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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 KENNETH JOHNSON, taken on behalf
of the Plaintiff, commencing at 11:03 a.m., on
December 17th, 2020, before Michael G. McMorran,
CSR No. 13735.

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I N D E X

WITNESS: Kenneth Johnson

EXAMINATION	PAGE
By Mr. Steering	4

E X H I B I T S

EX.	DESCRIPTION	PAGE
202	Officer Safety Bulletin	11
203	E-mail dated 04/12/18	6
210	Officer Johnson's body-worn camera footage	15
222	Part 1 of Officer Johnson's DA interview audio file	12
223	Part 2 of Officer Johnson's DA interview audio file	13
230	Series of photographs	14
265	Anaheim Police Department Policy Manual	25
347	Officer Johnson's DA interview transcript	12

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; 11:03 A.M.

* * *

KENNETH JOHNSON,

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

-oOo-

EXAMINATION

BY MR. STEERING:

Q Good morning, Officer Johnson.

A Good morning.

Q Okay. State your full legal name, please, sir.

A Kenneth A. Johnson.

Q What does "A" stand for?

A Alvin.

Q What's your date of birth, Officer Johnson?

A 11/24/65.

Q Okay. You're a police officer with the Anaheim Police Department, sir?

A Yes, sir.

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

A 28 years. 25 full-time and 3 as a reserve. Started in 1992.

Q Have you worked for any other police agency?

1 A No, sir.

2 Q Have you ever been sued in court for actions
3 allegedly committed by you in the course of your duties
4 as an Anaheim Police Department officer?

5 A No, sir.

6 Q Okay. Have you ever worked for any other
7 police agency?

8 A No, sir.

9 Q Okay. Have you -- I know you gave a statement
10 to the District Attorney's Office about the incident.
11 I'm just wondering if you gave any other statements to
12 the Anaheim Police Department or the Orange County
13 District Attorney's Office regarding the April 13th,
14 2018, incident involving the shooting of
15 Petrica Muntean?

16 MR. JOHNSON: Objection. Compound. Vague.
17 You can answer, Officer Johnson. I'm just
18 making objections for the record.

19 THE WITNESS: No, just that one I believe was
20 the only one that I had.

21 BY MR. STEERING:

22 Q You mean just this one?

23 A For this incident, the one that the district
24 attorney interviewed me on, correct.

25 Q Okay. Okay. Do you remember getting some

1 kind of briefing about Petrica Muntean and an incident
2 that happened the evening before he was shot?

3 A Did I get it the evening before? No.

4 Q Oh. I'm just wondering if you got briefed
5 about an incident that happened the evening before.

6 A Yes.

7 Q Okay. And did you get any type of e-mail or
8 memo about that incident on April 12, 2018, regarding
9 Petrica Muntean and his mom?

10 A Yes.

11 MR. STEERING: Okay. Now, let me -- let me
12 show you Exhibit 203.

13 (Exhibit 203 was marked.)

14 BY MR. STEERING:

15 Q Do you recognize Exhibit 203?

16 A Somewhat, yes.

17 Q Do you remember seeing Exhibit 203 prior to
18 your contacting Petrica Muntean on April 13th, 2018?

19 A Yes.

20 Q Did any Anaheim Police Department officer tell
21 you about the incident that happened the evening before
22 with Petrica Muntean?

23 MR. JOHNSON: Objection. Vague.

24 BY MR. STEERING:

25 Q Hello?

1 MR. JOHNSON: You can answer, Officer Johnson.
2 I'm just objecting for the record.

3 THE WITNESS: I remember reading the e-mail,
4 and it was discussed at briefing briefly the next
5 morning.

6 BY MR. STEERING:

7 Q Who's the one -- who's the person that gave
8 that briefing, sir?

9 MR. JOHNSON: Objection. Vague.

10 THE WITNESS: Sergeant Lee was one of the
11 management personnel supervisors at the front. And I'm
12 not sure since this was our payback day -- I believe it
13 was another sergeant. I don't recall who that was.

14 BY MR. STEERING:

15 Q Okay. Did anyone say anything to you about
16 Petrica Muntean being mentally ill?

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

19 BY MR. STEERING:

20 Q No? Yes?

21 A I already answered that. I said, no, sir.

22 Q Oh, I couldn't hear. I'm sorry.

23 A Oh, that's all right. I said "no." Are you
24 able to hear me okay? I'm having a hard time hearing --

25 Q Yeah, I can hear you just fine right now.

1 Okay. Did anyone say anything to you, or did
2 you -- were you shown any documents that indicated
3 that -- and this would be before Petrica Muntean was
4 shot -- that the gun that Petrica Muntean was --
5 supposedly had the evening before, that is April
6 the 12th, was a fake gun?

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

9 BY MR. STEERING:

10 Q Go ahead.

11 A It was no.

12 Q Okay.

13 (Reporter clarification.)

14 BY MR. STEERING:

15 Q Okay. Okay. Would you have wanted to know
16 the information that the evening before Petrica Muntean
17 was shot both his mom and his dad had told Anaheim
18 police officers that the gun he supposedly had was a
19 fake gun?

