in that  
16 the Department allowed you to use it when the officer,  
17 given all the circumstances confronting him, believed  
18 it was reasonable?

19 Is that correct?

20 MR. JOHNSON: Objection. Overbroad.

21 THE WITNESS: Generally, yes.

22 BY MR. STEERING:

23 Q Okay. Oh, gosh. Gosh, gosh, gosh. Okay.  
24 Well, we're going to pick it up at two minutes and 50  
25 seconds on Exhibit 356.

1           Now, I stopped it at two minutes and 54  
2 seconds. During that four seconds, we heard a whole  
3 lot of screaming -- yelling, I guess.

4           Was that Mr. Muntean yelling, that we heard?

5           A     Yeah.

6           Q     Do you know what he was yelling, sir?

7           MR. JOHNSON: Objection. Lack of foundation.  
8 Calls for speculation.

9           THE WITNESS: At the time, I don't think I  
10 could make it out.

11 BY MR. STEERING:

12          Q     Okay. We'll pick it up at two minutes and 54  
13 seconds.

14                We -- it sounded like -- I mean, maybe I  
15 missed it. But just a few seconds before I stopped  
16 it -- I stopped it at two minutes and 58 seconds on  
17 356 -- but just before I stopped it, it sounded like a  
18 couple of shots.

19                Am I incorrect?

20           MR. JOHNSON: Objection. Vague.

21           THE WITNESS: Are you saying you heard shots  
22 right there?

23 BY MR. STEERING:

24          Q     Well, I'm just wondering if they were shots or  
25 just some kind of loud bang.

1 MR. JOHNSON: Objection. Vague.

2 BY MR. STEERING:

3 Q Do you want me to play it over?

4 A Yes, please.

5 Q Thank you. I sure will.

6 Okay. I guess it was -- the shot we heard  
7 earlier I think was the beanbag shot.

8 Did you hear a man's voice yelling "gun in his  
9 hand, gun in his hand"?

10 A Yes.

11 Q And did he say he's pointing it to his -- I  
12 think he said pointing it to his chin?

13 A Yes.

14 Q Was that -- who was that that was yelling  
15 that, if you know?

16 A That was me.

17 Q Okay. Did you see Mr. Muntean point the gun  
18 to his chin?

19 A Yeah, I must have if I called it out.

20 Q Well, I mean, you know, do you know if  
21 Mr. Muntean had the gun inside of that shirt or jacket  
22 and was holding the tip of the gun underneath his chin  
23 while it was inside the jacket or the shirt?

24 MR. JOHNSON: Objection. Vague. Asked and  
25 answered.

1           THE WITNESS:  Could you ask -- could you  
2 rephrase?  I don't know what you're asking.

3 BY MR. STEERING:

4           Q     Well, here's what I'm trying to ask is this.

5                     There was a bunch of reports, I mean, several  
6 different points in time -- the night before, the day  
7 of the incident -- that Mr. Muntean was pointing a gun  
8 underneath his chin, like, you know -- like, you know,  
9 don't come near me or I'm going to kill myself kind of  
10 thing.

11                    So I'm just wondering when you yelled out,  
12 "He's got a gun.  He's pointing it to his chin," did  
13 he -- well, let me ask you this -- well, did you  
14 actually see the gun itself, or did you just see  
15 something pointed toward the chin?

16           MR. JOHNSON:  Objection.  Asked and answered.  
17 Vague as to time.

18           THE WITNESS:  Once I yelled out "gun, gun in  
19 his hand," at that point, I saw the gun.

20 BY MR. STEERING:

21           Q     Okay.  Now, on 356, there's somebody running  
22 in front of the garage door to the left of the white  
23 car, to the left side of the photo -- of the image.  
24 Let me back it up a little bit.  I backed it up to  
25 three minutes.

1           I backed it up two minutes, 59 seconds. I  
2 stopped it at two minutes, 58 seconds. The man on the  
3 left-hand side of the image to the left of the white  
4 car -- is that Mr. Muntean?

5           A     Yes.

6           Q     Okay. And you looked at your body-worn camera  
7 video. Do you see -- did you see anywhere in the  
8 body-worn camera video where you can see Mr. Muntean  
9 point -- either display a gun or point the gun at his  
10 chin?

11           MR. JOHNSON: Objection. Overbroad. Vague as  
12 to time.

13           THE WITNESS: No. Due to the bouncing and the  
14 distance that we had, I don't remember seeing one in  
15 the camera.

16           BY MR. STEERING:

17           Q     Okay. All right. I'll pick it up at two  
18 minutes, 58 seconds of Exhibit 356.

19                     Okay. Now, I stopped it at three minutes, six  
20 seconds. There's, like, sunlight coming through, I  
21 guess, from the south.

