

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 HEATHER SCAGLIONE, taken on
behalf of Plaintiff at 9:13 a.m., Wednesday,
December 16th, 2020, before Michael G. McMorran,
Certified Shorthand Reporter No. 13735 of the State of
California, RPR, pursuant to Notice.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES OF COUNSEL:

FOR PLAINTIFF:

LAW OFFICES OF JERRY STEERING
BY: JERRY L. STEERING, ESQ.
4063 Birch Street
Suite 100
Newport Beach, California 92660
(949) 474-1849
jerrysteering@yahoo.com

FOR DEFENDANTS:

ANAHEIM CITY ATTORNEY'S OFFICE
BY: MOSES W. JOHNSON, IV, ESQ.
200 South Anaheim Boulevard
Suite 356
Anaheim, California 92805
(714) 765-5169
mjohnson@anaheim.net

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

WITNESS: Heather Scaglione

EXAMINATION	PAGE
By Mr. Steering	4

E X H I B I T S

EX.	DESCRIPTION	PAGE
202	Officer safety bulletin	13
203	E-mail dated 04/12/18	11
250	Officer Scaglione's DA interview transcript	51
253	Google map image	31
254	Photograph	32
261	Photograph	48
265	Anaheim Police Department Policy Manual	22
267	Part 1 of Officer Scaglione's body-worn camera footage	30
268	Part 2 of Officer Scaglione's body-worn camera footage	37
269	Officer Scaglione's DA interview audio file	52

INFORMATION REQUESTED

None.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WEDNESDAY, DECEMBER 16TH, 2020

9:13 A.M.

* * *

HEATHER SCAGLIONE,

the Witness herein, having been first duly sworn,
testified as follows:

MR. JOHNSON: I stipulate that this deposition
can be taken by Zoom in light of COVID-19.

MR. STEERING: Okay. Me too. How about that?
Okay. That will take care of it.

(Off-the-record discussion held.)

-oOo-

EXAMINATION

BY MR. STEERING:

Q Good morning, Officer Scaglione.

A Good morning, sir.

Q Is that how you say it?

A Yes, sir.

Q Okay. All right. You're employed as a sworn
police officer with the Anaheim Police Department?

A Yes, sir.

Q And how long have you been a sworn police
officer with the Anaheim Police Department?

A Approaching seven years, sir.

Q And what's your present rank at Anaheim PD?

1 A You currently would call me an investigator.
2 I'm with the community policing team.

3 Q The community policing team?

4 A Yes, sir.

5 Q And what is that, please?

6 A Community policing kind of comes with a bunch
7 of different things. We come with long-term solutions,
8 do businesses, communities.

9 We help organize neighborhood watches. We
10 look at long-term and short-term approaches for crimes
11 in areas and help businesses look at how their building
12 is set up and how they can change things or take away
13 things or add things to their building to help deter
14 crime or other issues that they're having at their
15 business.

16 Q Oh, that's nice. Okay.

17 You ever been sued for actions by you or
18 omissions by you in the course of your duties as an
19 Anaheim police officer?

20 A No, sir.

21 Q Have you ever been sued -- well, have you ever
22 worked for any other law enforcement agency?

23 A Yes, sir. I worked for San Bernardino County
24 Sheriffs prior to coming to Anaheim.

25 Q Were you a sworn deputy sheriff?

1 A Yes, sir.

2 Q And from when to when were you a deputy
3 sheriff with San Bernardino County Sheriff's
4 Department?

5 A The two to three years prior to coming to
6 Anaheim.

7 Q Okay. Well, what years did you work for the
8 San Bernardino County --

9 A I'm trying to -- I'm trying to remember. It
10 was like 2011, 2012 to 2014, '15. Math is hard.

11 Q Okay.

12 MR. JOHNSON: When you talk about numbers
13 today, Officer, just give your best estimate.

14 THE WITNESS: Yes, sir.

15 BY MR. STEERING:

16 Q Not like this makes any difference in this
17 case whether, you know.

18 Okay. When you were at the San Bernardino
19 County Sheriff's Department, did you have any training
20 on the use of beanbag shotguns?

21 A Yes, sir.

22 Q And do you remember whether or not when you
23 worked for the San Bernardino County Sheriff's
24 Department that agency has some type of policy
25 regarding the use of a beanbag shotgun?

1 A The San Bernardino policy?

2 Q Yes, ma'am.

3 A Vaguely I can remember their policy.

4 Q Was it in writing?

5 A I'm sure it was.

6 Q And why are you sure it was?

7 A Because all policies are typically in writing.

8 Q And do you remember what the policy was with
9 the San Bernardino County Sheriff's Department about
10 the use of a beanbag shotgun device?

11 MR. JOHNSON: Objection. Asked and answered.

12 THE WITNESS: It's one of our use of force
13 continuums when working from the bottom up when it
14 comes to deescalation. It can be a deterrent without
15 even having to fire it just by racking it.

16 And there's a distance. Can't be within so
17 many feet of a person before you shoot it. I think
18 like 12 to 15 depending on the shotgun, the less lethal
19 shotgun.

20 At San Bernardino, we had two different kind
21 of less lethal shotguns. We had a short one for like
22 transport with the different rounds. You could be
23 closer. And then we had the long one like we have here
24 where you can be a little further away.

25 /////

1 BY MR. STEERING:

2 Q Okay. And during this April 13th, 2018,
3 incident with Mr. Petrica Muntean, what kind of beanbag
4 shotgun did you use on him?

5 A Well, it's the Anaheim one. It's a converted,
6 I think, Remington shotgun with a beanbag round. We
7 prefer the person to be 12 to 15 feet away before we
8 shoot.

9 Q And do you know why that is so?

10 A Because if you're closer, it can do more
11 damage. It kind of takes away from it being less
12 lethal if you're really close to a person.

13 Q Do you know what the muzzle velocity was -- or
14 was supposed to be -- how about that -- for the beanbag
15 shotgun that you used on Petrica Muntean on April 13th,
16 2018?

17 MR. JOHNSON: Objection. Calls for
18 speculation.

19 THE WITNESS: I do not know the muzzle blast
20 velocity of the beanbag shotgun that I used on that
21 day.

22 BY MR. STEERING:

23 Q Okay. Is it -- is it a 12-gauge shotgun
24 device?

25 A Yes, sir.

1 Q And -- and have you shot a 12-gauge shotgun
2 with a regular load in there like buckshot or a deer
3 slug?

4 A Yes, sir. At my last department, it was one
5 of our lethal options we can use.

6 Q How about -- I know when you shoot a shotgun,
7 it puts a pretty good deal of force in your shoulder.
8 In terms of the amount of kick you feel from shooting
9 the beanbag shotgun, is it similar to that of a regular
10 12-gauge, or is it different?

11 A It's -- it's significantly less, sir.

12 Q Okay. And that's so you don't kill somebody
13 with the darn thing; is that fair?

14 A Fair enough, yes, sir.

15 Q Okay. All right. Do you remember what first
16 drew your attention to the incident with
17 Petrica Muntean?

18 Well, let me back up. I guess on April 13th,
19 2018, you were working a particular duty shift that
20 day; is that correct?