20 Would you have wanted to know that during the
21 April 13, 2018 incident?

22 MR. JOHNSON: Objection. Lack of foundation.
23 Calls for speculation. Incomplete hypothetical.
24 Overbroad.

25 THE WITNESS: Go ahead and answer?

1 MR. JOHNSON: You can answer unless I tell you
2 not to, Officer Johnson.

3 THE WITNESS: Yes. Any information that you
4 can learn prior to is always an advantage for you.

5 BY MR. STEERING:

6 Q How about the mentally ill part? Had you
7 ever -- I mean, if Petrica Muntean was mentally ill,
8 would you have wanted to know that during the April 13,
9 2018 incident?

10 MR. JOHNSON: Same objections. Lack of
11 foundation. Calls for speculation. Incomplete
12 hypothetical. Overbroad.

13 THE WITNESS: Yes.

14 BY MR. STEERING:

15 Q And do you think that if you had known that he
16 was mentally ill, that would have affected the way that
17 you dealt with Mr. Muntean?

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

20 THE WITNESS: Are you talking about the date
21 the incident happened?

22 BY MR. STEERING:

23 Q Yes, sir. You would have wanted to know that
24 that he was mentally ill, you know -- so, in other
25 words, would you have wanted -- when you dealt with

1 Mr. Muntean on April 13th, 2018, would you have liked
2 to have known that he was mentally ill if he was
3 mentally ill?

4 MR. JOHNSON: Objection. Asked and answered.

5 THE WITNESS: Yes.

6 BY MR. STEERING:

7 Q Okay. And would you have treated him any
8 differently than the way you treated him if you had
9 known he was mentally ill?

10 MR. JOHNSON: Objection. Calls for
11 speculation. Incomplete hypothetical.

12 THE WITNESS: Can't answer that with just a
13 yes-or-no answer.

14 BY MR. STEERING:

15 Q Well, can you answer it with some kind of
16 explanation?

17 A The more information you know, the better off
18 you are. Each scenario or situation is different and
19 is completely isolated separately than what the person
20 could have as a mental health illness.

21 It's good to know, and it's nice to be able to
22 know that ahead of time, but each situation is
23 different.

24 So no matter what they're -- if they had a
25 mental health disability, no matter what it was, it

1 would depend on what the situation was as for how it
2 would have helped or not helped.

3 MR. STEERING: Okay. Thank you. All right.
4 Let me show you Exhibit 202.

5 (Exhibit 202 was marked.)

6 BY MR. STEERING:

7 Q And this is a -- looks like a memo with a
8 picture of Petrica Muntean. And it also describes the
9 April 12, 2018, incident the night before Mr. Muntean
10 was shot.

11 Do you recognize Exhibit 202, sir?

12 A Yes.

13 Q And did you see Exhibit 202 prior to
14 contacting Petrica Muntean on April 13th, 2018?

15 A Yes.

16 Q And where did you see it, sir?

17 A That was the e-mail that was sent out to us.

18 Q Okay. Let me bring up another document.
19 Okay. Did you review any documents in preparation for
20 your testimony today?

21 A Yes.

22 Q And what did you review?

23 A The Orange County District Attorney's
24 investigation summary that I believe you have in front
25 of you.

1 Q Okay. So let me -- I mean, I'll scroll
2 through this in any place you want. If you want it
3 slow, I can scroll it slow. If you want it fast, I can
4 scroll it fast. I just want to make sure this is the
5 document you reviewed in preparation for today. And I
6 can -- it's 53 pages; so, I mean, I can keep on going,
7 but . . .

8 A No. That looks like the one I reviewed, yes.

9 Q Okay.

10 MR. JOHNSON: What exhibit number is this,
11 Jerry?

12 MR. STEERING: 347.

13 (Exhibit 347 was marked.)

14 MR. JOHNSON: Thank you.

15 MR. STEERING: Okay. And I would like you to
16 authenticate the -- I guess there's two audio
17 recordings of your interview. I'll open the first one.
18 And it's Exhibit 222.

19 (Exhibit 222 was marked.)

20 BY MR. STEERING:

21 Q And I'll start it off. And I'm just playing
22 this to see if you can recognize your voice, and that
23 this was done pursuant to that interview, the
24 transcript of which we just identified.

25 Okay. I mean, I played 54 seconds of

1 Exhibit 222. And the whole recording is 42 minutes and
2 nine seconds.

3 Is that your voice on the recording, sir?

4 A Yes, sir.

5 Q Does that appear to be a recording of the
6 interview that you sat for on April 13, 2018, regarding
7 the death of Petrica Muntean?

8 A Yes.

9 MR. STEERING: Okay. Any problem with
10 agreeing to that being identified, Mr. Johnson?

11 MR. JOHNSON: That one, no.

12 MR. STEERING: Okay. Now, here's exhibit --
13 I'm going to bring up Exhibit 223.

14 (Exhibit 223 was marked.)

15 BY MR. STEERING:

16 Q Can you hear that? Can everybody hear that?

17 A Mmm-hmm.

18 MR. JOHNSON: Yes.

19 BY MR. STEERING:

20 Q Okay. I stopped it at nine seconds of
21 Exhibit 223.

22 Okay. I stopped it at 50 seconds. Do you
23 recognize that as the second part of the recording of
24 your interview of April 13, 2018, sir?

25 A Yes, sir.

1 Q Okay.

2 MR. STEERING: And do I have a stipulation
3 from Mr. Johnson that that is, in fact, what the item
4 is?

5 MR. JOHNSON: Yes, sir.

6 MR. STEERING: Okay. Okay. I'm going to show
7 you Exhibit 230.

8 (Exhibit 230 was marked.)