22                     So you can't see anything so I'm going to  
23 advance it a little bit past there. Now, I stopped it  
24 at three minutes and nine seconds. There's an officer  
25 in front of you.

1 Do you know who that officer is, sir?

2 A Yes.

3 Q Who is the officer, please?

4 A Officer Horn.

5 Q Okay. Did he pass you in running past you  
6 towards Mr. Muntean at some point?

7 A I believe right in that camera shot is when he  
8 passed me.

9 Q Okay. I stopped it at three minutes and nine  
10 seconds. I'm going to pick it up. I'm going to do  
11 just little dings to see if we can get an image, a  
12 clear image.

13 Back it up. No. I stopped it at three  
14 minutes and eight seconds, but, you know, there's a lot  
15 that changes in a second on these videos.

16 Do you see Mr. Muntean in this photograph -- I  
17 mean in this image at three minutes and eight seconds?

18 A I can't tell if that's him in the background  
19 or not in this shot.

20 Q You mean the little dot in the back of the car  
21 kind of directly underneath the "o" in Axon?

22 A Yeah, that may be him, but it's blurred and  
23 pretty small. I can't tell from here.

24 Q Right, I understand. But, I mean, you were  
25 there, I wasn't; so you may know things about how

1 things appear that I don't.

2 Okay. So we stopped it at three minutes and  
3 eight seconds. I'll pick it up and kind of ding it a  
4 little bit.

5 Okay. Now, I stopped it at three minutes and  
6 12 seconds, and there was a man's voice that said  
7 "cover, cover, cover."

8 Was that your voice?

9 A No.

10 Q Whose voice was that?

11 A I think it's Sergeant Lee.

12 Q Okay. And do you know what he's referring to,  
13 sir?

14 A He's yelling to take cover.

15 Q Do you know where Sergeant Lee is relative to  
16 you at that point in time?

17 MR. JOHNSON: Objection. Lack of foundation.  
18 Calls for speculation.

19 THE WITNESS: No, because I was focused  
20 straight ahead.

21 BY MR. STEERING:

22 Q Okay. I'll pick it up at three minutes and 12  
23 seconds.

24 Well, as soon as I hit the button at three  
25 minutes and 12 seconds, we hear a whole bunch of



1 gunshots.

2 Were any of those gunshots yours?

3 MR. JOHNSON: Objection. Vague.

4 THE WITNESS: I believe so.

5 BY MR. STEERING:

6 Q Were any of those gunshots Officer Horn's?

7 MR. JOHNSON: Objection. Lack of foundation.

8 Calls for speculation.

9 THE WITNESS: I mean, they could be, but I  
10 can't speak on when he started shooting because I can't  
11 see anything in the video there.

12 BY MR. STEERING:

13 Q How far do you think you were from Mr. Muntean  
14 when you began shooting at him?

15 A It was probably 10 to 15 yards.

16 Q Okay. Like, by that white car that we're  
17 looking at on this image at three minutes and 15  
18 seconds, correct?

19 MR. JOHNSON: Objection. Vague.

20 BY MR. STEERING:

21 Q In other words, is 10 to 15 yards from where  
22 this video shows your position next to that white car?

23 So you're saying that Mr. Muntean, when you  
24 shot at him, he was 10 to 15 yards from this position  
25 that we see in the video?

1           A     Yeah, approximately.

2           Q     Okay. I assume you didn't get a tape  
3 measurer. Okay.

4                     Okay. And then when you shot Mr. Muntean,  
5 what was he doing?

6           A     He extended the gun in his hand directly at  
7 me.

8           Q     Which hand did he have it in?

9           A     At that point, I don't know. Initially, I saw  
10 it in his right hand.

11          Q     Did you see the jacket underneath?

12                     MR. JOHNSON: Objection. Vague.

13 BY MR. STEERING:

14          Q     No? Yes?

15          A     I don't remember.

16          Q     Okay. And when you said Mr. Muntean had  
17 the -- had his hand pointed at you, was he standing  
18 upright at that time?

19                     MR. JOHNSON: Objection. Vague.

20                     THE WITNESS: He was behind the car, and all I  
21 could see was the top portion of his body.

22 BY MR. STEERING:

23          Q     Well, how far down from the head down could  
24 you see? Like, to the -- his tummy to his, you know,  
25 sternum? You know, bottom of the sternum to the

1 shoulder? I mean, what could you see?