21 A Yes, sir. I was working a patrol payback
22 shift.

23 Q And do you know from what hours to what hours
24 that shift was, ma'am?

25 A That would be a ten-hour shift. I was working

1 from 6:00 a.m. to 4:00 p.m. Supposed to be working
2 from 6:00 a.m. to 4:00 p.m. Got cut short that day.

3 Q Okay. And did you get some type of a briefing
4 e-mail or other briefing document regarding
5 Petrica Muntean at the beginning of your duty shift
6 that day?

7 A Yes, sir.

8 Q And what do you remember getting?

9 A Got an e-mail from a night shift officer for
10 an officer safety regarding him.

11 Q Okay. And did you -- is that something where
12 you go into work and you check your e-mails that day?
13 I mean, you know, at the beginning of your shift?

14 A Yeah, I logged on to my computer, checked my
15 e-mails, saw that e-mail, and read the e-mail sent.

16 Q Okay. Let me -- I got to look at one other
17 computer for another -- just bear with me.

18 MR. JOHNSON: Are you going to make that
19 e-mail an exhibit, Jerry?

20 MR. STEERING: Yeah. I just got to figure out
21 which computer this is; so it's probably with this one.
22 All these plugs. Okay. See if this came up.

23 No. No. Oh, there it is -- it's coming up
24 now. There it is. Well, I plugged the wrong one in.
25 Bear with me, please.

1 MR. JOHNSON: Okay.

2 MR. STEERING: There it is. Okay. Let's do
3 this. You got to bring these things up first, right?

4 MR. JOHNSON: Yeah. You're going to share
5 your screen; so we can see it?

6 MR. STEERING: Yeah, yeah. Okay. As
7 Exhibit 203.

8 (Exhibit 203 was marked.)

9 BY MR. STEERING:

10 Q And I'm going to ask you if you recognize that
11 document.

12 A Looks different than the one that I received.

13 Q I'm going to increase it. Okay. In terms of
14 the text, can you read the text?

15 A For the most part, yes, sir.

16 Q Okay. Do you want me to -- is there something
17 you want me to do to move it around so you can read it
18 better?

19 A Yeah. Is there a way to bring it into your --

20 Q I can bring it smaller, but I don't know if
21 you can read it. That's the problem. So, I mean, I
22 can put it down to 50 percent, but you probably can't
23 read that.

24 MR. JOHNSON: What about 75?

25 MR. STEERING: 75 -- that's what I had before,

1 but it's small print.

2 THE WITNESS: I can read it. It's just a
3 little cut off on the right side, but --

4 BY MR. STEERING:

5 Q Right. I know, but we want you to actually
6 read the whole thing, if that's possible; so . . .

7 MR. JOHNSON: Is there a way of showing it
8 where it just fits the screen, whatever percentage that
9 is?

10 MR. STEERING: Yeah, let's look. Yeah, but
11 see it's still going to be the width with a little
12 window over it.

13 THE WITNESS: No, it's good. I got the whole
14 width on it now. I can --

15 BY MR. STEERING:

16 Q You got it? Can you read it?

17 A Do you want me to read it out loud to --

18 Q Well, you can read it to yourself. I mean, if
19 you want to read it out loud, you can read it out loud
20 if you want to. If you want to read it to yourself,
21 you can read it to yourself.

22 MR. JOHNSON: Why don't you read it to
23 yourself, Officer, if you can see it.

24 THE WITNESS: Yes, sir.

25 Yeah, that's the e-mail narrative-wise what we

1 were sent. It's just missing like our -- a picture and
2 a couple of other things.

3 BY MR. STEERING:

4 Q Okay. And I'm going to -- there's another
5 document also that I think you might have got a
6 briefing that may go along with that, or it may have
7 been attached to this e-mail.

8 But do you recognize Exhibit 203?

9 A Yes, sir.

10 Q Okay. And was Petrica Muntean discussed at
11 the briefing that you had at the beginning of your
12 shift April 13th, 2018?

13 A I believe we talked about the e-mail, like did
14 everyone see it and the picture of Peter, and that was
15 discussed about that.

16 It wasn't really much in detail. It was just
17 officer safety, this male who is on a parole release
18 supervision was seen with a handgun. He got out of the
19 perimeter; so just be careful if you contact him in the
20 future.

21 Q Okay. Did -- all right.

22 MR. STEERING: Let me show you the next
23 exhibit.

24 And do you recognize Exhibit 202?

25 (Exhibit 202 was marked.)

1 BY MR. STEERING:

2 Q And I'll give you a chance to look at that.
3 Can you read this entire document?

4 A Yes, sir, with this picture below it? Yes,
5 sir.

6 Q Yeah.

7 A Yes, I actually remember this one better than
8 the other one just because of that photo.

9 Q Was this, like, handed out at a briefing or
10 otherwise disseminated at the briefing on April 13th,
11 2018?

12 A I believe it was something that we pulled up
13 on our computers; so I remember seeing that with the
14 picture.

15 Q Okay. Did anyone mention anything to you
16 about Petrica Muntean being suicidal at all?

17 A No, sir.

18 MR. JOHNSON: Objection. Calls for
19 speculation.

20 BY MR. STEERING:

21 Q Did anybody say anything that you recall prior
22 to encountering Mr. Muntean on April 13th, 2018, about
23 whether or not they thought he was -- had some kind of
24 mental health problem?

25 MR. JOHNSON: Same objection.

1 THE WITNESS: I do not recall anyone
2 mentioning that, sir, no.

3 BY MR. STEERING:

4 Q Do you remember -- prior to encountering
5 Petrica Muntean on April 13th, 2018, did anyone mention
6 anything to you about Anaheim police officers being
7 told the night before, that is April the 12th, that the
8 gun that Petrica Muntean was carrying was a replica gun
9 or a toy gun?

10 A No, sir.

11 Q Would you have wanted to know the information
12 about Petrica Muntean being suspected of having mental
13 health problems during your pursuit of him on April the
14 13th, 2018?

15 MR. JOHNSON: Objection. Lack of foundation.
16 Calls for speculation. Incomplete hypothetical.

17 BY MR. STEERING:

18 Q He didn't tell you not to answer. It's just
19 there's no judge here to say "Yea" or "Nay" on any
20 objections; so . . .

21 A Right, right. No. I was just trying to --
22 you gave me a lot of words at once. Can you repeat
23 that question for me?

24 MR. STEERING: Can I have the reporter repeat
25 the question, please?

1 (Record read.)

2 MR. JOHNSON: Same objections.

3 THE WITNESS: As an officer, we always want to
4 know as much information as we can. So any information
5 that can be given, whether it has to do with drug usage
6 or mental health or weapons or speculated weapons is
7 always good to know so we can make the best decisions.

8 BY MR. STEERING:

9 Q Okay. How about information about the gun
10 that Petrica Muntean having the night before being a
11 toy or a replica gun -- would you have wanted to know
12 that during your pursuit of Petrica Muntean?

13 MR. JOHNSON: Objection. Lack of foundation.
14 Calls for speculation. Incomplete hypothetical.

15 THE WITNESS: Knowing any information is
16 beneficial; however, from my personal experience in the
17 past, I've had parents tell us their son has not been
18 armed, and he's been inside with a handgun.