9 BY MR. STEERING:

10 Q And I'm just going to ask you -- I mean, I
11 guess I can tilt the picture.

12 Do you remember being photographed by, I
13 guess, either the Anaheim Police Department or the
14 Orange County District Attorney's Office to show you in
15 your uniform and your equipment that you had with you
16 on April 13, 2018?

17 Do you remember that?

18 A Yes, sir.

19 Q Okay. There's 34 pages in Exhibit 230, but I
20 just want to scroll through them. I mean, these are
21 photos of you; is that correct, sir?

22 A Yes, sir.

23 Q Okay. And I'm just zipping through this.
24 Does this look -- does Exhibit 230 look like -- I guess
25 that's last one -- photos of you and photos of your

1 equipment that you had with you on April 13, 2018?

2 A Yes, sir.

3 MR. STEERING: Okay. Okay. Let's look at the
4 body-worn camera video. This is Exhibit 210.

5 (Exhibit 210 was marked.)

6 BY MR. STEERING:

7 Q Okay. I'm just going to play some of
8 Exhibit 210 and kind of go through this with you. I
9 think the whole incident is, like, eight minutes long,
10 if that.

11 Well, anyway -- well, actually yours is a
12 little bit longer because you had the encounter in the
13 parking lot, but I just want to play this and go
14 through this with you. Okay?

15 Starting at zero -- zero -- well, I can only
16 get it back to one second; so that's where it says on
17 the counter. So I'll start playing Exhibit 210.

18 Okay. Now, what were you doing at the
19 Carl's Jr. parking lot at approximately 8:33 a.m. on
20 April 13, 2018?

21 A We were there for a call for service regarding
22 a transient that had come into the Carl's Jr.

23 Q Okay. Did you speak to the person or persons
24 inside the Carl's Jr. restaurant about this transient?

25 A Yes.

1 Q And do you remember what you were told about
2 the transient, like what the complaint was regarding
3 the transient, sir?

4 A Yes.

5 Q And what was the complaint regarding the
6 transient?

7 A The transient had come in with what I believe
8 to be a used bag of food and asked to have it reheated.
9 Staff inside refused to, and asked the person to leave.
10 And he did so.

11 Q Do you remember looking at any video
12 recordings of that?

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

14 THE WITNESS: No.

15 BY MR. STEERING:

16 Q Okay.

17 A Not to my recollection.

18 Q Okay. And then you stayed in the parking lot,
19 and then you happened to notice this white car that we
20 see at 35 seconds on Exhibit 210?

21 A Yes.

22 Q Okay. And then -- I mean, how long after you
23 talked with the people inside Carl's Jr. did you go
24 over to Mr. Muntean?

25 A It had probably been a few minutes. We had

1 returned. That is Officer Gonzalez and I had returned
2 to the car, discussed real quickly what we had done
3 there, and we had seen -- I had seen out of the corner
4 of my eye that there were two bodies at the back of
5 that white car.

6 We were unsure what they were doing. It was
7 assumed they might have been employees. And then I saw
8 the one sitting on the curb.

9 Q Okay. And when you saw Mr. Muntean, did you
10 think it was him, or you just went over there because
11 of the -- I mean, well, when you saw Mr. Muntean, did
12 you think it was him?

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

14 THE WITNESS: No.

15 BY MR. STEERING:

16 Q Okay. And so when did you conclude that the
17 person that you were encountering was Mr. Muntean?

18 A Probably 45 seconds into it as I was trying to
19 talk to this person. They were not cooperative, and I
20 was able to finally get a good visual on the person.
21 And then it clicked with me that this was
22 Peter Muntean.

23 Q Did you ask him? Did you ask him, you know,
24 "Are you Peter Muntean?"

25 A No.

1 Q Is there a reason you did not ask him that?

2 MR. JOHNSON: Objection. Argumentative.

3 BY MR. STEERING:

4 Q And what's the reason?

5 A I didn't know it was him until about 45
6 seconds into it. I had requested additional units, and
7 he had started to walk off.

8 Q When you approached him, was he hostile to
9 you?

10 MR. JOHNSON: Objection. Vague.

11 THE WITNESS: No.

12 BY MR. STEERING:

13 Q Was he crying?

14 MR. JOHNSON: Objection. Lack of foundation.
15 Calls for speculation.

16 THE WITNESS: No.

17 BY MR. STEERING:

18 Q Did you say to Mr. Muntean that he's not in
19 trouble, that you just wanted to talk to him?

20 A Yes.

21 Q Did -- okay. And did Mr. Muntean say anything
22 in response to that, sir?

23 A He kept saying he didn't do anything wrong.

24 Q Okay. Was he crying when he said that?

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

1 Lack of foundation. Calls for speculation.

2 THE WITNESS: I don't remember him crying. I
3 remember him just saying he didn't do anything wrong,
4 and I was trying to calm him down.

5 BY MR. STEERING:

6 Q Okay. I'm going to pick it up, Exhibit 210,
7 at 35 seconds.

8 All right. I stopped it at one minute, six
9 seconds. Did you hear Mr. Muntean during this interval
10 telling you that he didn't do nothing, sir and that he
11 was crying when he said that?