2 A Probably, like, sternum and up was about it.

3 Q So do you think that Mr. Muntean was -- was at  
4 least crouched down somewhat at that time that -- when  
5 you shot him?

6 MR. JOHNSON: Objection. Asked and answered.  
7 Lack of foundation. Calls for speculation.

8 THE WITNESS: Yeah. Like I said, I couldn't  
9 see what his legs were doing. I could only see his  
10 upper body.

11 BY MR. STEERING:

12 Q Do you know if any of your bullets hit him?

13 A I don't know.

14 Q What caliber bullet did you shoot at  
15 Mr. Muntean?

16 A 45 caliber.

17 Q At the time you shot at Mr. Muntean, were you  
18 able to take cover?

19 MR. JOHNSON: Objection. Vague. Vague as to  
20 time.

21 THE WITNESS: As best I could, but it all  
22 happened real fast.

23 BY MR. STEERING:

24 Q I mean, you were right next to that white car,  
25 right?

1           A     Yes, sir.

2           Q     And you ever think about ducking down behind  
3 the white car instead of shooting Mr. Muntean?

4           A     No.

5           MR. JOHNSON:  Objection.  Incomplete  
6 hypothetical.  Overbroad.  Vague.

7           THE WITNESS:  No.  I never had time to even  
8 think that much about it.

9           BY MR. STEERING:

10          Q     Let's pick it up from three minutes and 15  
11 seconds.

12                  Now, there was a bunch of -- I clicked it on  
13 three minutes and 15 seconds.  Then at three minutes --  
14 I stopped at three minutes and 24 seconds.

15                  But just before I stopped it, there were a  
16 couple more shots.  Were those yours, or were they  
17 Officer Horn's?

18           MR. JOHNSON:  Objection.  Vague.

19           THE WITNESS:  They were not mine.

20          BY MR. STEERING:

21          Q     Pardon me, sir?

22          A     They were not mine.

23          Q     Okay.  We'll pick it up at three minutes and  
24 24 seconds.

25                  All right.  I stopped it at four minutes and

1 33 seconds. I'm going to back it up a little bit.

2 Did you -- did you see the gun on the ground  
3 after Mr. Muntean had been shot and was lying still on  
4 the -- on the ground?

5 Did you see the gun before anybody touched him  
6 or the gun?

7 MR. JOHNSON: Objection. Vague. Vague as to  
8 time.

9 THE WITNESS: Can you rephrase again?

10 BY MR. STEERING:

11 Q After Mr. Muntean was shot and lying on the  
12 ground, not moving, and you went over to the front of  
13 that gray Honda, did you see the gun?

14 MR. JOHNSON: Same objection.

15 THE WITNESS: Not at this point in the video.

16 BY MR. STEERING:

17 Q Do you see the gun in your video at all?

18 MR. JOHNSON: Objection. Vague. Vague as to  
19 time.

20 BY MR. STEERING:

21 Q I didn't hear the answer.

22 A I don't think my body camera shows it because  
23 it's attached to my hip.

24 Q Okay. Well, when you looked on the ground,  
25 you saw Mr. Muntean lying on the ground -- did you see

1 his jacket near him?

2 MR. JOHNSON: Objection. Vague.

3 BY MR. STEERING:

4 Q That blue jacket or shirt we're talking about?

5 MR. JOHNSON: Same objection.

6 THE WITNESS: When we go to reach to pull him,  
7 I remember seeing it. But at the time, I don't -- I  
8 was still focused on his hands, trying to see where  
9 they were.

10 BY MR. STEERING:

11 Q Did you handcuff Mr. Muntean?

12 A I assisted. Someone else put the handcuffs  
13 on.

14 Q Why was he handcuffed?

15 MR. JOHNSON: Objection. Argumentative.

16 THE WITNESS: That's our protocol.

17 BY MR. STEERING:

18 Q Why? I mean, what's the point?

19 MR. JOHNSON: Same objection.

20 THE WITNESS: Part of our operating procedures  
21 involve we would rather get him handcuffed so that we  
22 can give him medical aid without any other resistance,  
23 if there may be some.

24 BY MR. STEERING:

25 Q Did Mr. Muntean look like he was physically in

1 a position to give you any resistance after he was shot  
2 and on the ground?

3 MR. JOHNSON: Objection. Argumentative.

4 THE WITNESS: I'm not a physician. I can't  
5 determine medical states. It's just our protocol.  
6 When an incident happens, we handcuff them so that we  
7 can give them medical aid until we pass them off to  
8 paramedics.