19 I've had parents tell us that they are armed,
20 and they haven't been. It's kind of -- you want as
21 much information, but at the same time, unless its
22 another officer telling you exactly what they saw, it's
23 hard to take with a lot of weight if that makes sense,
24 sir.

25 /////

1 BY MR. STEERING:

2 Q Yeah. Sure. I understand.

3 Okay. Do you know if the
4 Anaheim Police Department has a policy regarding under
5 what circumstances Anaheim Police Department police
6 officers are permitted to use beanbag shotgun devices?

7 A Yes, sir.

8 Q And is there a written policy?

9 A Yes, sir.

10 Q Have you ever -- when's the last time you saw
11 the written policy?

12 A Couple of years ago I think is the last time I
13 reviewed it. I think we review them every time there's
14 an update. I think our last update was a couple of
15 years ago.

16 Q I just looked at the Anaheim Police Department
17 policy manual.

18 A It gets updated, like, weekly.

19 Q Oh, I understand. I couldn't find any
20 reference at all to even the word "beanbag" at all.

21 A It's in there. It's amongst other -- the less
22 lethal. You have to kind of go through all the little
23 subsections.

24 Q Well, do you know what section it's under,
25 ma'am?

1 A The actual number-number, no, I would have to
2 look at the actual policy with you to point it out.

3 Q Well, I mean, I've got the policies and
4 procedures manual. And what I'm wondering is it says
5 "Policy Manual" -- "APD policy manual," and then it's
6 got table of contents.

7 And Chapter 1 is "Law Enforcement Role and
8 Authority"; Chapter 2, "Organization"; Chapter 3,
9 "General Operations Use of Force, Major Incident Review
10 Team" -- let me -- I think I have that as an exhibit.
11 Let me see.

12 MR. JOHNSON: The whole policy manual?

13 MR. STEERING: I just put the whole thing in
14 there as one exhibit. That's all. I mean, I've got --
15 here's the -- we've got a policy on the use of force,
16 but it doesn't talk about -- at least that I can tell,
17 it doesn't talk about beanbag devices.

18 THE WITNESS: I think if you continue down
19 through the policy manual, it's towards the bottom,
20 you'll start seeing stuff about firearms, taser
21 devices, and stuff like that because the 40-millimeter
22 round -- I want to say the beanbag is, like, down there
23 with all of those.

24 BY MR. STEERING:

25 Q You mean under "Equipment"?

1 A Honestly, I can't go off of memory right now
2 where exactly it is. I would have to be looking at it
3 with you, but I know --

4 Q I mean, I'm looking at the entire document.
5 It's a 689-page document. I'm doing a find function.
6 Find on page --

7 A I don't think it's actually under "Beanbag."
8 I think it's under a less lethal round.

9 Q Oh, I looked under "less lethal," and nothing
10 comes up. Is "less lethal" one word?

11 A It should be two words, but kind of like with
12 the taser, we call it, like, the electric device.

13 Q Oh, okay.

14 A You know, so our policy has -- we know it as
15 beanbag, but the policy might have, like, the official
16 post mandated statement for the . . .

17 Q Okay. Well, what do you understand the
18 Anaheim policy to be? I mean, you did use a beanbag
19 shotgun on Petrica Muntean on April 13th, 2018,
20 correct?

21 A Correct.

22 Q Okay. And when you did that, were you at
23 least trying to comply with the
24 Anaheim Police Department policy regarding the use of
25 beanbag shotguns?

1 A Yes, sir, I was.

2 Q Okay. And you had that policy in mind when
3 you were using your beanbag shotgun on Petrica Muntean?

4 A Yes, sir.

5 Q Okay. And what is your belief about what the
6 Anaheim Police Department policy was regarding the use
7 of beanbag shotguns on civilians at the time of this
8 incident?

9 A It's used as a de-escalation technique. It's
10 a less lethal force option where we don't have to be as
11 close to that person, whether they're armed with a
12 weapon or not.

13 It can be used to get them to drop a weapon.
14 You want to be approximately 15 feet away from that
15 person. There's areas that you should not aim for; so
16 very mindful of my distance, making sure I was loading
17 less lethal rounds in, giving my, you know, stop with
18 your hands.

19 I yelled out "less lethal" to my partners to
20 let them know that I had less lethal, and I shouted it
21 twice so people were aware that's what I had. So if
22 people heard the sound -- when I did eventually fire,
23 when people heard it, they weren't thinking I was
24 discharging a firearm.

25 Q Is a beanbag shotgun considered a kinetic

1 energy projectile?

2 A Yes.

3 Q That's what it says.

4 A Kinetic energy projectile, yes, sir, sorry.

5 Q Okay. And would that apply for like a -- what
6 do you call those things? PepperBall guns?

7 A It applied to all of that, I believe.
8 PepperBall -- you're not really supposed to shoot
9 people with it, but, beanbags, you can, yeah.

10 Q All right. Okay. What a name to name it,
11 "kinetic energy projectile."

12 MR. JOHNSON: I take it you found it, Jerry.

13 MR. STEERING: I found that. I'm not sure
14 that, you know . . .

15 Let me do this: So, you know, to be fair
16 to -- I know it's tough to believe, but to be fair to
17 Officer Scaglione, let me just -- let me bring up
18 the -- let me just bring up the manual -- or that
19 section anyway, and let her look at it.

20 MR. JOHNSON: Right.

21 MR. STEERING: You know what I mean. Bear
22 with me. Maybe I'm going a little wacko. That's
23 certainly possible. I just had the darn thing. Here
24 it is. Okay. So it's 304-10. Let me write that down.
25 "Kinetic energy projectile." That's wonderful.

1 I got to e-mail it to myself --

2 MR. JOHNSON: I understand.

3 MR. STEERING: -- to get it from one computer
4 to the other. There it is. Okay. Okay. I got it up.
5 I don't know if that went over really well.

6 MR. JOHNSON: I can see it.

7 MR. STEERING: 304.10. There it is.

8 (Exhibit 265 was marked.)

9 BY MR. STEERING:

10 Q Okay. Here's Exhibit 265. And it's the whole
11 Anaheim PD policy manual. And I'm referring
12 specifically to kinetic energy projectile guidelines.
13 And these are the guidelines that we were talking
14 about, ma'am, about the use of devices that shoot or
15 fire objects at people to -- in a nonlethal fashion; is
16 that fair?

17 A Yes, sir.

18 Q Okay. And I'll just go through the policy
19 with you if that's okay with Mr. Johnson.

20 And it says (As read:) Kinetic energy
21 projectiles when used properly are less likely to
22 result in death or physical injury and can be used in
23 an attempt to de-escalate a potentially deadly
24 situation.

25 That's something you considered when you shot

1 Mr. Muntean; is that correct?

2 A Yes, sir.

3 Q Okay. And then it says -- 304.10.1 says
4 "Deployment and Use."

5 And then it says (As read:) Only department
6 approved munitions can be carried or deployed.

7 And what you were carrying that day were
8 approved munitions; is that correct?

9 A Yes, sir.

10 Q Okay. And it was an approved beanbag shotgun;
11 is that correct?

12 A Yes, sir.

13 Q Okay. Okay. So it says (As read:) A
14 circumstance appropriate for deployment include but are
15 not limited to situations in which the suspect is armed
16 with a weapon and tactical circumstances allow for the
17 safe application of approved munitions.