12 Did you -- were you able to pick that up from
13 this video recording, sir?

14 MR. JOHNSON: Objection. Body-worn camera
15 speaks for itself. Lack of foundation. Calls for
16 speculation.

17 Go ahead.

18 THE WITNESS: I don't understand what you
19 mean. You're saying he's crying. I can't visually see
20 he's crying.

21 BY MR. STEERING:

22 Q Can you hear it?

23 A No.

24 MR. JOHNSON: Objection. Vague.

25 /////

1 BY MR. STEERING:

2 Q Okay. Okay. We'll pick it up at one minute,
3 six seconds on the video.

4 Okay. One minute and 14 seconds on the
5 video -- I stopped it, but just before that, you had
6 told Mr. Muntean to sit down several times. And I
7 guess he said he didn't do nothing.

8 At that moment in time, did you suspect
9 Mr. Muntean of a crime?

10 A Yes.

11 Q And what crime did you suspect of him?

12 A He was, probably due to the bag that was in
13 front of him, the person that was inside Carl's Jr.
14 creating the disturbance.

15 Q Okay. So did you suspect him of a, like, a
16 415, disturbing the peace?

17 A Possibly that, the 602. If he was related to
18 the car, or he was driving the car, he was driving a
19 vehicle that had expired registration.

20 Q Do you know who the vehicle was registered to?

21 A No, sir.

22 Q Okay. Do you know if he -- do you know if he
23 drove that vehicle?

24 A No.

25 MR. JOHNSON: Objection. Lack of foundation.

1 Calls for speculation.

2 THE WITNESS: No, sir.

3 BY MR. STEERING:

4 Q Okay. Would you say you had probable cause to
5 believe that he was driving a vehicle without proper
6 registration?

7 A It was possible, but I didn't know that it was
8 him.

9 Q Okay. And when you suspected him of a
10 trespass -- why do you call it "a trespass"?

11 MR. JOHNSON: Objection. Argumentative.

12 THE WITNESS: He was at a business operating
13 in the City of Anaheim with no lawful business asking
14 them to reheat food. He wasn't there for lawful
15 purpose.

16 BY MR. STEERING:

17 Q What in Section 602 of the Penal Code says you
18 got to be someplace for lawful purpose?

19 MR. JOHNSON: Objection. Argumentative.
20 Asked and answered.

21 THE WITNESS: Penal Code Section 602 states
22 trespassing is someone who -- certain sections, there's
23 a whole bunch to 602. I don't have them memorized.

24 But Penal Code 602 states that if someone is
25 not there for lawful purpose, it could be potential

1 trespassing.

2 BY MR. STEERING:

3 Q Okay. Okay. We'll pick it up at one minute,
4 14 seconds of the video, Exhibit 210.

5 Okay. When you said that Mr. Muntean had his
6 hands tucked in his shirt, you didn't mean he had it
7 tucked in his waistband -- you meant he had it tucked
8 in some shirt that he was holding, right?

9 MR. JOHNSON: Objection. Video speaks for
10 itself. Argumentative.

11 THE WITNESS: I believe I said he had it
12 tucked in his shirt.

13 BY MR. STEERING:

14 Q Right. But the shirt that you're talking
15 about wasn't a shirt he was wearing, it was a shirt he
16 was holding, right?

17 MR. JOHNSON: Objection. Argumentative.

18 THE WITNESS: It was tucked up underneath what
19 would have been his shirt or at the time, I might have
20 thought it was a shirt, but I believe it was a towel.

21 BY MR. STEERING:

22 Q And you asked for a 10-3. What's a 10-3?

23 A I wanted the radio traffic designated to us.
24 So in a potential emergency situation, we had the air
25 clear in case we had to request anything needed wise or

1 dispatch to let them know what we were doing.

2 Q Okay. We'll pick it up at one minute, 29
3 seconds.

4 Now, that warning -- I stopped it at one
5 minute, 41 seconds. When you say -- you said to
6 Officer Gonzalez, "It might be Muntean," at that point?
7 Do you hear yourself say that?

8 A Yes.

9 Q Okay. Was that -- when you said that, were
10 you thinking it was probably him, but you weren't sure?

11 MR. JOHNSON: Objection. Argumentative.
12 Video speaks for itself.

13 THE WITNESS: Right.

14 BY MR. STEERING:

15 Q Okay. And you were the field training officer
16 for Officer Alexandria Gonzalez that morning, sir?

17 A Yes, sir.

18 Q Okay. Had you ever trained her on the use of
19 the beanbag shotgun?

20 A No.

21 Q Were you ever trained by Anaheim PD on the use
22 of a beanbag shotgun?

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

24 THE WITNESS: Yes.

25 /////

1 BY MR. STEERING:

2 Q And do you remember when you were trained by
3 Anaheim PD as to the use of a beanbag shotgun?

4 A We get initial training on the subject matter.
5 And then when we go through our yearly courses, at
6 least one of them, we have to fire the shotgun itself;
7 so we get somewhat updated training or usage of it, at
8 least once a year.

9 Q Okay. Have you ever shot a person with a
10 beanbag shotgun on the job?

11 A No, sir.

12 Q Have you ever fired a beanbag shotgun?

13 MR. JOHNSON: Objection. Asked and answered.

14 THE WITNESS: Yes, I have fired a beanbag
15 shotgun.

16 (Reporter clarification.)