9 BY MR. STEERING:

10 Q You mean regardless of the situation, that's  
11 just what you fellows do, right?

12 A Yes, sir.

13 MR. JOHNSON: Objection. Argumentative.

14 BY MR. STEERING:

15 Q Okay.

16 THE WITNESS: Do you think we can take a  
17 restroom break, sir?

18 MR. STEERING: Yeah, sure. Do you want to  
19 take it right now?

20 THE WITNESS: Sure.

21 MR. STEERING: That's fine. Okay.

22 (Off the record from 2:10 p.m. to  
23 2:16 p.m.)

24 BY MR. STEERING:

25 Q So I got Exhibit 356 up, four minutes, 33

1 seconds. I'll pick it up.

2 All right. I stopped it at four minutes and  
3 50 seconds.

4 Let me look at my notes and I think I'm done.

5 Okay. Let me ask you this: Did you take  
6 cover from Mr. Muntean using the white car as cover  
7 after Officer Horn ran past you?

8 MR. JOHNSON: Objection. Vague. Vague as to  
9 time.

10 THE WITNESS: Could you rephrase it? I didn't  
11 fully understand.

12 BY MR. STEERING:

13 Q Did you use the white car that we saw in the  
14 video -- I think it was a Honda -- as cover from any  
15 possible shooting that Mr. Muntean might have shot at  
16 you?

17 MR. JOHNSON: Same objections.

18 THE WITNESS: I used the car as best I could.

19 BY MR. STEERING:

20 Q When you saw Mr. Muntean in the back of the  
21 gray Honda -- when I say "in back," he's actually  
22 standing at the front of the car, but from you he's in  
23 back of that car.

24 When you saw Mr. Muntean standing in some way  
25 in back of that gray car, which would be the opposite



1 side of the gray car from you, did he point the gun  
2 underneath his chin?

3 MR. JOHNSON: Objection. Vague as to time.

4 THE WITNESS: At some point, yes.

5 BY MR. STEERING:

6 Q Was that before you shot him?

7 A Yes.

8 Q How long after he took the gun from underneath  
9 his chin did you shoot him?

10 A It all happened within a matter of seconds.

11 Q How many shots did you fire at Mr. Muntean?

12 A I believe I fired seven.

13 Q Let me look at this.

14 Okay. When -- before -- did you assist in  
15 pulling Mr. Muntean from right -- or from the front  
16 passenger's side of the vehicle to the -- I guess the  
17 front of the driver side of the vehicle when he was on  
18 the ground?

19 A Yes.

20 MR. JOHNSON: Objection. Vague.

21 BY MR. STEERING:

22 Q What part of Mr. Muntean did you grab to pull  
23 him?

24 A His right foot.

25 Q And do you know who was pulling his left foot,

1 sir?

2 A Sergeant Lee.

3 Q Okay. Anyone else pulling on him?

4 A I don't think so.

5 Q And did you notice the gun -- did you see the  
6 gun prior to actually applying force and pulling  
7 Mr. Muntean's leg toward you?

8 MR. JOHNSON: Objection. Vague as to time.

9 THE WITNESS: Prior to pulling him, no.

10 BY MR. STEERING:

11 Q And when you pulled him, did you see that the  
12 gun was in the blue jacket?

13 MR. JOHNSON: Objection. Vague.

14 THE WITNESS: Yes.

15 BY MR. STEERING:

16 Q And was it inside of the jacket so if you just  
17 looked at it without touching it, you couldn't see the  
18 gun?

19 MR. JOHNSON: Objection. Vague.

20 THE WITNESS: I don't recall exactly how it  
21 was laid out.

22 MR. STEERING: Okay. I don't have any other  
23 questions.

24 MR. JOHNSON: All right. We're doing the  
25 federal rules; so we're done. And, again, I want a

1 certified copy.

2 (Proceedings concluded at 2:24 p.m.)

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STATE OF CALIFORNIA            )  
  )  SS.  
COUNTY OF ORANGE            )

I, the undersigned, say that I have read the foregoing deposition, and I declare, under penalty of perjury, that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_ at \_\_\_\_\_, California.

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BRENDAN THOMAS

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA            )  
  )  SS.  
COUNTY OF ORANGE            )

I, Michael McMorran, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the state of California, holder of Certificate Number CSR 13735 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

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I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a

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true record of the testimony given by the witness.  
(Fed. R. Civ. P. 30(f)(1)).

Before completion of the deposition, review of  
the transcript [ X ] was [ ] was not requested. If  
requested, any changes made by the deponent (and  
provided to the reporter) during the period allowed,  
are appended hereto. (Fed. R. Civ. P. 30(e)).

Dated: 12/29/2020



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MICHAEL G. MCMORRAN, CSR No. 13735