18 Where it says "And the tactical circumstances
19 allow for the safe application of approved
20 munitions" -- what does that mean to you, ma'am?

21 MR. JOHNSON: Objection. Overbroad.

22 THE WITNESS: It, basically, means to me that
23 if someone is armed with a weapon and you are in a
24 position to use a less lethal to get them to drop the
25 weapon, but you're not going to put yourself into

1 danger by doing so, you can use it.

2 An example would be if someone was armed with
3 a knife, and they're threatening officers or hurt
4 themselves with that knife, we would be in a position
5 to use that to fire upon them to get them to drop the
6 knife, pending we have good coverage, we have distance,
7 and you have other people who are armed with a lethal
8 option.

9 So if your option breaks down and you become a
10 target or a possible victim of being attacked, you have
11 partners that can protect you from that.

12 BY MR. STEERING:

13 Q When it says "armed with a weapon," to you,
14 does that include, like, knives, guns, clubs or
15 anything you can really hurt somebody with?

16 A Anything. I mean, if you're John Wick, you
17 can kill me with a pen; so it can be anything.

18 Q And then it talks about a suspect. Does that
19 mean you have to suspect a person of a crime?

20 A Yes, sir.

21 MR. JOHNSON: Objection. Overbroad.

22 THE WITNESS: It can also be -- if I may, it
23 can also be -- when we use "suspect," it can also be
24 any person in that situation where we can use that, a
25 beanbag. We're not going to use it on a witness,

1 obviously, or a victim.

2 BY MR. STEERING:

3 Q All right. Then 304.10.2 (As read:)
4 Deployment Considerations: Before discharging
5 projectiles, the officer should consider factors such
6 as distance and angle to target, type of munitions
7 employed, type and thickness of subject's clothing,
8 subject's proximity to others, the location of the
9 subject, whether the subject's actions dictate the need
10 for an immediate response, and the use of control
11 devices appears appropriate.

12 And then it goes on to say (As read:) A
13 verbal warning of the intended use of the device to
14 precede its application unless it would otherwise
15 endanger the safety of the officers and when it's not
16 practicable due to the circumstances. The officer
17 should keep in mind the manufacturer's recommendations
18 and their training regarding effective distances and
19 target areas.

20 And it goes on to talk about (As read:) The
21 need to immediately incapacitate the subject must be
22 weighed against the risk of causing serious injury or
23 death.

24 And it says (As read:) The head, neck, chest,
25 spine, and groin should not be intentionally targeted

1 except when the officer believes the suspect poses an
2 imminent threat of serious bodily injury or death to
3 others.

4 And then 304-10-3 -- or excuse me, 304.10.3
5 "Safety Procedures" says (As read:) Shotguns
6 specifically designed for use with kinetic energy
7 projectiles will be specifically marked with
8 gray-colored buttstocks and forearms in a manner that
9 makes them readily identifiable as such.

10 (As read:) Officer will inspect the shotgun
11 and projectiles at the beginning of each shift to
12 ensure it's in proper working order and that the
13 projectiles are the approved ones, appear to be free
14 from defects.

15 A And this right here -- sorry to interrupt.

16 Q Yeah. Go ahead.

17 A The unit carry condition -- that was -- if you
18 scroll back up, please. That was the change that
19 happened within the past year.

20 At the time of this, our policy stated that it
21 should not be loaded at all. All the magazine -- I
22 mean all the rounds for the beanbags should be in the
23 saddle and should be empty. And when we take it out
24 when we need to use it, that's the time to load it.

25 And this is what's changed recently, which is

1 why I said I read this, like, a year ago because there
2 was a change.

3 Q Okay. Do you remember giving an interview to
4 Orange County Sheriff's Department -- or, excuse me,
5 Orange County District Attorney's Office investigators
6 along with an Anaheim Police Department investigator
7 about the April 13th, 2018 incident?

8 A Yes, sir.

9 Q Did you give any other statements to other
10 officers about the incident?

11 MR. JOHNSON: Objection. Overbroad.

12 BY MR. STEERING:

13 Q In other words, like an internal affairs thing
14 as opposed to just with the district attorney's office.

15 A Oh, no, sir.

16 Q Okay.

17 MR. JOHNSON: Are you going to make her DA
18 interview your next exhibit, Jerry?

19 MR. STEERING: Yeah. I have it on a
20 12-gigabyte backup, and sometimes it takes a little
21 while to get cranked, if you know what I mean.

22 MR. JOHNSON: Sure.

23 THE WITNESS: Sir, while you're loading that,
24 may I take a restroom break?

25 MR. STEERING: Yeah, sure. Go ahead.

1 (Off the record from 9:56 a.m. to
2 10:05 a.m.)

3 BY MR. STEERING:

4 Q Did you have a body-worn camera with you,
5 ma'am, on April 13th, 2018?

6 A Yes, sir.

7 Q Did it record any part of this incident with
8 Mr. Muntean?

9 A It recorded part of it, sir, yes.

10 Q What part of the incident did it record?

11 A My initial contact with him, and the firing of
12 my two less lethal rounds, sir.

13 Q How many less lethal rounds did you shoot at
14 him?

15 A I believe four, sir. I dropped one.

16 Q I haven't seen that recording. I don't know
17 if Mr. Johnson knows where that recording is.

18 MR. STEERING: Mr. Johnson, do you know where
19 that recording is?

20 MR. JOHNSON: Jerry, we turned over a copy of
21 the entire DA investigation, which included all of the
22 officers' body-worn cameras. And if they had one and
23 two -- like, I think with this officer, you got both
24 body-worn camera recordings; so --

25 MR. STEERING: I don't see them. I mean, I'm

1 looking at everything that we have. And I looked for
2 the last two days, and I don't see any body-worn camera
3 recordings from --

4 MR. JOHNSON: We either produced it to you on
5 a thumb drive or disk, but we gave you a copy of the
6 entire DA investigation, which had all the body-worn
7 camera video.

8 MR. STEERING: I'm not saying that you didn't
9 think you did. All I'm saying is that I'm looking
10 at -- you know, I talked to Greg Peacock. He looked
11 through his stuff. I looked through my stuff. I don't
12 see it.

13 MR. JOHNSON: Why don't you hold for a second,
14 Jerry, because my paralegal helps me with that. I can
15 bring her in real quick and maybe she can explain to
16 you where it is.

17 MR. STEERING: Please.

18 MR. JOHNSON: Because I want you to be able to
19 find it because I know you have it.

20 MR. STEERING: Okay. Well, I appreciate that,
21 I just can't find it.

22 MR. JOHNSON: Okay. Hold on just a second.

23 (Off the record from 10:08 a.m. to
24 10:16 a.m.)

25 MR. JOHNSON: So this -- I will represent for

1 the record is part one of Officer Scaglione's two
2 body-worn camera videos, which we're playing, and it's
3 starting at time 12:08.

4 MR. STEERING: Can you stop it for a second?
5 Oh, that's the end.

6 MR. JOHNSON: Yeah, that's the end.

7 MR. STEERING: Okay. We'll call that 267? Is
8 that okay, Exhibit 267, that first fragment?

9 MR. JOHNSON: Sure.

10 (Exhibit 267 was marked.)