17 BY MR. STEERING:

18 Q Okay. And were you trained by
19 Anaheim Police Department that -- about the standards
20 that the Anaheim Police Department has set for when
21 Anaheim Police Department police officers are permitted
22 to shoot civilians with a beanbag shotgun?

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

24 THE WITNESS: Yes.

25 /////

1 BY MR. STEERING:

2 Q What's the standard that you were taught by
3 the Anaheim Police Department as to when an
4 Anaheim Police Department officer can shoot a civilian
5 with a beanbag shotgun?

6 MR. JOHNSON: Objection. Overbroad. Vague.
7 Vague as to time.

8 THE WITNESS: There are a lot of scenarios
9 that it could be used at, but the beanbag shotgun is a
10 less lethal -- less than lethal round designed to try
11 to make somebody stop; so it depends on the situation.

12 BY MR. STEERING:

13 Q Were you trained by the
14 Anaheim Police Department that an Anaheim Police
15 Department officer may only -- well, let me just -- let
16 me do this. Let me get the policy manual.

17 MR. STEERING: I got Exhibit 265, the
18 Anaheim Police Department policy manual.

19 (Exhibit 265 was marked.)

20 BY MR. STEERING:

21 Q And there's a section that's entitled "304.10:
22 Kinetic Energy Projectile Guidelines."

23 Is that -- are those the guidelines for a
24 beanbag shotgun also?

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

1 THE WITNESS: Yes.

2 BY MR. STEERING:

3 Q Okay. Do you know if the beanbag shotgun
4 policy at the Anaheim Police Department has changed
5 between now and the date of the shooting incident with
6 Petrica Muntean, April 13th, 2018?

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

9 THE WITNESS: Yes.

10 BY MR. STEERING:

11 Q And what was the change in the policy?

12 A Recently, afterwards, I believe it was changed
13 because officers were required at one time to have to
14 load the ammunition in.

15 And it was changed to where we're able to keep
16 it in a loaded position, but not one in the chamber.

17 Q Do you know of any other changes between the
18 beanbag gun policy of Anaheim PD between April 13th,
19 2018, and now?

20 A No, sir.

21 Q Okay. I'm going to show you this policy. It
22 talks about deployment and use of the weapon. And then
23 it says -- this is again, 265 (As read:) Circumstances
24 appropriate for deployment include but are not limited
25 to situations in which, A, the suspect is armed with a

1 weapon and the tactical circumstances allow for the
2 safe application of approved munitions.

3 When you were -- when you were pursuing
4 Petrica Muntean on foot on April 13, 2018, do you
5 believe that under this subsection A that I just read,
6 that it was within Anaheim Police Department policy for
7 you to have shot Petrica Muntean with a beanbag shotgun
8 to stop him from leaving your presence?

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

10 THE WITNESS: It depends.

11 BY MR. STEERING:

12 Q What does it depend on, sir?

13 A It depends on the time that that would be
14 used.

15 Q Okay. Well, how about throughout your entire
16 pursuit of Petrica Muntean from the time you
17 encountered him at that white car in the Carl's Jr.
18 parking lot to the time that he was shot -- do you
19 believe that under this subsection A, you would have
20 been able to -- within Anaheim PD policy been able to
21 shoot Petrica Muntean with a beanbag shotgun to prevent
22 him from leaving your presence?

23 MR. JOHNSON: Objection. Overbroad. Vague as
24 to time.

25 THE WITNESS: Yes.

1 BY MR. STEERING:

2 Q Okay. Okay. And then, B, it says (As read:)
3 The suspect has made credible threats to harm
4 him/herself or others.

5 Does that -- I mean, in terms of your
6 knowledge of what that policy statement means, I
7 assume, you know, since you've been an
8 Anaheim Police Department officer for 28 years, you're
9 familiar with at least some of this.

10 Does that mean that if Mr. Muntean had made
11 threats that he wanted to harm himself, that you could
12 have shot him with a beanbag shotgun?

13 Is that what that subsection means, sir?

14 MR. JOHNSON: Objection. Policy speaks for
15 itself.

16 THE WITNESS: It's possible, but that's a very
17 vague way of asking.

18 BY MR. STEERING:

19 Q I'll try to ask more specifically next time.
20 Thank you.

21 Okay. And then, I mean, the C is -- you know,
22 if there's riotous behavior like rock throwing, bottle
23 throwing, or throwing other objects at people or
24 officers -- that would kind of seem to go without
25 saying.

1 And then, D, it says (As read:) There's
2 probable cause to believe that the suspect has already
3 committed a crime of violence and is refusing to comply
4 with lawful orders. Okay. But I guess that speaks for
5 itself.

6 Okay. Let's go back to the video. I'll pick
7 it up at one minute, 41 seconds.

8 Okay. I stopped the video at two minutes. We
9 saw a patrol car pull up. Do you know who was in that
10 patrol car, Officer Johnson?

11 A Yes, sir.

12 Q Who was in the patrol car, please?

13 A Michael Fleet.

14 Q Anyone else?

15 A I don't know.

16 Q Okay. I'll pick it up at -- Exhibit 210, at
17 two minutes.

18 Okay. I stopped the video at two minutes, 17
19 seconds. And you could hear Michael -- I mean, excuse
20 me, you could hear Petrica Muntean yelling he didn't do
21 nothing, and this is not my fault, right?

