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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

MARGARET ALBA, individually)
and as guardian ad litem for)
minor children A.S., L.S. and)
S.S., and DAISY SANCHEZ,)
individually and successor in)
interest to LEONARD ANGELO)
SANCHEZ, and GLORIA ANN)
ALMAZON,)
)
)
Plaintiffs,)
)
vs.)
)
CITY OF BARSTOW, et al.,)
)
Defendants.)
_____)

No. 5:18-cv-02087-JGB-
(SHK)

Remote Deposition via Zoom videoconference of
City of Barstow Person Most Knowledgeable,
Andrew Espinoza, located in Santa Ana, California,
taken on behalf of Plaintiffs, commencing at 10:05
a.m., on September 9, 2020, remotely reported by
J'nel Erskine, CSR No. 11746, Huntington Beach,
California.

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APPEARANCES OF COUNSEL VIA ZOOM VIDEOCONFERENCE:

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William Spiller, Andrew Buesa, Andrew Espinoza, Jr.,
Jose Barrientos, Jarell Gilmore, Christopher Kirby,
Frank Benitz, and Thomas Lewis:

FERGUSON, PRAET & SHERMAN
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APPEARANCES OF COUNSEL VIA ZOOM VIDEOCONFERENCE:

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Also Present Via Zoom Videoconference:

THOMAS LEWIS

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I N D E X

DEPONENT	EXAMINED BY	PAGE
ANDREW ESPINOZA	MR. STEERING	6

PLAINTIFFS' EXHIBITS FOR IDENTIFICATION:

207 2/24/2018 County of San Bernardino Search Warrant, Bates stamped DEFT-000095-DEFT-000100; 6 pages	9
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DEFENDANTS' EXHIBITS FOR IDENTIFICATION:

A Defendants' Objection to Plaintiff's Notice of Taking Deposition of Person Most Knowledgeable on Behalf of the City of Barstow and Demand for Production of Documents; 19 pages	8
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QUESTIONS WITH AN INSTRUCTION NOT TO ANSWER:
(None)

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SEPTEMBER 9, 2020; 10:05 A.M.

-o0o-

THE STENOGRAPHER: Good morning. My name is J'nel Erskine, a Code-compliant, Certified Shorthand Reporter, licensed by the State of California, Certificate No. 11746.

Today is Wednesday, September 9, 2020, and the time is 10:05 a.m.

We are taking the remote deposition of the City of Barstow Person Most Knowledgeable, Andrew Espinoza, in the matter of Margaret Alba, et al., versus City of Barstow, et al., Case No. 5:18-cv-02087-JGB (SHK). This case is venued in the United States District Court, Central District of California.

To all people attending the deposition, please state your name, the city and state where you are located, and whom you represent. If there is anyone else in the room with you, please have them state their appearance as well.

We will start with the deponent, Mr. Espinoza.

MR. ESPINOZA: Andrew Espinoza, City of Barstow, Barstow, California.

MR. FERGUSON: Good morning. Pete Ferguson,

1 attorney for the City of Barstow, defendants, and
2 also in the room is Detective Lewis.

3 MR. STEERING: Jerry Steering for all plaintiffs.

4 MS. HOEHN: Laurel Hoehn. I'm presently in San
5 Bernardino, city of San Bernardino, State of
6 California, and I represent the County of San
7 Bernardino and Michael Cleary.

8 THE STENOGRAPHER: In light of this Zoom
9 videoconference proceeding, I am not in the same
10 location as the deponent. I will now remotely
11 administer the oath to the deponent.

12 Mr. Espinoza, please raise your right hand.

13 -o0o-

14 ANDREW ESPINOZA,

15 having been first duly administered the oath,

16 was examined and testified as follows:

17 -o0o-

18 EXAMINATION

19 BY MR. STEERING:

20 Q Good morning. Is it detective or sergeant
21 or lieutenant or something else or officer? How do
22 you want me to address you, Mr. Espinoza?

23 A My rank is captain.

24 Q Captain. Okay.

25 And how long have you been a -- you're with

1 Barstow P.D., sir? I mean, I can see that, for the
2 record, you're with Barstow P.D.

3 How long have you been with the Barstow
4 Police Department, Captain?

5 A Twenty-three years.

6 Q Okay. Have you worked for any other law
7 enforcement agency?

8 A No, sir.

9 Q Okay. And are there certain subjects that
10 you're here to testify about as the person most
11 knowledgeable of the Barstow Police Department?

12 MR. FERGUSON: Jerry, as you know, I filed
13 objections to each and every request. And you failed
14 to meet and confer to attempt to whittle down
15 appropriate sections. So there's an objection to
16 each and every issue. If you wish to ask specific
17 questions about this incident, I believe the captain
18 might be sufficiently prepared to go as the person
19 most knowledgeable. But -- but the objections stand.

20 And, in fact, I believe I sent over -- you
21 have a copy of the objections. And I would like to
22 mark those to this deposition. And I can get them to
23 the court reporter sometime during the deposition.

24 Okay. So is he ready to go and discuss the
25 issues that you've identified? The answer to that

1 question is no. Is he -- is he ready to answer
2 questions pertinent to this matter? The answer to
3 that is yes, depending on, of course, what the
4 question is.

5 (DEFENDANTS' EXHIBIT A WAS MARKED
6 FOR IDENTIFICATION AND ATTACHED HEREWITH.)
7 BY MR. STEERING:

8 Q Okay. Captain, would you say as a general
9 proposition that you're familiar with the customs,
10 policies, and practices of the Barstow Police
11 Department regarding obtaining search warrants?

12 A Yes.

13 Q And would that be the same for doing
14 officer-involved shooting investigations?

15 A Yes, sir.

16 Q Okay. Have you seen the search warrant that
17 Detective Lewis obtained to search the plaintiffs'
18 motel room I guess on February 25, 2018? Have you
19 seen that search warrant and the application for the
20 search warrant?

21 A Yes, sir.

22 Q Okay. And we -- I sent a copy of the search
23 warrant as a numbered exhibit to the court reporter.

24 J'nel, do you have any of those exhibits or
25 do you have them available by your e-mail?

1 A I do, sir. I have the copies that you sent
2 of the search warrant and the affidavit.

3 (PLAINTIFFS' EXHIBIT 207 WAS MARKED FOR
4 IDENTIFICATION AND ATTACHED HEREWITH.)

5 BY MR. STEERING:

6 Q Captain Espinoza, do you have in front of
7 you or do you see Exhibit 207?

8 A I do.

9 Q Okay. And could you tell us what 207 is,
10 please?

11 A Well, 207 starts with a report from
12 Detective Cleary and the second page is the face page
13 to the search warrant and then the next page is the
14 affiant's probable cause, his expertise and probable
15 cause for those search warrants.

16 And then 207-4 is the judge approval of the
17 search warrant and 207-5 is the return.

18 Q Okay. All right. Thank you.

19 And have you seen this document prior to
20 this morning, sir?

21 A Yes.

22 Q Okay. On page 207-2 where it's entitled
23 "Search Warrant and Affidavit" and then it has
24 Affidavit" in parentheses, do you recognize Tom
25 Lewis' signature as the affiant on that document?

1 A Yes.

2 Q Okay. And below his signature there is --
3 in parentheses there's letters saying "(Search
4 Warrant)" and then below that, page 2 of Exhibit 207,
5 there's a check-off-the-box list of -- of what the
6 property to be seized via the warrant is and you see
7 there's three boxes checked off there, sir?

8 A Yes.

9 Q And the first one is property and things
10 used to commit a felony. Do you see that, sir?

11 A Yes.

12 Q Okay. And do you -- are you familiar with
13 the February 25th, 2018, shooting of Leonard Sanchez,
14 Senior?

15 A Yes.

16 Q Okay. Do you know of anything that was
17 sought in the plaintiffs' motel room, the Sands
18 Motel, that could be characterized as property and
19 things used to commit a felony?

20 A Yes.

21 Q And what would that be, sir?

22 A The knives that were possessed by
23 Mr. Sanchez.

24 Q Okay. And what felony do you think that --
25 well, what felony are you referring to that the

1 knives have any relevance to?

2 A Well, the officers were faced with
3 Mr. Sanchez holding knives and refusing to drop them
4 and then going back in the motel. So the brandishing
5 or the display of the knife to a peace officer is a
6 violation -- or could be a violation of Penal Code
7 Section 417.8, which is brandishing a deadly weapon
8 to a peace officer as he's trying to make a
9 detention.

10 It could be a 245, P.C. 245, which is
11 assault with a deadly weapon or attempt 245 on the
12 officers because the facts show that at least we know
13 Mr. Sanchez was in possession of knives that led to
14 an officer-involved shooting. It led the officers to
15 take certain action, which could be a probable cause
16 for P.C. 245 as well.

17 And then we wanted to look at the facts of
18 Mr. Sanchez re-entering the room where there's other
19 family members there that he could cause harm to. So
20 those were the main felonies looked at that could be
21 characterized by property or things used to commit a
22 felony.

23 Q Okay. So as far as any felony that the
24 evidence was sought for, one you're saying is
25 California Penal Code Section 417.8?

1 A Yes, sir.

2 Q Is that correct?

3 Okay. 417.8 says, quote, every person who
4 draws or exhibits any firearm, whether loaded or
5 unloaded, or other deadly weapon, with the intent to
6 resist or prevent the arrest or detention of
7 himself ... shall be imprisoned in the state prison
8 for two, three, or four years.

9 So you're familiar with that statute?
10 That's the one you mentioned to me.

11 A Yes, sir.

12 Q Okay. So do you divine from that that
13 the -- the -- when the person who's being
14 investigated draws or exhibits a knife or a firearm,
15 it has to be with the intent to resist or prevent
16 detention or arrest?

17 MR. FERGUSON: Objection. This goes outside the
18 scope of this individual's person most knowledgeable
19 issues that you defined at all, zero.

20 MR. STEERING: Well, he answered the questions
21 and now I'm following up the answers that his --
22 following up questions to his answers. I'm asking
23 about the specific code section that he stated was a
24 basis to get a search warrant to go in that room.

25 MR. FERGUSON: What issue are you talking to in

1 your notification?

2 MR. STEERING: Getting the search warrant. I
3 don't think it's a --

4 MR. FERGUSON: Which one?

5 MR. STEERING: I'll look. You really want me to
6 look through all these. There's tons of items about
7 search warrants. Okay. No. 11, the policies of the
8 San Bernardino County.

9 I need to find your objections.

10 MR. FERGUSON: What's the question as it relates
11 to Issue No. 11?

12 MR. STEERING: It has to do with the
13 justification for getting the search warrant in this
14 case. That's what I'm asking him.

15 MR. FERGUSON: I think he's already testified to
16 that, hasn't he?

17 MR. STEERING: Well, right. Well, he cited the
18 code sections. So I'm just asking about the code
19 sections that he discussed.

20 MR. FERGUSON: Well, that's exceeding the issue.
21 What's the question again, Jerry?

22 BY MR. STEERING:

23 Q The question is, are you claiming that you
24 believe that 417.8 applies to this case? The 417
25 point -- let me ask it another way. Do you believe

1 that Leonard Sanchez, Senior, was being investigated
2 for possible violation of California Penal Code
3 Section 417.8?

4 MR. FERGUSON: Calls for legal conclusion.

5 But you can answer if you know, if you know
6 the answer, if you understand the question.

7 THE DEPONENT: Can you repeat the question again,
8 sir?

9 MR. STEERING. Can I have the reporter read it
10 back, please.

11 (Record read as follows:

12 "Q The question is, are you claiming
13 that you believe that 417.8 applies to this
14 case? The 417 point -- let me ask it
15 another way. Do you believe that Leonard
16 Sanchez, Senior, was being investigated for
17 possible violation of California Penal Code
18 Section 417.8?")

19 THE DEPONENT: Well, I know that why the officers
20 were there and it encompasses the whole thing.
21 There's an O.I.S. that occurred at that location
22 based on certain actions that Leonard Sanchez
23 displayed and did. And so faced with the totality of
24 the circumstances that those actions caused officers
25 to use deadly force and a homicide occurred, then

1 that is a possibility. But it's an investigation and
2 it encompasses the entire officer-involved shooting.

3 BY MR. STEERING:

4 Q So in other words -- look, the search
5 warrant was obtained so that the Barstow Police
6 Department could investigate their officer-involved
7 shooting by a Barstow officer; is that fair?

8 A Well, no. We don't investigate. The San
9 Bernardino County Sheriff's Department Homicide Team
10 investigated the entire shooting.

11 Q So why did Thomas Lewis get the search
12 warrant?

13 A We were asked to get the search warrant by a
14 member of the homicide team.

15 Q In terms of when -- in terms of Barstow
16 Police Department officer-involved shootings and the
17 investigation of those Barstow Police Department
18 officer-involved shootings by the Barstow Police
19 Department, if there's a shooting that takes place at
20 a private residence, is a search warrant routinely
21 obtained to search the residence?

22 A Yes.

23 Q Okay. And that's regardless of -- right.
24 But this -- what I'm trying to get at is this. Okay.
25 Have you seen 1524 of the Penal Code?

1 A Absolutely, 1524(a), yes.

2 Q Okay. And those are the categories within
3 which a California peace officer can obtain a search
4 warrant for a private residence, right?

5 MR. FERGUSON: Objection. The question exceeds
6 the scope of P.M.K. designation.

7 MR. STEERING: Okay. Are you going to answer --
8 are you going to tell him not to answer?

9 MR. FERGUSON: That is legal conclusion and it's
10 argumentative as framed.

11 But if he understands the question, he can
12 answer the question.

13 THE DEPONENT: I'm familiar with the section.
14 Yes, sir.

15 BY MR. STEERING:

16 Q Okay. Isn't it correct that the -- that the
17 Barstow Police Department would have obtained a
18 search warrant to search the plaintiffs' motel room
19 at the Sands Motel regardless of whether or not they
20 thought anything had happened other than an
21 officer-involved shooting?

22 A I don't --

23 MR. FERGUSON: I don't understand your question.

24 BY MR. STEERING:

25 Q Look, let's say there's an officer-involved

1 shooting by a Barstow officer and it happens at a
2 private residence and the officer shot somebody
3 because the officer felt that his life was in -- his
4 life was in danger in some way. Okay.

5 If the Barstow Police Department doesn't
6 believe that the officer committed a crime and
7 doesn't believe that anyone else committed a crime,
8 is it customary for the Barstow Police Department to
9 still get a search warrant to investigate the
10 officer-involved shooting?

11 A Okay. Barstow Police Department is not
12 going to investigate that shooting. Is it customary
13 that when we have the Sheriff's Department Homicide
14 Team come and do that? Yes, it is, to get a search
15 warrant, because there's -- there's several different
16 investigations going on. The criminal investigation
17 into the conduct of the officers is also looked at as
18 well as the actions of the suspect.

19 Q Why would the Barstow Police Department
20 investigate the actions of a suspect who's dead?

21 A Because it encompasses the entire
22 officer-involved shooting. You have to investigate
23 the entire shooting, what led up to it, where it
24 started. The whole thing has to be investigated.

25 So one of the -- and it happens at a private

1 residence. The Fourth Amendment does not allow us to
2 go in there and seize potential evidence without a
3 search warrant in a private residence. Therefore, we
4 gather as much information as we can based on the
5 totality of the circumstances. We submit that
6 information to a judge for a search warrant.

7 Now, in this case the Sheriff's Department
8 asked us to get one, and that is very customary for
9 them to do. That happens a lot. And we don't have a
10 problem helping them out in that aspect of it.

11 Q Okay. On Exhibit 207-3, page 3 of that
12 exhibit, under the section that says "Probable
13 Cause," do you have that, sir?

14 A Yes, sir.

15 Q Okay. The section says "Probable Cause."
16 It starts off, quote, On 2/25/18 at approximately
17 2000 hours I received a phone call from Captain A.
18 Espinoza advising me of an officer involved shooting.

19 And is that in fact correct, sir?

20 A It appears correct. Yes, sir. It's
21 correct.

22 Q I mean, that did happen?

23 A Yeah, that happened.

24 Q Okay. Then the next paragraph. "On 2/25/18
25 at approximately 2037 hours I responded to the

1 incident location at 924 East Main Street," and then
2 parenthetically, the Sands Motel, "and received a
3 briefing from the on duty watch commander, Barstow
4 Police Department Sergeant J. Gilmore," stop.

5 "Gilmore told me that on 2/25/18 at 1821 hours
6 Barstow Police Officers responded to 924 East Main
7 Street reference a subject holding a knife to his
8 neck threatening to kill himself," stop.

9 "Gilbert told me BPD Officers responded to
10 the incident location at approximately 1826 hours and
11 broadcast," quote, "'I have a man holding a knife,"
12 unquote, stop. "Seconds later BPD officers broadcast
13 'shots fired,'" stop.

14 "Gilmore relayed to me that at least one
15 Barstow ... Officer shot the suspect, later
16 identified as Leonard Sanchez, striking him in the
17 chest," stop. "Sanchez was transported to the
18 Barstow Community Hospital, where despite all life
19 saving measures he was pronounced deceased," stop.

20 "No further information is available at this
21 time as the investigation is ongoing. Based on the
22 above information I feel that it is necessary for the
23 Barstow Police Department Personnel as well as San
24 Bernardino County Sheriff's Department Personnel to
25 enter the above location in order to process the

1 incident location for any and all evidence related to
2 the officer involved shooting," stop.

3 "Based on my training and experience, and
4 the information contained in this affidavit, I
5 believe that there is reasonable cause to believe" --
6 or "reasonable cause to believe that evidence
7 involved in this investigation will be found in the
8 above location," stop.

9 Did you approve this statement of probable
10 cause before it was sent to the judge, sir?

11 MR. FERGUSON: Objection; exceeds the scope of
12 P.M.K. designation, calls for a legal conclusion.

13 You can answer.

14 THE DEPONENT: No, sir, I did not.

15 BY MR. STEERING:

16 Q Would you have approved this?

17 A No, sir.

18 Q Pardon me?

19 A No, sir.

20 Q And why would you not have approved this?

21 A Because our detectives are charged with the
22 investigation and we -- they are trained in these
23 matters. And Detective Lewis has not only been
24 trained, but has experience in these matters. And
25 the basis for the search warrant does not necessarily

1 need approval by a supervisor.

2 Q Okay. I probably misspoke when I said would
3 you approve. What I'm saying is -- what I'm saying
4 is, if you were called upon to review this statement
5 of probable cause in support of the issuance of the
6 search warrant for the plaintiffs' motel room, if you
7 were asked to approve it or disapprove it, would you
8 have approved it?

9 MR. FERGUSON: Objection; calls -- incomplete
10 hypothetical as framed, calls for speculation as
11 framed, lacks foundation as framed. It exceeds the
12 scope of the P.M.K. designation.

13 But is your question -- I'm still -- don't
14 have -- I'm still unclear of what your question is
15 asking.

16 MR. STEERING: The question's asking is that
17 if -- if an officer came to him and was going to
18 apply for a search warrant for the plaintiffs' motel
19 room at the Sands Motel and this was the statement of
20 probable cause in that search warrant application and
21 he was -- and Captain Espinoza was called upon to
22 approve or disapprove the -- the contents of the
23 statement of probable cause for the search warrant
24 application, would he have approved this writing?

25 MR. FERGUSON: I think he testified that he

1 doesn't approve or disapprove of the applications for
2 a search warrant of probable cause. So that's why
3 I'm misunderstanding your question.

4 Are you hypothetically asking him --

5 MR. STEERING: Yes. I'm asking him -- yeah,
6 sorry.

7 MR. FERGUSON: -- an opinion that he'd like to
8 render an opinion on? That's what I don't
9 understand.

10 MR. STEERING: I'm going to -- no. It's an --
11 whether or not he would approve such an affidavit in
12 support of a search warrant. In other words, whether
13 he would approve applying to a judge for a search
14 warrant for the plaintiffs' motel room with that
15 language from the statement of probable cause.

16 MR. FERGUSON: My same objections stand. So
17 you're asking him to render a legal conclusion of
18 whether or not this statement of probable cause
19 should or should not be submitted in a search warrant
20 to a neutral magistrate.

21 MR. STEERING: I'm asking the conclusion of a
22 police captain who supervises many people under his
23 command, who knows about search warrants, is familiar
24 with the policies of the Barstow P.D. And I just
25 want to know whether or not he would approve of one

1 of his officers trying to obtain a search warrant
2 with this language in the statement of probable
3 cause.

4 MR. FERGUSON: But I think he's already testified
5 he doesn't approve or disapprove.

6 MR. STEERING: I understand. That's not what I'm
7 asking. I'm not asking you if he did or didn't or
8 does or doesn't. I'm asking, as a captain, who's
9 familiar with the policies of the Barstow P.D. and
10 familiar with the various code sections and the
11 various requirements for a search warrant, I want to
12 know if he would approve that language to be sent to
13 a judge to apply for a search warrant in this case.

14 MR. FERGUSON: But that exceeds the scope of the
15 P.M.K. and he's already testified he doesn't approve
16 or disapprove --

17 MR. STEERING: Please -- please --

18 MR. FERGUSON: So you're wanting him to
19 speculate --

20 MR. STEERING: It's not --

21 MR. FERGUSON: -- as to what --

22 MR. STEERING: Nobody speculates as to what they
23 think.

24 MR. FERGUSON: Well, a judge signed the search
25 warrant. So, obviously, yes. The answer would be

1 yes.

2 MR. STEERING: No. Then he can say it instead of
3 you.

4 MR. FERGUSON: A judge that has the legal
5 training for warrants approved it.

6 MR. STEERING: Look, I sat at judges' offices at
7 least 25 times. When the narcs come in with the
8 search warrant affidavits, they don't even look at
9 them. They just sign them. Okay. So the fact that
10 a judge approved it is totally meaningless.

11 MR. FERGUSON: Are you going to prove that this
12 happened in this case? The opposite would be true.

13 BY MR. STEERING:

14 Q Okay. In the statement of probable cause
15 that I just read you, do you see any facts that
16 would -- that you -- that indicates to you that a
17 crime was committed at all?

18 MR. FERGUSON: And he's already testified.

19 MR. STEERING: No. I'm talking about from this
20 language.

21 MR. FERGUSON: Repeat your answer, Captain,
22 please.

23 BY MR. STEERING:

24 Q From this language, do you see --

25 A The answer to your last question is, yes, I

1 do.

2 Q You would approve this?

3 A No. I see facts in here.

4 Q Okay. Tell me what the facts are. Which
5 facts do you see.

6 A Well --

7 Q I got zipped out of the video.

8 A Pardon?

9 Q I got zipped out of the video. I just see
10 an orange circle.

11 (Discussion held off the record.)

12 BY MR. STEERING:

13 Q You said you do see facts there that
14 indicate a crime was committed. What facts are you
15 referring to?

16 A Okay. Well, I misunderstood your question,
17 then. I thought you meant facts in this incident.

18 Q I mean facts -- just the facts -- I'm just
19 talking about the facts set forth in the statement of
20 probable cause, just the language of the facts set
21 forth in the statement of probable cause. That's all
22 I'm asking about. Okay.

23 A Yes.

24 Q Do you see -- as a police captain that has
25 to deal with crimes and penal code sections all the

1 time and had to deal with that throughout your
2 career, do you see any facts in this statement that
3 indicates somebody committed a crime?

4 A Okay. Yes.

5 Q And please tell me what those facts are,
6 sir?

7 A Okay. So the officer -- in Paragraph 3, the
8 officer goes to a place where he is confronted with a
9 man holding a knife and then the officer -- seconds
10 later the officer has discharged his firearm at the
11 person.

12 Q Okay.

13 A So it's -- it's still there that the officer
14 was confronted with a man with a knife and that an
15 officer-involved shooting occurred there. That
16 officer took action based on what that person did.

17 Q What crime would this -- what crime do you
18 divine from the text of the statement of probable
19 cause in Exhibit 207?

20 A That he brandished a firearm at an -- or
21 brandished a deadly weapon at an officer, the knife
22 being the deadly weapon, and that the officer took
23 the reactive action, which led to the
24 officer-involved shooting.

25 Q Where do you -- from -- from what words do

1 you divine that an officer brandished a knife --
2 excuse me, that anyone brandished a knife at any of
3 the Barstow police officers?

4 A I did it from just 3, Paragraph 3.

5 Q Okay. So "I have" -- okay. So they
6 broadcast, "I have a man holding a knife," and then
7 seconds later somebody shot -- it says, "Shots
8 fired." So you're saying that's indicative that
9 somebody committed a crime?

10 A I'm saying based on the totality of the
11 circumstances and the limited information that I have
12 to look at right here and that's available to us at
13 the time. So your --

14 Q I'm just asking what crime do you divine
15 somebody committed from the facts stated in this
16 statement of probable cause?

17 MR. FERGUSON: Objection; asked and answered
18 numerous times. You're now being argumentative.

19 But can you repeat it again.

20 THE DEPONENT: It's either brandishing, 417, or
21 like I had stated before, a possible 245 on an
22 officer, which led that officer to use the force that
23 he used at that incident. And it's based, sir, on
24 the totality of the circumstances and that's what the
25 Supreme Court has said we evaluate search warrants

1 on, is the totality of the circumstances. So the
2 whole thing is really -- you can't just take one
3 piece of it. You have to show what the officers were
4 called to, what they were faced with, and the limited
5 information you have.

6 This is an officer-involved shooting.
7 Therefore, it's not typical in the way where
8 detectives and investigators can go re-talk to
9 victims and witnesses and gather more information
10 that would help substantiate that probable cause.
11 We're mandated and we're precluded by law not to talk
12 to an officer per the government code. So with the
13 limited information that we have and the totality of
14 everything, from the minute the officer gets the call
15 to the very end, is included in the search warrant.
16 And with that limited information that we have, we
17 petition the court and we ask the court to evaluate
18 this for a search warrant. And Judge Rogan signed
19 the search warrant.

20 Q Well, number one, the fact that Judge Rogan
21 signed a search warrant is meaningless, okay, other
22 than Judge Rogan signed a search warrant.

23 Look, regardless of taking the totality of
24 the circumstances into account, when a judge issues a
25 search warrant, as far as your experience is, it's

1 based on the text of the application from the search
2 warrant itself, right?

3 MR. FERGUSON: Objection. What is your question?
4 It's overbroad.

5 BY MR. STEERING:

6 Q Has it been your experience and your
7 training that -- that when you submit a search
8 warrant application to a judge, that the judge bases
9 their decision based on the facts contained in the
10 search warrant application?

11 MR. FERGUSON: Are you asking him as a person
12 most knowledgeable for the City how search warrants
13 are issued? Is that what you're asking?

14 MR. STEERING: I'm asking as a police captain
15 with his experience. He's a police captain.

16 MR. FERGUSON: He's here for a P.M.K. He's not
17 here for his experience as a police captain. He's
18 talking about the policies and practices of a search
19 warrant that are issued by the City of Barstow. So
20 is your question what as it relates to that?

21 BY MR. STEERING:

22 Q Do you know if the judge who signed the
23 search warrant was given any facts other than those
24 facts contained in the statement of probable cause in
25 Exhibit 207?