11 BY MR. STEERING:

12 Q I saw -- Officer Scaglione, I saw a lot of
13 walking going on, and I saw what looks like the barrel
14 of a shotgun and a rifle strap, but what was going on
15 during that first video that we saw, ma'am?

16 A I arrived at the location. As I was arriving
17 to my spot on Citron Street west of where all the
18 officers were, someone on the radio requested an
19 officer to grab a less lethal beanbag shotgun.

20 So I went to the rear of my car and grabbed my
21 less lethal beanbag shotgun. And like I stated
22 earlier, our policy was to have that unloaded in the
23 back of our car until it was time to use it.

24 So I was trying to load my beanbag shotgun
25 when I saw Petrica coming to the alley, he saw me, and

1 he cut through a parking lot.

2 Q And what -- is the -- let me -- let me bring
3 up that exhibit.

4 MR. STEERING: Okay. Here's Exhibit 253.

5 (Exhibit 253 was marked.)

6 MR. STEERING: And I'll do a screen share.
7 And I can make it bigger.

8 MR. JOHNSON: So what is this? A Google map?

9 MR. STEERING: Yeah. It's a Google map of the
10 area over where the shooting took place. The street --

11 BY MR. STEERING:

12 Q Can you see the map, ma'am?

13 A Yes, sir.

14 Q Okay. The street on the bottom right is
15 Broadway, at least that's what it's labeled. Let me
16 see this thing.

17 The -- there's Anaheim High School on the
18 upper left-hand corner, and there's a street that says
19 South Seneca Circle. And then there's the vintage
20 apartments.

21 And just to get you oriented and then
22 Citron -- South Citron is to the left of that apartment
23 complex that goes vertically up and down the left
24 middle of the photograph.

25 Does this aerial photograph look familiar to

1 you, ma'am?

2 A Yes, sir. But it would be a lot easier to
3 point things out if we look at the overhead versus that
4 angled satellite view that you have there.

5 Q Okay. Let's see what I got here.

6 MR. STEERING: Here's Exhibit 254.

7 (Exhibit 254 was marked.)

8 BY MR. STEERING:

9 Q And we'll make it a little bit bigger. And --
10 okay. Here's 254. Is that easier to figure out where
11 things happened in this incident from this photograph?

12 A Yes, sir.

13 Q Okay. I'm moving this little box around with
14 everybody's image on it. Let me move -- make this
15 bigger.

16 Do you see the area on Exhibit 254 -- or the
17 place on Exhibit 254 where you first encountered
18 Mr. Muntean, ma'am?

19 A The place where I first saw him -- yes, sir.

20 Q And was that on -- I mean, do you remember
21 what street that was on, ma'am?

22 A It was on that alley.

23 Q This one that I'm -- have my cursor on right
24 now?

25 A Yeah, if you moved your cursor a little bit

1 more to the left -- stop right around that area, down
2 the alley -- see where that church building is on the
3 corner?

4 Q Right here?

5 A No, other side. So between the parking lot of
6 Seneca Circle and the corner of the church -- went a
7 little too far.

8 Q Right there?

9 A A little more. A little more. Right about
10 there. Between there and the entrance to the parking
11 lot is where I first saw Peter.

12 Q Okay. So I would like to see if I can mark it
13 somehow. This thing -- okay. So I see where it is.
14 It's on the alley between South Seneca Circle and
15 Broadway; is that correct?

16 A Yes, sir.

17 Q And then you first encounter him if we look at
18 the alley that's below, which would be, I guess,
19 South -- South Seneca Circle would be the alley that he
20 was being chased down; is that correct?

21 A Where I first saw him in the alley, yes, sir.

22 Q Did you block the alley off with your vehicle?

23 A Not 100 percent. I think my nose was visible,
24 but, yeah, my -- there was -- it's only partially there
25 just because the way officers were coming, I didn't

1 want to block them.

2 Q All right.

3 A But I was visible -- my car was visible from
4 the alley.

5 Q Okay. And where on this diagram do you
6 believe that Mr. -- or that you first shot
7 Petrica Muntean?

8 A Between seeing him in the alley and seeing me
9 cutting through the parking lot of South Seneca Circle
10 and making his way onto Citron, my first shot was not
11 until he was on Citron of the less lethal beanbag.

12 Q And you were on the -- were you on the
13 sidewalk when you shot?

14 MR. JOHNSON: Objection. Vague.

15 THE WITNESS: I was somewhere between the
16 street of Citron and the parking lot entrance apron
17 area in the -- I guess you go onto the sidewalk, I was
18 somewhere in that vicinity.

19 BY MR. STEERING:

20 Q Okay.

21 A When I fired my first less lethal.

22 Q Why did you shoot him the first time?

23 A From the call from the night before was he was
24 a felon in possession with a gun, he got outside of our
25 perimeter, and officer safety for today.

1 And then I recognize him as the man from the
2 e-mail. He was acting like he had a weapon. I didn't
3 see it. I was trying to get him to stop.

4 I had a bunch of kids going to school. I
5 didn't know what he had, didn't know what he would do;
6 so trying to get him to stop and to show his hands and
7 stuff, I yelled out "less lethal." I racked it, and I
8 gave him time to understand what I was doing.

9 And then I fired him in the back as he took
10 off running from me to try to get him to stop and give
11 up.

12 Q So the crime that you suspected him of is
13 felon in possession of a firearm?

14 A From the e-mail from the night before, yes,
15 sir, convicted felon in possession of a firearm.

16 Q Why do you say -- is the type of probation
17 that he was on -- is that felony probation that you
18 recognize from that e-mail?

19 A Yes, a PRCS is a parole release community
20 supervision. It's typically a felony one. And him
21 armed with a handgun from the e-mail.

22 Q Okay. So if you had -- if you had learned
23 that Petrica Muntean's mom and dad had told the police
24 officers that went to the mom's house the evening
25 before on April the 12th, 2018, that they told the

1 officers that the gun was fake -- would that have
2 lessened your suspicion that he was a felon in
3 possession of a firearm?

4 MR. JOHNSON: Objection. Lack of foundation.
5 Calls for speculation. Incomplete hypothetical.

6 THE WITNESS: Based on what my partners had
7 e-mailed from the night before and what they saw to
8 believe was a firearm, and, like I said, in the past,
9 I've had parents tell me that their family members
10 don't have firearms when they do, and vice versa -- I
11 was still going to go off of what the officers e-mailed
12 out, believing it was a firearm.

13 BY MR. STEERING:

14 Q Okay. And did you use your beanbag shotgun to
15 stop Petrica Muntean from fleeing you?

16 MR. JOHNSON: Objection. Overbroad. Vague.

17 THE WITNESS: I was trying to get him to stop
18 and show his hands. His hands were concealed, acting
19 like he had something in them, possibly a weapon, but I
20 never visually saw it.

21 And he was fleeing towards the school, and I
22 didn't want him to go to the school. I didn't want him
23 to keep running. So I used the less lethal to help
24 stop him and for him to comply and us take him into
25 custody.