22 A Yes.

23 Q Did it appear to you that he had some kind of
24 mental or emotional problem during this two minutes
25 that we just seen him?

1 MR. JOHNSON: Lack of foundation. Calls for
2 speculation. Overbroad. Incomplete hypothetical.

3 THE WITNESS: I'm not a doctor; so I have no
4 way of knowing what his mental state of mind is.

5 BY MR. STEERING:

6 Q You ever make a 5150 arrest?

7 A Yes, sir.

8 Q And in terms of your training as a police
9 officer, you're trained that a peace officer can arrest
10 another for -- under California Welfare Institutions --
11 excuse me, is it Welfare and Institutions Code or
12 Health and Safety Code -- I think it's Health and
13 Safety Code, 5150, (As read:) If the peace officer has
14 probable cause to believe that as a result of the
15 mental disorder, the person is either gravely disabled,
16 a danger to himself, or a danger to others, right?

17 A No.

18 MR. JOHNSON: Objection. Calls for a legal
19 conclusion. Overbroad.

20 BY MR. STEERING:

21 Q So that's not your understanding of 5150?

22 A You said "arrest." It's not an arrest. It's
23 a detention.

24 Q Okay. Well, it's called "civil protective
25 custody," right?

1 A Yes.

2 Q Okay. So when you take someone into civil
3 protective custody as a peace officer pursuant to
4 Section 5150, I think it's the
5 Welfare Institutions Code, you can do so if you have
6 probable cause to believe that as a result of the
7 mental disorder, the person is either a danger to self
8 or a danger to others or gravely disabled, right?

9 MR. JOHNSON: Objection. Calls for a legal
10 conclusion. Overbroad.

11 THE WITNESS: Possibly, yes.

12 BY MR. STEERING:

13 Q Okay. So when you make these 5150 seizures of
14 persons, these civil protective custody seizures -- you
15 must make an evaluation as to whether or not the person
16 is suffering from some kind of mental disorder, right?

17 MR. JOHNSON: Objection. Misstates the
18 statute. Argumentative. Incomplete hypo.

19 MR. STEERING: No, that's exactly what the
20 statute says.

21 THE WITNESS: Yes.

22 BY MR. STEERING:

23 Q Okay. And so on the past occasions, you've
24 been called upon to make that determination in the
25 field as to whether or not somebody is suffering from

1 mental disorder, right?

2 A Yes.

3 MR. JOHNSON: Objection. Argumentative.

4 BY MR. STEERING:

5 Q Was there an answer?

6 A Yes.

7 Q Okay. Okay. We'll pick it up at two minutes,
8 17 seconds.

9 And I'll stop it at two minutes and 39
10 seconds. When we hear the voice, "And somebody block
11 him off at the church," was that your voice, sir?

12 A That's my voice, yes.

13 Q And that's because you wanted to contain
14 him -- you didn't want to hurt him, but you didn't want
15 him to getting out into the neighborhood near any
16 children or schools; is that fair?

17 MR. JOHNSON: Objection. Overbroad.

18 THE WITNESS: Absolutely, sir.

19 BY MR. STEERING:

20 Q Okay. We'll pick it up at two minutes, 39
21 seconds.

22 Now, I stopped it at four minutes and 52
23 seconds of Exhibit 210. We heard a couple of pops
24 shortly before I stopped the recording.

25 Do you know what those pops were?

1 A Yes, sir.

2 Q What were they?

3 A Officer Scaglione discharging the less than
4 lethal shotgun at Mr. Muntean.

5 Q How do you know that's what it was?

6 MR. JOHNSON: Objection. Argumentative.

7 THE WITNESS: I was able to see her pointing
8 the gun at him.

9 BY MR. STEERING:

10 Q Where was she?

11 A Over near the northwest side of the triangular
12 parking lot that -- from my hand, on that video, it
13 would be above my hand, right about where the X and the
14 8 would be on this video here. There would be -- where
15 the car is pulling out, it would be behind that.
16 That's where I remember seeing her.

17 Q Was she standing on the street or the
18 sidewalk?

19 MR. JOHNSON: Objection. Vague.

20 THE WITNESS: I don't remember if she was
21 standing in the street or the sidewalk.

22 BY MR. STEERING:

23 Q Was Mr. Muntean on the street or the sidewalk
24 when he was shot with the beanbag?

25 A Sidewalk.

1 Q Okay. That's okay. So if we stopped it at
2 four minutes, 52 seconds on the recording, it says
3 14:12:49 hours. And we can see your hand from the
4 right side of the image -- we see an officer in the
5 street -- is that Scaglione in the street?

6 Do you know?

7 MR. JOHNSON: Objection. Calls for
8 speculation.

9 THE WITNESS: I don't know, but I don't
10 believe so.

11 BY MR. STEERING:

12 Q Okay. And then we see an Anaheim PD patrol
13 car, black and white. It looks like it's pulling out
14 from the curb and moving forward.

15 So you're saying that in this image, that
16 Officer Scaglione was standing, I guess, somewhere near
17 Mr. Muntean when she shot him with a beanbag shotgun;
18 is that correct, sir?

19 MR. JOHNSON: Objection. Misstates his
20 testimony. Vague.

21 THE WITNESS: It was prior to that that I
22 heard it. And as I was running, I glanced over to the
23 right trying to see if Mr. Muntean was coming back at
24 us or what have you, but when those shots happened, it
25 was near the mouth of the opening that would be to the

1 back of where that police unit was pulling out. It
2 would have been somewhere in there.

3 BY MR. STEERING:

4 Q Okay. Did you see what Mr. Muntean's reaction
5 was to being shot with a beanbag gun?

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

8 THE WITNESS: I believe I saw one because I
9 saw him -- after the sound of the shotgun being fired,
10 I saw him move or flinch as though it might have struck
11 him.

12 BY MR. STEERING:

13 Q Did you have a belief after those two pops we
14 heard that Mr. Muntean had been struck by at least one
15 of the beanbags?

16 MR. JOHNSON: Objection. Asked and answered.

17 THE WITNESS: It's possible.

18 BY MR. STEERING:

19 Q Okay. Did you think it was likely?

20 MR. JOHNSON: Objection. Asked and answered.

21 THE WITNESS: It was possible.

22 BY MR. STEERING:

23 Q Okay. Pick it up at four minutes, 50 seconds.

24 Now, I stopped it at five minutes, four
25 seconds. When you heard a pop a couple of seconds

1 before I stopped it, was that another beanbag shotgun
2 being fired?

3 A I have no idea. I heard it also. And I
4 assumed it was, but I don't know that.

5 Q Okay. I'll pick it up at five minutes, four
6 seconds of the video.

7 Now, I stopped it at five minutes, 17 seconds.
8 Do you remember when Mr. -- well, do you remember
9 Mr. Muntean running down that alley that we saw the car
10 driving down?

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

12 BY MR. STEERING:

13 Q And at a certain point in time, him being
14 blocked by the front of an Anaheim Police Department
15 vehicle? Do you remember that?

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

18 THE WITNESS: I'm sorry. You said in an
19 alley?

20 BY MR. STEERING:

21 Q Well, in other words, you're walking down an
22 alley. We see you with the body cam. You're walking
23 behind the Anaheim PD car, the black and white down
24 this alley, and you're going in a westerly direction.

25 And then at some point you reach, I guess,

1 Citron Street and then make a right on Citron.

2 So what I'm wondering is as Mr. Muntean and
3 you and the rest of the officers were proceeding
4 westbound down this alley, at a certain point in time,
5 do you see Mr. Muntean get blocked by an
6 Anaheim Police Department vehicle?

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

9 THE WITNESS: Yes.

10 BY MR. STEERING:

11 Q And was that Officer Scaglione's patrol
12 vehicle, sir?

13 A I don't know which unit it was that blocked
14 him.

15 Q Okay. Did you actually see Mr. Muntean kind
16 of run into the car or the car hit him in some way?

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

20 THE WITNESS: Yes.

21 BY MR. STEERING:

22 Q And did it look like a hard impact or kind of
23 a glancing-type impact?

24 MR. JOHNSON: Objection. Calls for
25 speculation.

1 THE WITNESS: It appeared the unit had pulled
2 into the opening on Seneca and stopped as -- to block
3 his path. And Mr. Muntean ran into the side of it, and
4 then ran off to his right.

5 BY MR. STEERING:

6 Q Okay. And that's when he ran down that
7 sidewalk that we just saw the officers pursuing him
8 down; is that correct?

9 MR. JOHNSON: Objection. Vague.

10 THE WITNESS: I believe so, but it was out of
11 my view at that point.

12 BY MR. STEERING:

13 Q Okay. Okay. I'll pick it up at five minutes,
14 17 seconds of Exhibit 210.

15 Okay. Now, I stopped it when the gunshots
16 started to go off at five minutes, 27 seconds of
17 Exhibit 210.

18 Let me just back it up a couple of seconds
19 here. At five minutes -- well, five minutes, 27
20 seconds still, there's a -- there's a -- looks like --
21 well, there's an Anaheim PD officer right in the middle
22 of the image.

23 Do you know who that is, sir?

24 A Not sure, but it could be my trainee.

25 Q You mean Ms. Gonzalez?

1 A Yes, but I'm not sure.

2 Q Okay. So I'll pick it up at five minutes, 27
3 seconds and see, you know, if you can identify some
4 people.

5 Now, there's -- I stopped it at -- it still
6 says five minutes, 27 seconds. I don't know why, but
7 there's an Anaheim PD officer kind of bent over who's
8 to the rear left of an Anaheim PD black and white
9 patrol vehicle, and somebody has got their hand out.
10 It's probably your hand since it's your body cam.

11 Do you know who the man is that's bent over in
12 the center of the image at that time, sir?

13 A I think that's Officer Fleet.

14 Q Okay. I'll pick it up at five, 27.

15 Okay. Now, I stopped it at five minutes, 33
16 seconds. And it looks like there's one, two, three,
17 four -- five Anaheim police officers in the view of the
18 camera. Your body-worn camera.

19 Starting with the lady on the right side of
20 the photo -- is that Alexandria Gonzalez, sir?

21 A Yes, sir.

22 Q Okay. And then there's a man in front of her
23 that's between your camera view and that white Honda
24 right by that white car.

25 Do you know who that gentleman is, sir?

1 A I don't recognize who that is, no.

2 Q Okay. And then there's another gentleman on
3 the -- toward the rear of the white car on the
4 right-hand side.

5 Do you know who that gentleman is?

6 A I do not know.

7 Q And then there's two people in the background,
8 two officers. Do you know who they are?

9 A No, I believe one of them is Officer Horn, but
10 I don't know. I can't tell you which position.

11 MR. STEERING: Do you mind if we take, like,
12 just five minutes so I can run to the restroom?

13 Is that okay, Mr. Johnson?

14 MR. JOHNSON: This is a good time for a break.
15 Yes. Thank you.

16 MR. STEERING: Okay. Thank you.

17 (Off the record from 11:59 a.m. to
18 12:06 p.m.)

19 BY MR. STEERING:

20 Q I'll pick it up again at five minutes, 33
21 seconds of the Exhibit 210, Officer Johnson's body-worn
22 camera video.

23 I stopped it at six minutes, 18 seconds.
24 There's a voice that says, "Let me get it. Let me get
25 it."

1 Was that you?

2 A I believe so.

3 MR. JOHNSON: Objection. Misstates the video.

4 BY MR. STEERING:

5 Q Okay. Well, what were you saying, sir?

6 A I think somebody was asking about where the
7 gun was. And I was saying, "Let me see if I can see
8 where it's at," if I'm interpreting what you're asking.

9 Q Did you see where it was at?

10 A I could see -- I don't know if from there I
11 could see it or not, but I was able to see it
12 afterwards, and it was underneath the area where he was
13 at or to the right front tire of that car.

14 Q Wasn't the gun inside the shirt or jacket that
15 he was carrying?

16 MR. JOHNSON: Objection. Argumentative.

17 THE WITNESS: I'm not sure what you're talking
18 about.

19 BY MR. STEERING:

20 Q Petrica Muntean gets shot and falls down. He
21 gets shot supposedly because he pointed a gun at
22 somebody. So you're the one that said, "Let me go look
23 for the gun," or, "Let me see if I can see the gun."

24 Without any officer or you or any other police
25 officer touching that -- what turned out to be a BB gun

1 that looked like a real gun -- isn't it so that that
2 gun was found covered up by that blue shirt or jacket?

3 MR. JOHNSON: Objection. Misstates the video.
4 Argumentative. Asked and answered.

5 THE WITNESS: There was some of it that was
6 exposed, and I could see part of it.

7 BY MR. STEERING:

8 Q What part?

9 A The barrel part, the end.

10 Q Okay. We'll pick it up at six minutes, 18
11 seconds.

12 Were you the one saying, "I have a
13 tourniquet," sir?

14 A Yes.

15 Q Is that something, like, you carry with you
16 during your course of your duties as a police officer
17 because you might have to use something like that?

18 A Yes, sir.

19 Q Okay. Now, you weren't involved in shooting
20 anybody; so that's going to limit what I need to ask
21 you about.

22 At some point, did you see Petrica Muntean
23 point a gun underneath his chin?

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

25 /////

1 BY MR. STEERING:

2 Q At any time during this incident that we're
3 discussing and looking at.

4 MR. JOHNSON: Objection. Overbroad.

5 THE WITNESS: I saw him point something under
6 his chin as he was walking westbound in the alley near
7 the parking lot.

8 BY MR. STEERING:

9 Q Was it inside that blue shirt?

10 MR. JOHNSON: Objection. Vague.

11 BY MR. STEERING:

12 Q The thing that he was pointing? Like, in
13 other words, whatever it was, it was an object inside
14 the shirt that he was pointing up toward his chin?

15 MR. JOHNSON: Objection. Vague.

16 BY MR. STEERING:

17 Q Was there an answer?

18 A I said "yes, sir." That was my third time,
19 yes.

20 Q I know, but you're answering the same time
21 Mr. Johnson is making an objection; so I'm not in the
22 room with both of you; so it's difficult to hear
23 sometimes. I'm not trying to be a pain in the butt,
24 sir.

25 A No, sir.

1 Q Would you describe at any point in this
2 pursuit of Mr. Muntean by you -- would you describe his
3 affect as a paranoid look?

4 MR. JOHNSON: Objection. Vague. Incomplete
5 hypothetical. Argumentative.

6 THE WITNESS: I don't know that I can answer
7 that.

8 BY MR. STEERING:

9 Q Well, isn't that what you said in your
10 statement to DA investigators that -- that (As read:)
11 He would look back at us to where nothing I said
12 appeared to kind of resonate with him enough for him to
13 say something back to us outside of the fact of I'm not
14 doing anything, I'm not doing anything wrong, type
15 stuff. And it's just, you know, he -- and it's just
16 that he, you know, the paranoid look and, you know,
17 trying to keep whatever he had underneath his shirt
18 hidden from us; so we couldn't see it?

19 Did you make that statement?

20 A Yes.

21 Q Okay. And why did you say "paranoid look"?
22 Why did you say that?

23 A Just a way to express the look he had.

24 Q Okay.

25 MR. STEERING: All right. I don't have

1 anything else.

2 MR. JOHNSON: Okay. Going by the federal
3 rules.

4 (Proceedings concluded at 12:14 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.

KENNETH JOHNSON

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Michael McMorran, hereby certify:

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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)).

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9 Dated: 12/29/2020

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MICHAEL G. MCMORRAN, CSR No. 13735

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