1 A Do I know that, no, but I know that the
2 judge would require more information or kick it back
3 to us and ask us for more information, it happens all
4 the time, if the judge didn't feel that there was
5 enough probable cause or that this warrant couldn't
6 stand on its own based on the totality of the
7 circumstances. She would have denied it or she would
8 have sent it back to us.

9 Now, keep in mind that this is Barstow P.D.
10 doing this limited thing of obtaining a search
11 warrant. We have a whole homicide team from the
12 Sheriff's Department in route to Barstow at this
13 time. So if our warrant was denied, then all we
14 would do is brief the Sheriff's Department that our
15 warrant was denied, and then those investigators
16 would be charged with rewriting and resubmitting,
17 gathering more information or whatever they could do
18 at the time to make sure that we meet the threshold
19 for a judge to sign off and enter that private
20 property. But based on the totality of the
21 circumstances, the warrant was signed and we provided
22 it to the Sheriff's Department.

23 Q Actually, as far as you know, the only thing
24 that the warrant was issued on are those facts in the
25 statement of probable cause, right?

1 A Correct. This was submitted to the judge
2 and she signed it. You're right, sir.

3 Q Okay. Do you know whether any witnesses
4 were taken to the Barstow Police Department on
5 February 25, 2018, from the Sands Motel following the
6 officer-involved shooting?

7 A Not to the Barstow Police Department.

8 Q Were they taken to an annex?

9 MR. FERGUSON: Jerry, I can't hear you. Can you
10 speak up a little bit more?

11 MR. STEERING: Yeah, sure. Did you hear the last
12 question?

13 MR. FERGUSON: I did not, to be honest with you.

14 MR. STEERING: J'nel, can you read the question,
15 please.

16 (Record read as follows:

17 "Q Were they taken to an annex?")

18 THE DEPONENT: Yes.

19 BY MR. STEERING:

20 Q Is that leased or owned by the Barstow
21 Police Department or the City of Barstow?

22 A It is.

23 Q Is there a name for the annex or is it just
24 called Annex?

25 A It's called the Barstow Police Detective

1 Division Annex.

2 Q Okay. That's where the detectives work out
3 of?

4 A Yes, sir.

5 Q Did you request that anyone be taken there?

6 A Yes, I did.

7 Q And who did you make the request to?

8 A Detective Lewis.

9 Q And how did you make the request?

10 A I met with Detective Lewis when he came. I
11 debriefed him on the status of the family, Ms. Alba
12 and her children being in a neighbor's room there.
13 It was cold outside. It was not the best place for a
14 family to be. They were in a neighbor's -- somebody
15 else's apartment that they didn't even really know.
16 So once I learned that information, I asked Detective
17 Lewis to go ask Ms. Alba if she'd be willing to go up
18 to the annex where it's more comfortable. The annex
19 is prepared for the detective division, but we also
20 have in it specifically designed for interviews and
21 those type of things. Plus, there's a kitchen there.
22 There's bathrooms. There's facilities. I just knew
23 that there was a lot more amenities there that could
24 help them and get them out of this environment. So I
25 asked him if he would go make contact with them and

1 ask them if they were willing to go up to the annex
2 to eventually talk with the detectives who were
3 coming.

4 Q So what would have happened if Margaret
5 Alba would have said she wasn't willing to go to the
6 annex? What would you have had your officers do?

7 A Then at that time I would have made sure
8 that we have her information and where we could reach
9 her at a later time and then let her go wherever she
10 wanted to go. That's very typical. That's how --
11 that's within our policy and that's how we operate at
12 Barstow P.D. We ask the victims or the witnesses,
13 and if they don't want to, then they don't have to.
14 I would at least try to get their information. Let
15 them know that the detectives would still want to
16 speak to them at a later date maybe, that's possible,
17 a later time. We understand that. So I would at
18 least try to get that information. And I believe we
19 have her information at the time. So there would be
20 no reason to do anything further with her. