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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 DARREN LEE, taken on behalf of
the PLAINTIFF, commencing at 1:06 p.m., on
December 16th, 2020, before Michael G. McMorran, CSR
No. 13735.

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I N D E X

WITNESS: Darren Lee

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234	Officer Lee's DA interview transcript	46
249	Los Angeles Police Department policy excerpt	34
265	Anaheim Police Department Policy Manual	29
271	Series of photographs	56
274	Officer Lee's DA interview audio file	56
275	Part 1 of Officer Lee's body-worn camera footage	7

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 16TH, 2020; 1:06 P.M.

* * *

DARREN LEE,

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

-oOo-

EXAMINATION

BY MR. STEERING:

Q Good afternoon, Sergeant Lee.

A Hello.

MR. STEERING: Moses, why don't we do this as we corresponded back and forth between the depositions? I don't have -- for whatever reason, I don't have Sergeant Lee's body-worn camera video.

So why don't we --

MR. JOHNSON: All I can tell you, Jerry, is I know we produced all of the officers' body-worn camera, including Sergeant Lee's on disk.

I don't know why you either can't find it, or if you have a bad disk.

MR. STEERING: I don't know. I guess we'll find out. You know, how long are the Lee body-worn camera video or videos? How long is that?

MR. JOHNSON: I don't know exactly how long it is. I -- let me see. You know, it's probably -- I

1 think he has two, just like Officer Scaglione. I think
2 the first one -- the relevant part I would say is
3 probably no more than ten minutes, if that.

4 MR. STEERING: Yeah.

5 MR. JOHNSON: But we can start it, basically,
6 from where the audio starts, if you would like.

7 MR. STEERING: Yeah, sure.

8 MR. JOHNSON: And just tell me when to stop
9 it.

10 MR. STEERING: Well, I'm just -- look, you
11 know, the relevant portion is the time between when
12 Johnson and Gonzalez confronted Muntean at the
13 Carl's Jr. parking lot, and then he ends up getting
14 shot; so maybe a minute after that or something like
15 that.

16 So how long is that? Like, eight minutes or
17 something like that?

18 MR. JOHNSON: It's probably, like, eight
19 minutes, give or take, eight to ten. So like I said,
20 why don't I just start it from when the audio starts,
21 and then you can tell me when after the shooting you
22 want to stop it.

23 MR. STEERING: Okay. I sure would appreciate
24 that.

25 MR. JOHNSON: Okay. So let me share-screen.

1 Can everybody see that?

2 MR. STEERING: I can see it.

3 THE WITNESS: Yes.

4 MR. STEERING: How about the sound?

5 MR. JOHNSON: Oh, let me make sure. Here,
6 I'll start it, and just give me a thumbs up if all of
7 you can hear the sound?

8 Can you hear that?

9 MR. STEERING: No.

10 MR. JOHNSON: Okay. Okay. I got to check
11 this little box. Okay. Let's try it again.

12 MR. STEERING: Okay.

13 MR. JOHNSON: Do you hear it?

14 MR. STEERING: I hear it, yeah.

15 MR. JOHNSON: Okay. Let me go back to the
16 beginning where the audio starts. It's right in there.
17 Okay. Here we go.

18 I'm sorry. Just for the record, we're
19 starting at about 9:05 on the counter, 9:06.

20 MR. STEERING: Can you back it up a little
21 bit, Moses? About 15 seconds?

22 MR. JOHNSON: Sure.

23 MR. STEERING: Just before the shooting. Just
24 before the bang-bang. That's good.

25 All right. You can turn it off, Moses.

1 MR. JOHNSON: All right. We're stopping at
2 18:17.

3 MR. STEERING: Let me find the exhibit number
4 to give it. How about 275.

5 (Exhibit 275 was marked.)

6 MR. JOHNSON: Okay.

7 MR. STEERING: Is there one video or two of
8 Sergeant Lee's? You said there's two?

9 MR. JOHNSON: I believe there's a second one,
10 but it's way after this one you just watched.

11 BY MR. STEERING:

12 Q Okay. Okay. Sergeant Lee, hi.

13 A Hi.

14 Q Okay. Have you reviewed any documents or any
15 recordings in preparation for your testimony today?

16 A Yes.

17 Q Okay. What have you reviewed, sir?

18 A The body-worn camera footage related to this
19 event and audio recording of my D.A. interview, and the
20 written transcript of my D.A. interview.

21 Q When you said you looked at the body-worn
22 camera recordings, was that just yours or someone
23 else's?

24 A The other officers that were involved, yes.

25 Q In any of the recordings that you saw by other

1 officers or that you created yourself, at any time
2 other than after Petrica Muntean was shot by
3 Sergeant Horn -- excuse me, by Officer Horn and
4 Officer Thomas, do any of those videos you saw ever
5 show a gun?

6 MR. JOHNSON: Objection. Overbroad --

7 BY MR. STEERING:

8 Q Before he -- before they shot him?

9 MR. JOHNSON: Objection. Overbroad. Vague.

10 THE WITNESS: Can you restate the question,
11 please?

12 BY MR. STEERING:

13 Q Yeah, let me -- that's probably inartful.

14 In any of the videos that you reviewed,
15 including your own body-worn camera video, up to and
16 including the time that Petrica Muntean was shot by
17 Officers Horn and Thomas, do you -- did you see a gun
18 being held or otherwise possessed by Petrica Muntean at
19 all?

20 MR. JOHNSON: Same objections.

21 THE WITNESS: I didn't observe a gun in those
22 videos.

23 BY MR. STEERING:

24 Q How about in your videos? Is there a gun
25 visible in any -- in your body-worn camera visible at

1 all that was being held or controlled or possessed by
2 Petrica Muntean?

3 A No.

4 Q Okay. Did you see -- well, let me back up.
5 We just looked at Exhibit 275, which is the body-worn
6 camera recording that you made that included a pursuit
7 in the shooting portion.

8 And we see that the officers eventually went
9 around the front of the vehicle that Mr. Muntean was
10 shot behind. And pulled him out and then we saw the --
11 I guess the blanket or the jacket, whatever it was,
12 being pulled back. And then we see the BB pistol,
13 which looks like a real pistol.

14 Had you ever seen that actual BB pistol at all
15 prior to the time that the officers looked behind the
16 car and got Mr. Muntean out from the back of the
17 vehicle?

18 MR. JOHNSON: Objection. Lack of foundation
19 as to whether he knew it was a BB pistol before.

20 THE WITNESS: I saw a black object that
21 appeared to be the barrel of a handgun. But to say
22 that it appeared in the same configuration and fashion
23 as it was depicted when it was uncovered from the
24 blanket, it was not in that configuration when I
25 initially saw it.

1 BY MR. STEERING:

2 Q And where was Mr. Muntean relative to you when
3 you saw the barrel of the gun?

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

5 THE WITNESS: He was in front of me in the
6 alleyway running from me with what appeared to be a
7 barrel, black barrel pointing towards his head.

8 BY MR. STEERING:

9 Q Are you sure it wasn't inside a jacket or a
10 blanket or some other cloth object, and then pointing
11 it toward his head inside the object?

12 Are you sure about that?

13 MR. JOHNSON: Objection. Asked and answered.
14 Argumentative.

15 BY MR. STEERING:

16 Q Go ahead.

17 A I'm not sure -- I'm sorry. Ask the question
18 again. I got a little confused.

19 Q Well, this is what I'm trying to figure out.
20 Okay? And we've had all kinds of testimony from
21 officers saying even the night before that he put a BB
22 pistol up underneath his -- or that he put a gun.
23 Okay?

24 I mean, whether it's a firearm gun with
25 gunpowder or a BB pistol with CO2, it's still a gun,

1 some kind of gun. So I'll just use the generic term
2 "gun." It could mean the BB pistol. It could mean the
3 regular pistol. Okay?

4 So you were aware that the night before, there
5 was some kind of incident where Petrica Muntean's mom
6 had called the Anaheim PD; is that correct, sir?

7 MR. JOHNSON: Objection. Overbroad.

8 THE WITNESS: Yes.

9 BY MR. STEERING:

10 Q Okay. And then there was an officer e-mail
11 that was sent to the officers by Officer Valdiserra the
12 night before, that is April the 12th, 2018, correct?

13 A Correct.

14 Q And you got that e-mail prior to any pursuit
15 of Petrica Muntean on April 13th, 2018?

16 A Yes.

17 Q And you reviewed the e-mail; is that correct?

18 A Yes.

19 MR. STEERING: Okay. Let me see if we can
20 identify it.

21 Do you recognize Exhibit 203, sir?

22 (Exhibit 203 was marked.)

23 THE WITNESS: It's been two years. I can't
24 recall if that is actually the e-mail. It appears to
25 be based upon the name.

1 But if you're asking if I have an independent
2 recollection of this particular e-mail from two years,
3 I can't say that I recall.

4 BY MR. STEERING:

5 Q Okay. Do you see where it talks about where
6 officers are trying to determine if there was a crime
7 committed?

8 Do you see that, sir, in the e-mail?

9 A Can you make the screen a little bit bigger.

10 Q Yeah. Absolutely. How about 125?

11 A That's fine.

12 Q I can move it back. Where it says (As read:)
13 While officers were trying to determine if there was a
14 crime something -- oh, there was a crime. Muntean
15 pulled a black semi automatic handgun and pointed at
16 his head.

17 And then it says (As read:) They gave him
18 commands to drop the weapon, and he walked away -- and
19 I guess -- I mean do you recall, you know, what is
20 described in the e-mail as the information that you
21 received prior to engaging Mr. Muntean on the 13th of
22 April?

23 A Yes. Generally speaking, the general content,
24 I remember.

25 Q Did you talk to any of the officers that were

1 involved in that April 12th incident, that is the day
2 before -- or the night before the shooting of
3 Mr. Muntean about the April 12th incident before
4 Mr. Muntean was shot?

5 A No.

6 Q Okay. Did anyone say anything to you about
7 the semi automatic pistol that Officer Valdiserra
8 reported as Muntean pointing at his chin?

9 Did anyone ever say anything to you during the
10 April 12th, 2018, incident that both Muntean --
11 Petrica Muntean's mom and dad told officers there that
12 they thought the gun was a fake gun?

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

15 THE WITNESS: No.

16 BY MR. STEERING:

17 Q Would you have wanted to know that information
18 when you engaged Mr. Muntean on April 13th, 2018?

19 MR. JOHNSON: Objection. Lack of foundation.
20 Calls for speculation. Incomplete hypothetical.

21 THE WITNESS: Yes.

22 BY MR. STEERING:

23 Q And why would you have wanted to know that
24 information?

25 A It would have affected my perception of a

1 deadly threat.

2 Q And how would it have affected your perception
3 of a deadly threat, Sergeant Lee?

4 A If I knew with 100 percent certainty that the
5 object was not a deadly weapon, it would address the
6 fear of dying.

7 However, that's not to take away from the
8 potential for it to be a functioning BB gun that could
9 expel a projectile, which could inflict serious bodily
10 injury.

11 So while I would like to have known if it was
12 a firearm or not, it would have not played a huge
13 factor in the actions that I took that day.

14 Q Okay. Okay. We saw at the beginning of your
15 body-worn camera video recording that I guess you
16 were -- I don't know -- looked like about -- I don't
17 know, 75 feet from Officer Johnson and Gonzalez when
18 they were -- first approached and spoke with
19 Mr. Muntean.

20 Is that a fair estimate, sir?

21 A No.

22 Q What would you say is a fair estimate of how
23 far you were from Officers Johnson and Gonzalez when
24 they first reached Mr. Muntean sitting in the parking
25 lot at Carl's Jr.?

1 MR. JOHNSON: Objection. Vague.

2 THE WITNESS: I would say a more fair estimate
3 would be in the approximate area of 50 feet rather than
4 75 feet.

5 BY MR. STEERING:

6 Q Okay. You know, sometimes things look bigger
7 on a photo or a video than they are, and sometimes they
8 look smaller; so -- anyway, okay.

9 And so when they were talking to
10 Petrica Muntean, and he was talking to them when
11 Mr. Muntean was still in the Carl's Jr. parking lot
12 before he decided to walk away from the officers, did
13 you hear what they were saying to him and what he was
14 saying to them, Sergeant?

15 A Yes.

16 Q And what do you recall the discussion being
17 between Officer Johnson and Officer Gonzalez and
18 Petrica Muntean before -- you know, at the Carl's Jr.
19 parking lot before he decided to walk away from the
20 officers?

21 MR. JOHNSON: Objection. Overbroad.

22 THE WITNESS: I recall Officer Johnson asking
23 him to sit down. I recall Officer Johnson asking him
24 to show his hands. And that he didn't do anything
25 wrong. I recall --

1 BY MR. STEERING:

2 Q You mean -- sorry. Officer Johnson said he
3 didn't do anything wrong, or Mr. Muntean said he didn't
4 do anything wrong?

5 A Mr. Muntean said he didn't do anything wrong.

6 Q Okay. Did he seem to be kind of crying to
7 you, I mean, when he was in the parking lot of
8 Carl's Jr. and talking to Officers Johnson and
9 Gonzalez?

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

12 THE WITNESS: Yes.

13 BY MR. STEERING:

14 Q Okay. And do you remember Mr. Petrica Muntean
15 repeating the statement that he didn't do anything
16 wrong?

17 MR. JOHNSON: Objection. Overbroad.

18 THE WITNESS: Yes.

19 BY MR. STEERING:

20 Q Do you remember Officer Johnson saying to
21 Mr. Muntean that he wasn't in trouble, they just wanted
22 to speak with him?

23 A Yes.

24 Q Now, at the point in time when
25 Officers Johnson and Gonzalez approached and walked up

1 to Petrica Muntean at the Carl's Jr. parking lot, did
2 you suspect Petrica Muntean of having committed a
3 crime?

4 A Yes.

5 MR. JOHNSON: Objection. Overbroad.

6 BY MR. STEERING:

7 Q And what crime did you suspect Petrica Muntean
8 to have committed by that point in time of this event?

9 A Potentially a couple of crimes. Number one
10 was from the evening before, potentially resisting a
11 lawful order, 148 of the penal code.

12 Q Okay.

13 A And then possession -- potentially a
14 possession of a firearm by a convicted felon; so a
15 weapons violation.

16 Q Okay. You knew he was a convicted felon
17 because of his probation status; is that it?

18 A Yes.

19 Q Okay. All right. I assume his parole status,
20 right? Like if you're on parole, you must have
21 committed a felony; is that fair?

22 MR. JOHNSON: Objection. Overbroad.

23 THE WITNESS: My understanding is that he was
24 on post release community supervision, which suggests
25 to be that he had been convicted of a felony.

1 BY MR. STEERING:

2 Q Yeah. You can't get in state prison unless
3 you commit a felony. Okay? So you're relegated to the
4 county jail.

5 Okay. When you saw the barrel of
6 Petrica Muntean's pistol, the little gun that he had,
7 was he behind that silver vehicle that he was shot
8 behind?

9 MR. JOHNSON: Objection that the weapon was
10 little.

11 BY MR. STEERING:

12 Q Well, okay, whatever you want to call it. Was
13 he behind the car, sir, when you saw the barrel of the
14 gun?

15 A No. I saw the barrel of the gun prior to him
16 hiding behind the car.

17 Q And where was he relative to the car when you
18 saw the barrel of his gun?

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

20 THE WITNESS: He was probably between 20 and
21 40 feet away from that vehicle running towards it.

22 BY MR. STEERING:

23 Q And do you remember if seeing -- well, do you
24 remember seeing a gun in his hand?

25 A At what point are you referring to?

1 Q Well, the point I'm talking about is you see
2 him -- he's running towards the car, and you claim you
3 see a barrel of a gun.

4 Is he holding the gun in his hand?

5 MR. JOHNSON: Objection. Argumentative.

6 THE WITNESS: Yes.

7 BY MR. STEERING:

8 Q Do you remember which hand?

9 A No.

10 Q Do you remember that jacket or whatever you
11 want to call it, the blanket or jacket that he was --
12 that the gun was ultimately found inside of in the back
13 of the car?

14 Do you remember -- do you remember seeing that
15 jacket or that blanket at the time that you saw the
16 barrel of the gun?

17 MR. JOHNSON: Objection. Vague.

18 THE WITNESS: Yes.

19 BY MR. STEERING:

20 Q And where was the jacket or blanket?

21 MR. JOHNSON: Objection. Misstates his
22 testimony.

23 THE WITNESS: The blanket -- I'm sorry. The
24 blanket --

25 /////

1 BY MR. STEERING:

2 Q Sorry.

3 A I'm going to give the answer right now.

4 Q Okay.

5 A The blanket was draped over his shoulders.

6 Q And his hands were free in carrying that gun?

7 MR. JOHNSON: Objection. Argumentative.

8 THE WITNESS: I don't recall seeing his hands.

9 BY MR. STEERING:

10 Q Okay. How long did you have a visual on the
11 barrel of that gun?

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

13 THE WITNESS: A split second.

14 BY MR. STEERING:

15 Q Did you see any part of the gun other than the
16 barrel?

17 A No.

18 Q Did you see what Mr. Muntean did to cause you
19 not to be able to see the barrel after you saw it?

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

22 THE WITNESS: I'm afraid I don't understand
23 the question. Can you rephrase it?

24 BY MR. STEERING:

25 Q In other words -- yeah, sure.

1 You said that you saw the barrel of
2 Petrica Muntean's gun for a split second. And then you
3 said you didn't see his hands, but you saw -- you
4 remember the barrel of a gun.

5 So I'm wondering if you saw Mr. Muntean then
6 do something that caused you not to be able to see the
7 barrel of the gun?

8 MR. JOHNSON: Same objections.

9 THE WITNESS: I don't recall what he did with
10 his hands, but the next time I saw him, he was behind
11 the car.

12 BY MR. STEERING:

13 Q Well, did you look away from him?

14 MR. JOHNSON: Objection. Argumentative.

15 THE WITNESS: I don't recall.

16 BY MR. STEERING:

17 Q Okay. Could you see any gun on
18 Petrica Muntean after he got behind the -- that silver
19 car?

20 MR. JOHNSON: Objection. Vague.

21 THE WITNESS: I saw what appeared to be the
22 same barrel now pointing at me.

23 BY MR. STEERING:

24 Q And where were you relative to that car? In
25 other words, let's say that you're in back of that -- I

1 think it's a Honda -- I think it's a Honda, silver
2 Honda or a gray Honda.

3 Do you remember the car that Mr. Muntean
4 was -- after he was shot, that he was lying in front of
5 or in back of depending on where you are?

6 Do you remember that car, sir?

7 A Yes.

8 Q Okay. We just saw it on the video? Okay. So
9 Mr. Muntean is -- he's behind the front of the car; in
10 other words, the back of the car is facing you, the
11 front of the car is facing him when he's in back of the
12 car, right?

13 A Yes.

14 Q Okay. And then when he was behind the car,
15 was he standing up or sitting down or somewhere in
16 between?

17 MR. JOHNSON: Objection. Vague. Vague as to
18 time. Overbroad.

19 THE WITNESS: I don't know because I couldn't
20 see behind the car from where I was.

21 BY MR. STEERING:

22 Q Could you see him from behind the car from
23 where you were?

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

25 /////

1 BY MR. STEERING:

2 Q Could you see him? After he got -- after he
3 got in back of the car where the back of the car is
4 facing you, the front of the car is facing him, he's on
5 the other side of the car from you, did you lose sight
6 of him?

7 MR. JOHNSON: Objection. Misstates his
8 testimony. Overbroad. Vague as to time.

9 THE WITNESS: I'm confused by that question
10 because it contradicts what I said.

11 Can you restate it?

12 BY MR. STEERING:

13 Q What I'm trying to find out is when
14 Mr. Muntean reached the other side of the Honda from
15 you, and he was in front of the Honda; in other words,
16 he was in front of the car, and you were in back of the
17 car, could you see him?

18 A Yes.

19 MR. JOHNSON: Same objections.

20 BY MR. STEERING:

21 Q And was he standing upright in front of the
22 car for some period of time?

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

24 THE WITNESS: I can't say for sure if he was
25 standing, crouching, or kneeling. I can only tell you

1 that I saw his head and him pointing the barrel of the
2 object towards me.

3 BY MR. STEERING:

4 Q Towards you or towards the other officers
5 or -- towards you or the other officers?

6 MR. JOHNSON: Objection. Overbroad.

7 THE WITNESS: I don't -- at the time, I didn't
8 know where those officers specifically were, but the
9 barrel was pointing towards me.

10 It may have been also pointing towards them
11 based upon where they were standing. But I looked at
12 the barrel of the gun and him holding it, pointing it
13 towards me.

14 BY MR. STEERING:

15 Q How long were you looking at the barrel of the
16 gun pointed towards you?

17 A A fraction of a second.

18 Q Did he, like, point the gun up and then pull
19 it down?

20 MR. JOHNSON: Objection. Argumentative.

21 Asked and answered.

22 THE WITNESS: No.

23 BY MR. STEERING:

24 Q How was it -- how do you think it physically
25 happened that you were able to see the barrel of the

1 gun for a fraction of a second when Mr. Muntean was on
2 the other side of the vehicle?

3 MR. JOHNSON: Objection. Lack of foundation.
4 Calls for speculation. Argumentative. Asked and
5 answered.

6 THE WITNESS: I don't know.

7 BY MR. STEERING:

8 Q Did you shoot at Petrica Muntean?

9 A No.

10 Q Why not?

11 A Because I did not see him when I decided to
12 pull the trigger.

13 Q When did you decide to pull the trigger?

14 A When he pointed the gun at me.

15 Q When you officers were going down that alley
16 following Mr. Muntean from Carl's Jr. and then out to,
17 I guess, Citron and then back to the condo complex, did
18 you think that you officers were scaring him?

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

21 THE WITNESS: No.

22 BY MR. STEERING:

23 Q How about -- I mean, how about after
24 Officer Scaglione shot Mr. Muntean with her beanbag
25 gun, do you think -- did it appear to you that that

1 scared Mr. Muntean?

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

4 THE WITNESS: No.

5 BY MR. STEERING:

6 Q Did he appear to be angered by being shot by
7 Officer Scaglione?

8 MR. JOHNSON: Same objections.

9 THE WITNESS: No.

10 BY MR. STEERING:

11 Q Would you -- if -- if Mr. Muntean had just
12 continued toward the Anaheim High School, not going to
13 the conflict, but just continued towards the high
14 school, knowing what you knew, would you -- you or --
15 would you have shot him with a gun, pistol?

16 MR. JOHNSON: Objection. Incomplete
17 hypothetical.

18 THE WITNESS: I can't answer that question
19 without more facts.

20 BY MR. STEERING:

21 Q All right. At the time of this incident, did
22 Anaheim Police Department have a policy as to when
23 officers can shoot people with beanbag guns?

24 A Yes.

25 Q Do you remember what the policy was?

1 A No, I can't restate the policy verbatim.

2 Q Well, how about just generally -- in other
3 words, you got an officer on the scene. You're the
4 sergeant. She's the patrol officer. She's got a
5 beanbag gun. She shoots somebody.

6 Now, I assume Anaheim Police Department had
7 some standard as to whether -- as to when an Anaheim
8 police officer could shoot somebody with a beanbag gun;
9 is that fair?

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

12 THE WITNESS: Yes.

13 BY MR. STEERING:

14 Q Okay. So when at that time were
15 Anaheim Police Department officers allowed to shoot
16 people with beanbag guns?

17 MR. JOHNSON: Objection. Overbroad.
18 Incomplete hypothetical. Argumentative. Asked and
19 answered.

20 THE WITNESS: I would have to have more facts
21 in the matter before I answered that question. So I
22 can't answer it based upon the limited -- limited
23 information I have right now.

24 BY MR. STEERING:

25 Q Well, okay. Anaheim PD did have standards for

1 when an officer could shoot somebody, right, with a
2 beanbag gun, right?

3 A Yes.

4 Q So what was the standard?

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

7 THE WITNESS: There's a standard, but I would
8 need some specific facts before I give you that answer.

9 Generally speaking, the use of a less than
10 lethal or beanbag shotgun would be utilized in cases
11 that would not amount to a deadly force encounter.

12 BY MR. STEERING:

13 Q Okay. How about the use of a beanbag gun
14 to -- to get compliance -- well, just -- let me do
15 this.

16 Let me -- what were you trained, if at all --
17 well, let me just ask it -- let me just bring up this
18 other -- we had Valdiserra's.

19 MR. STEERING: This is Exhibit 202. I'll just
20 do it; so you can identify the document.

21 (Exhibit 202 was marked.)

22 BY MR. STEERING:

23 Q Do you recognize Exhibit 202, sir?

24 A No.

25 Q Okay. There's a picture of Petrica Muntean,

1 and it says (As read:) Officer Safety, Petrica --
2 Peter Muntean.

3 And then it talks about the incident that
4 happened the night before, April 12th, 2018, about
5 responding to a domestic incident, 415 domestic
6 incident.

7 Do you remember some kind of a shift briefing
8 that included this officer safety memo, sir?

9 A I can't -- I don't have any independent
10 recollection of this particular document.

11 Q Okay.

12 MR. STEERING: Okay. Now, I'll show you
13 Exhibit 265. It's an Anaheim PD policy manual, the
14 whole thing.

15 (Exhibit 265 was marked.)

16 BY MR. STEERING:

17 Q Okay. Okay. Can you see Exhibit 265, sir?

18 A I think we're looking at 304, sir?

19 MR. JOHNSON: Sergeant Lee, he's identifying
20 the exhibit for your deposition.

21 THE WITNESS: Oh, I'm sorry.

22 BY MR. STEERING:

23 Q Yeah, yeah.

24 A Sorry.

25 Q Do you see Exhibit 304.10, "Kinetic Projectile

1 Guidelines"?

2 Do you see that?

3 A Yes.

4 Q Is that the guidelines that was in effect on
5 April 13th, 2018, for Anaheim Police Department
6 officers regarding the use of a beanbag shotgun device?

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

9 THE WITNESS: I would have to look at the
10 revision date if its printed in the footer.

11 BY MR. STEERING:

12 Q Could be.

13 A Yeah, looks like --

14 Q This says 8/27/20. That's what this says. It
15 says "Copyright Lexipol." I'm not sure about the
16 revisions.

17 But anyway, where it talks about deployment
18 and use, and then it talks about under 3- -- or
19 304.10.1, it talks about (As read:) Circumstances
20 appropriate for deployment include but are not limited
21 to suspect is armed with a weapon and the tactical
22 circumstance allowed for the safe application of
23 approved munitions.

24 Does that mean that if a suspect is armed with
25 a weapon, that you can shoot him with a beanbag gun?

1 Is that what that means?

2 MR. JOHNSON: Objection. Incomplete
3 hypothetical. Overbroad.

4 THE WITNESS: I'm going to read it very
5 quickly, please.

6 Yes.

7 BY MR. STEERING:

8 Q So what you're saying is if a suspect is armed
9 with a weapon and the circumstances would make it -- it
10 says (As read:) Circumstances allow for the safe
11 application of approved munitions.

12 So if -- according to this policy, as far as
13 your understanding as a police sergeant with the
14 Anaheim PD, if a suspect is armed with a weapon and the
15 officer believes he can safely shoot the beanbag gun at
16 the suspect -- that's authorized under this policy; is
17 that fair?

18 MR. JOHNSON: Objection. Asked and answered.

19 THE WITNESS: Yes.

20 BY MR. STEERING:

21 Q Okay. And then it says (As read:) The
22 suspect has made a credible threat to harm him or
23 herself or others.

24 As an Anaheim police sergeant, do you take
25 that to mean that the Anaheim Police Department

1 authorizes Anaheim police officers to shoot suspects
2 with beanbag guns if the officer has a good reason to
3 believe the suspect has made a credible threat of harm
4 to himself or others; is that correct?

5 MR. JOHNSON: Objection. Document speaks for
6 itself. Overbroad.

7 THE WITNESS: Yes.

8 BY MR. STEERING:

9 Q Okay. And then the third one, C, says
10 (As read:) The suspect is engaged in riotous behavior
11 or is throwing rocks, bottles, or other dangerous
12 projectiles at people and/or officers.

13 So your understanding as an Anaheim police
14 sergeant is that under the circumstances described in
15 C, that the Anaheim Police Department allows
16 Anaheim Police Department officers to shoot beanbag
17 guns at persons engaged in such riotous behavior?

18 MR. JOHNSON: Objection. Document speaks for
19 itself.

20 BY MR. STEERING:

21 Q Is that correct, sir?

22 A Yes.

23 Q Okay. And then the fourth one, it says
24 (As read:) D, there's probable cause to believe that
25 the suspect has already committed a crime of violence

1 and is refusing to comply with lawful orders.

2 In terms of your understanding, as an
3 Anaheim Police Department sergeant, does D authorize
4 Anaheim Police Department officers to shoot people with
5 beanbag guns where there's probable cause to believe
6 the suspect has already committed a crime of violence
7 and is refusing to comply with a lawful order?

8 MR. JOHNSON: Objection. Document speaks for
9 itself.

10 THE WITNESS: Yes.

11 BY MR. STEERING:

12 Q Okay. Now, after subsection F, 304.10.2
13 (As read:) There's a paragraph that states, quote, a
14 verbal warning of the intended use of the device should
15 precede its application unless it would otherwise
16 endanger the safety of officers or when it is not
17 practicable due to the circumstances.

18 And this verbal warning -- is it a verbal
19 warning like, "Stop, or I'll shoot," or do you know the
20 kind of verbal warning that this section is referring
21 to, sir?

22 MR. JOHNSON: Objection. Incomplete
23 hypothetical. Overbroad.

24 THE WITNESS: Yes.

25 MR. STEERING: Let me -- let me show you an

1 LAPD policy on the use of -- the -- it's Exhibit 249.

2 (Exhibit 249 was marked.)

3 BY MR. STEERING:

4 Q Of the use of a beanbag shotgun. I mean, I
5 got this off the internet. It's LAPD policy. It looks
6 like it was from December of 2019.

7 MR. JOHNSON: Does this have any kind of a
8 number, Jerry?

9 MR. STEERING: Oh, you know, something. Yeah,
10 it does. Let me -- sorry. Let me get it.

11 MR. JOHNSON: I mean, like --

12 MR. STEERING: 249.

13 MR. JOHNSON: 249.

14 MR. STEERING: Yeah, 249.

15 BY MR. STEERING:

16 Q Okay. Now, there, LAPD's policy -- I'm just
17 asking if you recognize a difference in the policies of
18 the agencies.

19 I'm not suggesting one is right, and one is
20 wrong or anything. I'm just trying to figure out what
21 appears to be a pretty big disparity in the policies,
22 and maybe you can give me some insight as to why that
23 might be the case.

24 Anyway, it's the LAPD policy of beanbag
25 shotgun. And it talks about when practical, officers

1 should use de-escalation techniques. I assume that's
2 the same thing with Anaheim, right? When possible, you
3 try to de-escalate a situation rather than escalate it?

4 Is that fair, Sergeant?

5 MR. JOHNSON: Objection. Overbroad.

6 THE WITNESS: Can you restate the question,
7 please?

8 BY MR. STEERING:

9 Q Generally -- generally with
10 Anaheim Police Department, they want their officers to
11 try to de-escalate a situation, if possible, rather
12 than escalate it; is that fair?

13 MR. JOHNSON: Incomplete hypothetical.
14 Overbroad.

15 THE WITNESS: Yes, that is preferred.

16 BY MR. STEERING:

17 Q Okay. Now, LAPD says that (As read:)
18 Consistent with the department's use of force policy,
19 less lethal force options are only permissible when an
20 officer reasonably believes that a suspect or subject
21 is violently resisting arrest or poses an immediate
22 threat of violence or physical harm.

23 Is that -- would you say that that's,
24 basically, the same as Anaheim Police Department
25 policy?

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

3 THE WITNESS: I don't know. I would not want
4 to speculate on that.

5 BY MR. STEERING:

6 Q Okay. How long have you been an Anaheim PD
7 officer, sir?

8 A 20 years.

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

11 A Yes.

12 Q What other law enforcement agency have you
13 worked for?

14 A The Covina Police Department.

15 Q And how long did you work for them?

16 A Roughly seven years.

17 Q Okay. Were you on patrol with them?

18 A Yes.

19 Q Do you remember when you started with Anaheim,
20 sir?

21 A Yes.

22 Q When was that?

23 A December of 2000.

24 Q So you've been a policeman about 27 years?

25 A Yes.

1 Q Did you lateral over from Covina?

2 A Yes.

3 Q Okay. Did you think that the officers chasing
4 after Mr. Muntean escalated the situation with him or
5 not? What do you think?

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

8 THE WITNESS: You're asking me to opine on his
9 frame of mind. I'm not comfortable saying.

10 BY MR. STEERING:

11 Q I mean, isn't that what you do every day as an
12 officer? You do things, and you evaluate what you
13 think the suspect or detainees are going to do?

14 MR. JOHNSON: Objection. Incomplete
15 hypothetical. Overbroad.

16 THE WITNESS: No.

17 BY MR. STEERING:

18 Q When you heard Peter Muntean over at the
19 Carl's Jr. parking lot speaking to Officers Johnson and
20 Gonzalez, he appeared pretty upset to you, right?

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

23 THE WITNESS: He was crying.

24 BY MR. STEERING:

25 Q How tall are you, sir?

1 A Between 5'7" and 5'8".

2 Q After Petrica Muntean was shot with real
3 bullets, not the beanbags, did you and the couple of
4 your fellow officers pull his body from the front right
5 of the -- front passenger's side of his vehicle to the
6 side of the driver side front of the vehicle?

7 A Yes.

8 Q And you did that so you could work on him to
9 try to save him; is that fair?

10 A Yes.

11 Q Okay. You couldn't do it, he was too jammed
12 up, like, underneath the car where he was for the
13 officers to render medical aid to him; is that correct?

14 A Partially.

15 Q And what part am I missing, sir?

16 A So whether he was physically jammed up there
17 or not, but there was still a gun in that area. And so
18 I needed -- in order to provide medical aid, I needed
19 to separate him from the gun.

20 Q Why didn't you just pick up the gun?

21 MR. JOHNSON: Objection. Argumentative.

22 THE WITNESS: Because it was not safe to do so
23 with him in close proximity to it.

24 BY MR. STEERING:

25 Q He was just shot in the head and the throat,

1 wasn't he?

2 MR. JOHNSON: Objection. Argumentative.
3 Calls for speculation.

4 THE WITNESS: I didn't know that at the time.

5 BY MR. STEERING:

6 Q Well, there was blood all over his head,
7 wasn't there?

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

10 THE WITNESS: I don't know how much blood was
11 on his head. There was some blood on his head.

12 BY MR. STEERING:

13 Q Did it look to you like he was shot in the
14 head?

15 MR. JOHNSON: Objection. Vague as to time.
16 Argumentative.

17 THE WITNESS: Yes.

18 BY MR. STEERING:

19 Q Did it look to you like he was conscious when
20 you gentlemen pulled him from one side of the front of
21 the vehicle to the other?

22 A No.

23 Q You didn't even see the gun on the ground that
24 was next to him until you or one of the other officers
25 pulled back some cloth that was covering the gun when

1 it was on the ground, right?

2 MR. JOHNSON: Objection. Misstates the
3 record. Argumentative.

4 THE WITNESS: Correct.

5 BY MR. STEERING:

6 Q Anyway, did you notice where Officer Horn was
7 when he shot Mr. Muntean?

8 MR. JOHNSON: Objection. Vague.

9 THE WITNESS: Yes.

10 BY MR. STEERING:

11 Q And would you say that you were standing kind
12 of directly in back of that Honda that Mr. Muntean was
13 lying in front of?

14 MR. JOHNSON: Objection. Misstates his
15 testimony.

16 THE WITNESS: No.

17 BY MR. STEERING:

18 Q How -- okay. So let's say that standing in
19 back of the Honda -- if you were, like, directly in
20 back of the middle of the Honda, if you look straight
21 ahead, that would be let's say 12:00 o'clock. Okay?

22 And you would be standing at, like, 6:00
23 o'clock, and you're looking at 12:00 o'clock? Okay?
24 Are you with me so far?

25 MR. JOHNSON: Objection. Misstates his

1 testimony.

2 MR. STEERING: I'm just asking him a question,
3 Moses. I'm just -- okay.

4 BY MR. STEERING:

5 Q Where -- if straight back of the car is 6:00
6 o'clock and straightforward of the car is
7 12:00 o'clock, where were you standing on the watch
8 dial when Officer Horn was shooting Mr. Muntean?

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

11 THE WITNESS: I was standing east of the
12 parked vehicle that Mr. Muntean was hiding behind.

13 BY MR. STEERING:

14 Q And if you -- okay. What direction was the
15 parked vehicle pointed toward?

16 A I'm sorry. I said "east." I meant west of
17 the vehicle. I misspoke. West of the vehicle.

18 Q Okay. Was the Honda pointing -- the front of
19 the Honda pointing north or south or east or west or
20 somewhere in between? What direction was it?

21 A The front bumper was where Mr. Muntean was,
22 east of me.

23 Q Okay. So if we're -- let's say we just have
24 an aerial view straight down on top of the car, the
25 front of the car would be east: The back of the car

1 would be west, the driver side would be north, the
2 passenger's side would be south?

3 A Yes, I'm following.

4 Q Is that correct?

5 A Yes.

6 Q Okay. And so you said you were -- okay. How
7 far in back of the Honda were you? In other words,
8 let's say we're doing two coordinates. We're doing a X
9 coordinate and a Y coordinate. We're not dealing with
10 the Z right now.

11 So the X coordinate is going toward the back
12 of the -- toward the car and away from the car. The Y
13 coordinate is going from one side of the car to the
14 other.

15 So what I'm trying to figure out is if the car
16 is facing east, and straight back -- if we drew a line
17 from the middle of the front of the car to the middle
18 of the back of the car, kept that line going, that
19 would be 6:00 o'clock, where were you? Like, 8:00
20 o'clock or 7:00 o'clock or 9:00 o'clock?

21 Where were you when Officer Horn shot
22 Mr. Muntean?

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

25 THE WITNESS: Generally or approximately

1 between 6:00 o'clock and 4:00 o'clock.

2 BY MR. STEERING:

3 Q Okay. So you were on the rear right -- the
4 rear passenger's side area of the vehicle, sir?

5 MR. JOHNSON: Objection. Asked and answered.
6 Misstates his testimony.

7 MR. STEERING: I'm just asking, Moses.

8 I'm sorry. Go ahead.

9 THE WITNESS: I'm trying to follow the visual
10 of a X, Y coordinate, that's all. And the visual of a
11 clock. I'm trying to incorporate that into my visual
12 here.

13 BY MR. STEERING:

14 Q We got a little geometry going here. Okay.

15 A So without respect to the distance between the
16 vehicle and me, generally speaking, if we were to
17 superimpose an analog clock on top of the alleyway and
18 the 12 was pointing due east and the 6 is due west,
19 generally speaking, I was in the area between
20 4:00 o'clock and 6:00 o'clock.

21 Q Okay. And you could kind of look down and see
22 the right side of that gray car that Mr. Muntean was
23 crotched down in front of; is that correct?

24 MR. JOHNSON: Objection. Misstates his
25 testimony.

1 THE WITNESS: Let me make sure that you are --
2 I'm clear on what your question is.

3 Are you asking me if I saw the passenger's
4 side of the parked vehicle that Mr. Muntean was behind?

5 BY MR. STEERING:

6 Q Yes, sir.

7 A No.

8 Q So -- okay. You said between 6:00 and 4:00;
9 so you got to be a little off to the -- you're in back
10 of the Honda, and you're somewhat off to the
11 passenger's side of the Honda; is that correct?

12 MR. JOHNSON: Objection. Asked and answered.

13 THE WITNESS: Yes.

14 BY MR. STEERING:

15 Q Okay. And could you see any part of the
16 passenger's side of the Honda from where you were
17 standing?

18 MR. JOHNSON: Objection. Asked and answered.

19 THE WITNESS: No.

20 BY MR. STEERING:

21 Q What blocked your view?

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

24 THE WITNESS: The parked vehicle that I was
25 standing next to.

1 BY MR. STEERING:

2 Q How far from the back of the Honda were you
3 when Officer Horn was shooting Mr. Muntean?

4 MR. JOHNSON: Objection. Lack of foundation.
5 Calls for speculation. Vague as to time.

6 THE WITNESS: That's hard for me to answer
7 because I don't know when the shooting started. It
8 was -- with respect to where I was standing between me
9 and the car. If I knew when the shooting started, I
10 could give you a better idea.

11 BY MR. STEERING:

12 Q Well, you heard the shooting start, right?

13 A Yes.

14 Q Is it just that you heard it and you forgot
15 relative to -- well, you heard -- you knew when the
16 shooting started because you heard the shooting, right?

17 MR. JOHNSON: Objection. Asked and answered.
18 Argumentative.

19 BY MR. STEERING:

20 Q Okay.

21 MR. JOHNSON: Jerry, while you're looking at
22 whatever you're looking at, is it time for a quick
23 bathroom break?

24 MR. STEERING: Yeah. Yeah. Perfect time.

25 (Off the record from 2:18 p.m. to

1 2:30 p.m.)

2 MR. STEERING: Okay. Here's 234.

3 (Exhibit 234 was marked.)

4 BY MR. STEERING:

5 Q And why don't we bring up -- okay. Don't
6 worry, Sergeant Lee. Moses won't let me get away with
7 pulling any fast ones on you.

8 A I trust you, Mr. Steering, I trust you. You
9 seem like a good guy.

10 Q Oh, thank you. Okay. So I have a 25-page
11 document. It says "Interview Report." It says that
12 you're the interviewee.

13 And if you want to, I'll scroll through the
14 whole thing and see if this is what you reviewed, but,
15 I mean, unless Mr. Johnson -- you know, unless you want
16 me to go through the whole thing, I will, if you want
17 me to go through it.

18 But is this -- and I'll go through the end,
19 which is -- the end is page 25 -- okay. So I'm just
20 going to ask you to identify it.

21 You don't have to, I'll scroll through the
22 whole thing if you want, but is this the transcript
23 that you reviewed in preparation for your testimony
24 today, that is a transcript of your interview
25 statement?

1 A Yes, that appears to be the transcript.

2 Q And did you review the questions and answers
3 in the interview statement prior to your testimony
4 today?

5 A Yes.

6 Q Okay. And do you believe that the transcript
7 is an accurate showing of what your statement was on
8 the audio recording?

9 MR. JOHNSON: Objection. Overbroad.

10 THE WITNESS: Yes.

11 BY MR. STEERING:

12 Q Okay. Now, when you gave this interview
13 statement to -- looks like -- it says James Monsoor,
14 Detective, Anaheim PD -- when you gave this interview
15 statement of April 13, 2018, you did your best to tell
16 the truth as you believed it to be; is that fair?

17 A Yes.

18 MR. JOHNSON: Objection. Overbroad.

19 BY MR. STEERING:

20 Q Okay. Did you ever give a command to
21 Mr. Muntean to drop the gun?

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

23 BY MR. STEERING:

24 Q Ever?

25 A No.

1 Q Is there a reason you did not do so?

2 MR. JOHNSON: Objection. Argumentative.

3 Incomplete hypothetical.

4 THE WITNESS: By the time I identified it as a
5 gun, I didn't have a reasonable opportunity to make
6 that command.

7 BY MR. STEERING:

8 Q Okay. Did you tell any of the other officers,
9 that is Horn or Thomas, to take cover close in time
10 when the shooting were taking place between Horn and
11 Thomas and Mr. Muntean?

12 MR. JOHNSON: Objection. Overbroad.

13 Incomplete hypo.

14 THE WITNESS: I shouted the word "cover."

15 BY MR. STEERING:

16 Q And that was something to tell your
17 subordinate officer, to take cover?

18 MR. JOHNSON: Objection. Misstates his
19 testimony.

20 THE WITNESS: My intent by shouting "cover"
21 was to have all the officers try to seek cover.

22 BY MR. STEERING:

23 Q And you said that when you saw the gun barrel,
24 sir, for Mr. Muntean?

25 A I saw -- when I saw the barrel the second time

1 when he pointed it at me from behind the vehicle.

2 Q Was he crouched down behind the vehicle when
3 he did that?

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

5 THE WITNESS: I don't know.

6 BY MR. STEERING:

7 Q Was he standing up in front of the vehicle
8 when he did that -- when he did that?

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

11 THE WITNESS: I couldn't tell.

12 BY MR. STEERING:

13 Q Now, you're trained as a peace officer, are
14 you not, that if you're pursuing a suspect and there's
15 a, say, foot pursuit going on and you think the suspect
16 has a weapon and the suspect stops behind something,
17 like a car or a building or whatever -- are you trained
18 to take cover so you don't leave yourself in a position
19 of being shot?

20 MR. JOHNSON: Objection. Incomplete
21 hypothetical. Overbroad. Argumentative.

22 THE WITNESS: Yes. May I explain?

23 BY MR. STEERING:

24 Q Please.

25 A Seeking cover when someone is threatening you

1 or pointing a weapon, pointing a firearm is the ideal
2 situation that we would hope for.

3 Q Okay.

4 A There are times during a deadly encounter that
5 it is not practical based upon the fluidity of the
6 incident and the speed at which the threat is presented
7 to the officer.

8 So that's the ideal type. Sometimes that's
9 not possible.

10 Q Okay. Do you remember telling
11 Detective Monsoor -- that's M-o-n-s-o-o-r -- that when
12 Mr. Muntean made it to the parked vehicle, that you see
13 the top of his head and you see him pointing a gun at
14 you?

15 Do you remember saying that to the officer?

16 MR. JOHNSON: Objection. Misstates the
17 document.

18 BY MR. STEERING:

19 Q It's page 14 of the document.

20 A May I take a look at my transcript?

21 Q Yeah, yeah. 14 -- page 14. Yeah, let me --

22 A I don't have it in front of me.

23 Q No, I'll just show it to you. Okay?

24 A Yeah.

25 Q I got it up right here.

1 Let's forget that question. Let me ask you
2 this: During this pursuit of Mr. Muntean, was there
3 any type of coordination between the officers as to who
4 was going to do what to capture him?

5 MR. JOHNSON: Objection. Overbroad. Vague.

6 THE WITNESS: Yes.

7 BY MR. STEERING:

8 Q What was the nature of that coordination?

9 A I can recall asking an available police unit
10 to respond to the end of the alleyway at Citron to stop
11 him from getting out to Citron.

12 That was one of the things that I did.

13 Q Did an officer do that, park their car at the
14 end of the alleyway?

15 MR. JOHNSON: Objection. Vague.

16 THE WITNESS: Eventually there was a police
17 car out there. I can't recall when the police car
18 showed up or from which direction that police car came.

19 BY MR. STEERING:

20 Q Okay. Do you think that Officer Horn would
21 have been justified in shooting Mr. Muntean if
22 Mr. Muntean didn't point his gun at you or any of the
23 other officers?

24 MR. JOHNSON: Objection. Incomplete
25 hypothetical. Overbroad.

1 THE WITNESS: I can't opine on that because I
2 cannot state Officer Horn's state of mind and his
3 perception of a deadly threat at that time.

4 BY MR. STEERING:

5 Q Well, were you his watch commander at that
6 time?

7 Excuse me. Were you his patrol sergeant at
8 that time?

9 A Yes.

10 Q Isn't that your duty to see whether or not
11 your subordinate officers are shooting people in a
12 justified manner?

13 MR. JOHNSON: Objection. Argumentative.

14 THE WITNESS: Yes.

15 BY MR. STEERING:

16 Q And did you do that?

17 MR. JOHNSON: Objection. Argumentative.

18 Asked and answered.

19 THE WITNESS: At the time of the incident, no.

20 BY MR. STEERING:

21 Q How about after the incident?

22 A No.

23 Q Is there a reason you didn't do that?

24 MR. JOHNSON: Objection. Lack of foundation.

25 Calls for speculation. Overbroad. Argumentative.

1 THE WITNESS: Yes.

2 BY MR. STEERING:

3 Q And what's the reason?

4 A After an officer-involved shooting, my role is
5 not to investigate the officer-involved shooting. The
6 Orange County District Attorney's Office is the lead
7 agency that conducts that investigation on the
8 culpability of the officer and his discharge of the
9 firearm.

10 Q You mean of the criminal culpability of the
11 officer, right?

12 A Yes.

13 Q Right. And, I mean, as far as you know, the
14 district attorney's office could believe the shooting
15 was not legally justified, but nonetheless not file
16 criminal charges because they can't get a conviction,
17 right?

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

20 THE WITNESS: I couldn't opine on the reason.

21 BY MR. STEERING:

22 Q You've been working at Anaheim PD for 20
23 years, and you don't know the reasons that the DA's
24 office might not file a criminal action against a
25 police officer for shooting somebody on the job; is

1 that what you're saying?

2 MR. JOHNSON: Objection. Argumentative.

3 Asked and answered.

4 THE WITNESS: No.

5 BY MR. STEERING:

6 Q How many -- how many Anaheim Police Department
7 officers have you ever heard of getting criminally
8 prosecuted for shooting anybody ever?

9 MR. JOHNSON: Objection. Overbroad.
10 Argumentative.

11 THE WITNESS: None.

12 BY MR. STEERING:

13 Q And as a -- in your 20 years at Anaheim PD,
14 how many -- do you have an estimate as to how many
15 officer-involved shootings have taken place during your
16 tenure at Anaheim PD?

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

19 THE WITNESS: More than 10 and less than 50.
20 I don't want to -- I would like to give you that
21 estimate.

22 BY MR. STEERING:

23 Q And in some of these instances, civil juries
24 have found that the officers wrongfully shot a person,
25 but the DA's office nonetheless didn't prosecute the

1 officer, right?

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

4 THE WITNESS: Can you restate the fact pattern
5 again?

6 BY MR. STEERING:

7 Q In some of these Anaheim Police Department
8 officer-involved shootings during your tenure at the
9 Anaheim PD, some of these cases have resulted in civil
10 verdicts against Anaheim Police Department officers for
11 wrongfully shooting someone, but in those cases, the
12 DA, district attorney's office nonetheless did not
13 prosecute them, right?

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

16 THE WITNESS: I can think of one incident, but
17 I don't know the legal justification for the finding;
18 so I would rather not give an opinion on that.

19 BY MR. STEERING:

20 Q I wasn't asking for an opinion. I was asking
21 for a memory of an event or a fact.

22 A I don't recall.

23 Q Okay.

24 MR. STEERING: And let me show you the
25 video -- I guess we'll identify this. We'll call this

1 274. Okay. I need you to identify Exhibit 274.

2 (Exhibit 274 was marked.)

3 MR. STEERING: And I'm not sure how to bring
4 it up and play it.

5 MR. JOHNSON: You got to share your screen.

6 MR. STEERING: Oh, there's the shared screen.

7 And --

8 THE WITNESS: When you pick the shared screen,
9 you got to check box the audio on the lower left-hand
10 corner.

11 MR. STEERING: Thank you.

12 MR. JOHNSON: What is it you're trying to
13 share, Jerry?

14 MR. STEERING: Just his audio recording of his
15 interview. That's it.

16 MR. JOHNSON: Oh, his DA audio?

17 MR. STEERING: Yeah. Do you need me to play
18 it?

19 MR. JOHNSON: I don't think so. I'll
20 stipulate that we produced a copy of his DA audio, and
21 I'm assuming that's what 274 is.

22 MR. STEERING: Yeah, it is. Okay. And
23 then -- oh, I know what I need. Here's Exhibit 271,
24 and it's a bunch of pictures of you and your equipment.

25 (Exhibit 271 was marked.)

1 BY MR. STEERING:

2 Q Let me -- okay. 271 is 30 pages, and it looks
3 like you're holding a card. 271-2 -- that's you
4 holding a little card with your name on it, sir?

5 A Yes, sir.

6 Q Okay. There's a bunch of pictures. I'm just
7 going to zip through these.

8 It looks like you had two guns here. Did you
9 have, like, a revolver and a semi-automatic pistol
10 also?

11 A Yes.

12 Q Do you keep the revolver in your ankle?

13 MR. JOHNSON: Objection. Officer safety.

14 BY MR. STEERING:

15 Q Okay. Whatever. Looks like a little one.
16 Looks like a two-inch barrel. Okay. I showed you
17 these photos -- all these photos.

18 Are those photos of you and your equipment,
19 sir?

20 A Yes.

21 Q Okay.

22 MR. STEERING: I think I'm done. Let me just
23 look at the other exhibits.

24 Okay. I'm done.

25 MR. JOHNSON: All right. And we're going by

1 the federal rules, correct?

2 MR. STEERING: Yes.

3 MR. JOHNSON: Okay. We're done, Sergeant.

4 (Proceedings concluded at 2:52 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.

DARREN LEE

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Michael McMorran, hereby certify:

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

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

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

Before completion of the deposition, review of
the transcript [X] was [] was not requested. If
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Dated: 12/29/2020



MICHAEL G. MCMORRAN, CSR No. 13735