1 BY MR. STEERING:

2 Q Do you think that he presented an immediate
3 threat of danger to anyone at the time you shot him?

4 A Believing he was possibly armed with a weapon,
5 yes, sir.

6 Q Who was in danger?

7 A There -- we were right next to a high school.
8 I had already passed kids on my way. I had numerous
9 kids because we were down the street from the high
10 school.

11 I know there's a taco shop that's just north
12 of us. I even drove past a couple at the intersection
13 at Citron and Broadway prior to me stopping my car
14 there.

15 So believing he had a weapon and he could
16 possibly use it on other people, on us, I believed he
17 was a danger to others.

18 MR. STEERING: Mr. Johnson, can you play the
19 other video, please? We'll call it 268.

20 (Exhibit 268 was marked.)

21 MR. JOHNSON: Just a sec. You're going to
22 have to stop sharing, Jerry.

23 Okay. This is -- I'll represent for the
24 record, part two of Officer Scaglione's body-worn
25 camera. And it's starting at time approximately 13:35.

1 And just let me know, Jerry, when you want to
2 stop it because this one goes a while.

3 MR. STEERING: Thank you. Thank you.

4 MR. JOHNSON: And just for the record, the
5 first 30 seconds, there's no audio.

6 MR. STEERING: How long does this go for?

7 MR. JOHNSON: It goes for a while. I don't
8 know how much of this you want to watch of the medical
9 care.

10 MR. STEERING: No, that's fine. You can stop.
11 Okay.

12 MR. JOHNSON: Okay. For the record, we
13 stopped at 15:40.

14 BY MR. STEERING:

15 Q Okay. Ma'am, the 268 -- I can't tell if you
16 were shooting at all during the playing of 268, but it
17 doesn't seem like it. Am I correct?

18 A Correct, sir.

19 Q Okay. So the only shooting that's recorded on
20 your body-worn camera is the first two shots or the
21 first shot? Which one?

22 A First two shots, sir.

23 Q And at the time you shot Mr. Muntean, he
24 had -- he had something in his hand that was covered by
25 some kind of blanket; is that fair?

1 MR. JOHNSON: Objection. Vague.

2 THE WITNESS: It was -- it was -- the object
3 was covered, whether it's under clothing or whatever
4 was covered, but it was covered. I couldn't see the
5 object.

6 BY MR. STEERING:

7 Q Okay. Some type of cloth on top of it, right?

8 MR. JOHNSON: Objection. Asked and answered.

9 THE WITNESS: Yes, sir.

10 BY MR. STEERING:

11 Q Okay. Yeah, and then he put the -- whatever
12 it was underneath his chin, like pointing it toward the
13 bottom of his chin; is that fair?

14 A Yes, sir.

15 Q Okay. And did that give you some kind of
16 impression that he was threatening to harm himself?

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

19 THE WITNESS: He had an object unknown what
20 under his chin. I believe it could have been a weapon,
21 but I wasn't sure what. And he could easily harm
22 himself or others with it up in that position.

23 BY MR. STEERING:

24 Q Okay. But, I mean, did you think he was
25 trying to show you that he was -- show you that he

1 might kill himself?

2 MR. JOHNSON: Objection. Speculation.
3 Argumentative.

4 THE WITNESS: Because I didn't see the object
5 under his hands, it was covered, he was doing that, I
6 don't know what he was trying to show me.

7 I don't know if he was trying to elude. He
8 had a firearm. I don't know if he was trying to elude.
9 He had a cell phone. I don't know if he was just using
10 it as a way to escape for me to get over to a different
11 spot.

12 BY MR. STEERING:

13 Q Weren't you trying to arrest him for felony
14 possession of a weapon, ma'am?

15 MR. JOHNSON: Objection. Misstates her
16 testimony.

17 THE WITNESS: Based on the e-mail that was
18 sent out, I believed he was armed with one, but because
19 I did not visually see it that day, it was just his
20 actions. I would not with 100 percent certainty say
21 that, sir.

22 BY MR. STEERING:

23 Q So when I ask you the question of whether or
24 not Mr. Muntean was feigning suicide by sticking an
25 object underneath his chin, did you think that object

1 was likely a gun?

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

4 THE WITNESS: I believe based on his actions,
5 he was acting like he had a weapon on him, yes, sir.

6 BY MR. STEERING:

7 Q Okay. And did you think he was pointing that
8 weapon underneath his chin when you described him doing
9 so?

10 MR. JOHNSON: Objection. Asked and answered.

11 THE WITNESS: Yes. He was possibly armed with
12 a gun when he was doing that, pointing to his head,
13 yes, sir.

14 BY MR. STEERING:

15 Q And, I mean, if you did take a meaning to that
16 at all, him pointing this suspected weapon underneath
17 his chin, what was the meaning that you divined from
18 that gesture by him?

19 MR. JOHNSON: Objection. Asked and answered.
20 Compound. Overbroad.

21 THE WITNESS: Sir, could you explain it again,
22 please? I wasn't 100 percent what you were asking.

23 BY MR. STEERING:

24 Q You think the guy's got a gun, and you think
25 maybe what he's holding under this jacket or blanket is

1 some kind of gun maybe. Okay?

2 So he points it underneath his chin. Did you
3 think he was trying to communicate to you that he was
4 considering harming himself?

5 MR. JOHNSON: Objection. Asked and answered.
6 Overbroad.

7 THE WITNESS: Based on the gesture alone,
8 sir --

9 BY MR. STEERING:

10 Q Yeah, based on that gesture.

11 A Not -- not that 100 percent on its own. If he
12 had said something along with it, maybe my thought
13 process would have gone there.

14 But I've had other people in the past do
15 similar actions with unknown objects, and it hasn't
16 been for that. It's just been as a way to get us to
17 back off or escape.

18 Q What reaction, if any, did you see or hear
19 Petrica Muntean to have when you shot him with the
20 beanbag?

21 A When I shot him with the beanbag round, I
22 could hear him yell, letting me know that he felt me
23 hit him with it, but he continued to run away.

24 Q Where did -- where do you believe you -- your
25 beanbags hit Mr. Petrica, like where on his body?

1 MR. JOHNSON: Objection. Vague.

2 THE WITNESS: I believe based on him running
3 away from me and where I was aiming, I hit him on his
4 back and his butt cheek area.

5 BY MR. STEERING:

6 Q And at the time you shot him with that beanbag
7 round, did you believe that he was about to cause
8 imminent serious physical injury to some person?

9 MR. JOHNSON: Objection. Asked and answered.
10 Overbroad. Vague as to time.

11 THE WITNESS: Since we were running towards
12 the school, yes, sir, I believed he was going to keep
13 running towards the school.

14 And because it was also morning time, people
15 were coming out of their homes to go to work, I thought
16 there was a chance that a civilian could come into our
17 paths as well, and he could go to that sort of
18 civilians, sir.

19 BY MR. STEERING:

20 Q Did you yell "less lethal" at Petrica Muntean?

21 MR. JOHNSON: Objection. Asked and answered.

22 THE WITNESS: Yes, sir. I yelled it twice.

23 BY MR. STEERING:

24 Q Did you use any other words other than "less
25 lethal" when you were saying that to Mr. Muntean?

1 MR. JOHNSON: Objection. Vague. Asked and
2 answered.

3 THE WITNESS: Before I yelled "less lethal," I
4 yelled "stop" and "hands." I racked the shotgun, and I
5 yelled "less lethal" twice and paused before shooting,
6 giving everyone time to hear and process what I said.

7 BY MR. STEERING:

8 Q Did you tell him that if he doesn't stop,
9 you're going to shoot him with a -- with anything?

10 MR. JOHNSON: Objection. Argumentative.
11 Asked and answered.

12 THE WITNESS: Based on the rapidly evolving
13 event and him running, I didn't have time to get that
14 entire statement out. Yelling "less lethal" and
15 racking it and telling him to -- yell "stop" and
16 "hands" all together in that situation, it's implied
17 that I wanted him to stop, and that he was going to get
18 hit with the less lethal.

19 BY MR. STEERING:

20 Q Well, maybe that would be implied to a police
21 officer. Do you think that would have been implied to
22 a regular civilian --

23 MR. JOHNSON: Objection.

24 MR. STEERING: Just hold on, Mr. Johnson.

25 /////

1 BY MR. STEERING:

2 Q "Stop," "hands," "less lethal" -- do you think
3 that means something to an average citizen?

4 MR. JOHNSON: Objection. Compound.
5 Argumentative. Asked and answered.

6 THE WITNESS: Yes, sir, I do believe because I
7 believe if an officer is right in front of you and
8 yelled "stop" and "hands," rack a shotgun, point it at
9 you, yell "less lethal," you would get under the
10 impression that I want you to stop and show the hands
11 and stop.

12 I didn't give him any further instructions to
13 get down because I did not get that time out because he
14 was running away from me towards a school where there
15 were a bunch of kids.

16 BY MR. STEERING:

17 Q So at the time you yelled out "stop," "hands,"
18 and "less lethal," Mr. Muntean was running away from
19 you?

20 A He saw me -- I apologize.

21 He saw me. I yelled it. He took off. I shot
22 him as he ran away from me.

23 Q When you yelled out to him "stop," "hands,"
24 "less lethal" -- had he already passed you?

25 MR. JOHNSON: Objection. Vague. Vague as to

1 time.

2 THE WITNESS: When I was yelling at the start
3 of everything, he was still in front of me. And as he
4 ran and moved past me is where I got my second "less
5 lethal" warning out. And then he was in front of me
6 running towards the school when I started firing my
7 shots.

8 BY MR. STEERING:

9 Q Did you see Officer Horn or Officer Thomas
10 shoot Mr. Muntean?

11 MR. JOHNSON: Objection. Vague. Overbroad.

12 THE WITNESS: At the very end of the event,
13 when I heard someone yell "gun," and I heard gunshots,
14 the only person I had a very good view of was
15 Officer Horn.

16 And he was ducking down and had his gun raised
17 out as he was firing. So I didn't know if someone was
18 firing at him, and he was returning fire. I couldn't
19 tell if he just heard gunshots. I could see
20 Officer Horn out in the open with that stance of kind
21 of ducking and one arm extended with his gun in his
22 hand.

23 BY MR. STEERING:

24 Q He was standing up, right?

25 MR. JOHNSON: Objection. Vague. Asked and

1 answered.

2 THE WITNESS: Officer Horn was standing up,
3 but, like, ducking down, if that makes sense. Not
4 kneeling, not squatting. He was --

5 BY MR. STEERING:

6 Q You mean with his upper body --

7 A Yes.

8 Q -- or with his knees?

9 A With his upper body.

10 Q Did you see him shooting from that position?

11 MR. JOHNSON: Objection. Asked and answered.

12 THE WITNESS: Based on where I was and the
13 gunshots and his stance, I believed he was shooting,
14 yes, sir.

15 BY MR. STEERING:

16 Q And where were you when you saw Officer Horn
17 shoot Mr. Muntean?

18 MR. JOHNSON: Objection. Vague.

19 THE WITNESS: Before that alley, between the
20 garages in that residential condo area, it was maybe
21 from where we entered to where the -- it's kind of hard
22 because it kind of goes like this, and it dips down a
23 little bit.

24 I was like two-thirds into the street part of
25 the alley approximately when I saw Officer Horn out in

1 the open.

2 MR. STEERING: Let me show you Exhibit 261, if
3 it will come up.

4 (Exhibit 261 was marked.)

5 BY MR. STEERING:

6 Q Do you see 261, ma'am?

7 A Yes, sir.

8 Q Is that you on the right with the long gun?

9 A With the less lethal shotgun, yes, sir.

10 Q Okay. Did you -- were you running down this
11 driveway area behind those officers that are running
12 away from the viewer of the photo?

13 A Yes, sir.

14 Q Okay. Did you stop at some point and turn
15 around?

16 A I stopped at one point because there was
17 additional officers. I could hear them coming up
18 behind me. And I told them to go around so he couldn't
19 keep running through the complex.

20 Q Did you ever get any closer to where
21 Officer Horn shot Mr. Muntean before he shot him than
22 you are shown in Exhibit 261?

23 MR. JOHNSON: Objection. Calls for
24 speculation. Vague.

25 THE WITNESS: If I did get any closer -- you

1 see how there's a full garage ahead of me, sir?

2 BY MR. STEERING:

3 Q Yes, ma'am.

4 A It would be somewhere between that garage.
5 Like, it was the stop, turn around, then I took a few
6 more steps, and I was somewhere in that very first
7 garage area when I started seeing the shooting occur,
8 sir.

9 Q How far away was Petrica Muntean from you when
10 you shot him the first time?

11 A Approximately 15 feetish. It was about a car
12 to a car and a half between me and him.

13 Q And how about when you fired the second
14 shot -- how far away was he?

15 A He was gaining speed. He was almost -- maybe
16 almost two cars away from me.

17 Q Now, the area that Officer Horn and
18 Officer Thomas chased Mr. Muntean to was a dead end,
19 right?

20 MR. JOHNSON: Objection. Lack of foundation.
21 Calls for speculation. Asked and answered.

22 THE WITNESS: When I was able to finally get
23 up there with all of them, I realized we were at a dead
24 end, a very short dead end.

25 I believe this area went through. That's why

1 I told the officers who were running up behind us to go
2 around to try to cut him off in case he did, like, a
3 big U-turn and ran back onto Citron.

4 BY MR. STEERING:

5 Q Okay. Did you shoot Mr. Muntean in his rear
6 end?

7 MR. JOHNSON: Objection. Asked and answered.

8 THE WITNESS: Yes, sir.

9 BY MR. STEERING:

10 Q When you yelled out "less than lethal," you
11 did that so your fellow officers knew that you weren't
12 firing real bullets, right?

13 MR. JOHNSON: Objection. Asked and answered.

14 THE WITNESS: I did that so everybody was
15 aware. It's a good verbal intent for everyone --
16 witnesses, suspects, officers -- all know what I am
17 firing is a less lethal shotgun.

18 MR. STEERING: I'll show you a few items.
19 Showing you Exhibit --

20 BY MR. STEERING:

21 Q Well, let me ask you -- I forgot to ask you.
22 What documents or recordings or other items of evidence
23 did you review in preparation for your testimony today?

24 A The DA interview, sir.

25 MR. STEERING: Okay. So let me show you

1 Exhibit 250.

2 (Exhibit 250 was marked.)

3 BY MR. STEERING:

4 Q And it's 45 pages. And I guess I can scroll
5 through all of it if you want me to, but I think
6 Mr. Johnson will tell you I'm not going to pull any
7 fast ones on you, nor would I be able to get away with
8 it if I tried.

9 MR. JOHNSON: The latter part is what's true.

10 MR. STEERING: Not that I would.

11 BY MR. STEERING:

12 Q But anyway, does this -- is Exhibit 250 -- I
13 mean, I'll scroll as much as you want me to scroll. I
14 just need you to identify that this is the interview
15 that you read over.

16 A Yes, sir.

17 Q Okay. And did you review your answers to the
18 questions put to you in that interview in Exhibit 250?

19 A Yes, sir.

20 Q And were those answers truthful answers?

21 MR. JOHNSON: Objection. Overbroad. It's 45
22 pages. God knows how many questions.

23 MR. STEERING: Oh, okay.

24 BY MR. STEERING:

25 Q I didn't mean to imply that you, like, told

1 some lies and then told some truth.

2 I'm just asking you, when you answered the
3 questions of the officers that are shown in
4 Exhibit 250, are your answers shown in Exhibit 250 --
5 when you made those answers, were you doing your best
6 to tell the truth?

7 A Yes, sir.

8 Q Okay. And there's an audio that was an audio
9 of the interview.

10 MR. STEERING: I guess we can call this
11 Exhibit 269.

12 (Exhibit 269 was marked.)

13 MR. JOHNSON: Are you going to play that?

14 MR. STEERING: No. No. I just need her to
15 identify it. That's all. I don't think there's any
16 real dispute about it, but I'm just going through the
17 motions. And here's the exhibit. I just need to get
18 off the exhibit share thing. I'll just play the
19 beginning just so you can identify your voice.

20 MR. JOHNSON: Is it playing? Jerry, I don't
21 hear anything.

22 MR. STEERING: Oh, I'm sorry. You don't hear
23 anything?

24 THE WITNESS: No, sir.

25 MR. STEERING: I hear it; so I don't know what

1 the problem is.

2 MR. JOHNSON: There may be -- when you're
3 going to play audio, I think there's something you got
4 to click to make sure it comes through not on your end
5 but on our end too.

6 I don't know if the court reporter can help
7 you with that.

8 THE WITNESS: That's similar to when
9 Mr. Johnson played my body-worn camera footage. You
10 didn't hear me yelling or a shotgun on mine, yeah, so
11 we didn't hear the sound earlier on my first video.

12 MR. STEERING: Yeah.

13 MR. JOHNSON: Oh, I'm sorry. If I did -- I
14 might have made the same mistake. I heard it on my
15 end. I just assumed you guys were hearing it on your
16 end as well.

17 MR. STEERING: No. No.

18 MR. JOHNSON: I know there's something about
19 clicking something so everybody hears it. I know my
20 paralegal probably knows that.

21 MR. STEERING: Well, how about if we just
22 agree that there's a video -- that that's her audio
23 recording.

24 MR. JOHNSON: Jerry, I'm willing to stipulate
25 not only did we give you a copy of her DA interview in

1 print form but in audio form. Okay? So that could
2 save playing that.

3 MR. STEERING: Yeah. Yeah. We don't need to
4 play it. I'm just trying to get authentication.
5 That's all.

6 MR. JOHNSON: Okay. Is this a -- I was just
7 going to ask for another restroom break, but go ahead
8 and finish where you're at.

9 MR. STEERING: I'm going to finish.

10 BY MR. STEERING:

11 Q Did you author any type of use of force report
12 about the incident, ma'am?

13 A Did I what, sir?

14 Q Author any type of use of force report about
15 the incident with Mr. Muntean?

16 A I did not write anything. They had everything
17 done through by our homicide detectives. I personally
18 did not write anything on the report, sir.

19 MR. STEERING: Okay. Let's take a break, and
20 I'll go over my notes and see what we got. I think
21 we're done. Okay?

22 MR. JOHNSON: Well, let me ask this, Jerry. I
23 mean, if you're close to being done, I can wait five or
24 ten minutes.

25 MR. STEERING: Yeah, but I can't wait to go to

1 the restroom.

2 MR. JOHNSON: Okay. That's fine. Let's take
3 five minutes.

4 MR. STEERING: Okay.

5 (Off the record from 10:57 a.m. to
6 11:05 a.m.)

7 MR. JOHNSON: Okay. So we're back on the
8 record. And I'm playing the first part of
9 Officer Scaglione's body-worn camera.

10 This time I properly checked the box; so
11 you'll hear the audio.

12 MR. STEERING: Thank you.

13 MR. JOHNSON: Did you hear that, Jerry?

14 MR. STEERING: I heard it, yeah.

15 MR. JOHNSON: Okay. Thank you.

16 MR. STEERING: Are we on the record now?

17 MR. JOHNSON: Yes, we should be.

18 BY MR. STEERING:

19 Q Officer Scaglione, what was that you yelled
20 out, that we just heard? It was something, and then
21 you said "less lethal." What was the word you said
22 before that?

23 A "Stop." "Hands." "Less lethal." "Less
24 lethal."

25 Q And you were running -- you were physically

1 running after Mr. Muntean when you shot him?

2 A Yes, sir.

3 Q Isn't that kind of dangerous in terms of
4 aiming, like, running while you're shooting?

5 MR. JOHNSON: Objection. Argumentative.
6 Overbroad.

7 BY MR. STEERING:

8 Q Go ahead.

9 A When it comes to the less lethal shotgun,
10 because there is virtually no kick, you can kind of
11 tell in my video, I kind of time it with my steps, and
12 I was within that 15 feet range.

13 I was very confident that I would be hitting
14 him. If there were people in the immediate vicinity,
15 like right in front of him when I was doing it, I
16 probably would not have made a similar shot because it
17 was just me and him on the street, even though I could
18 see kids off to the distance on the left.

19 Because it was just me and him on the street,
20 I felt pretty confident taking the shots.

21 Q Okay.

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

24 MR. JOHNSON: We going to go by the federal
25 rules, or are you going to put a stip? Assuming the

1 court reporter will accept it -- if we're just going by
2 the rules --

3 MR. STEERING: Just go by the rules. Just go
4 by the rules.

5 MR. JOHNSON: Okay. I will need a certified
6 copy, sir.

7 THE REPORTER: And is that for all of the
8 officers, Mr. Johnson?

9 MR. JOHNSON: Yes, I'll need a certified copy
10 for all the officers. Standing order.

11 (Proceedings concluded at 11:08 a.m.)

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b), and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

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

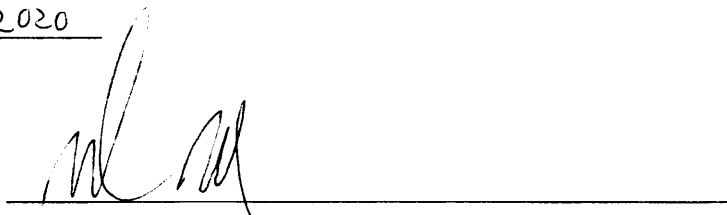
/ / /

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

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

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Dated: 12/29/2020



MICHAEL G. MCMORRAN, CSR No. 13735

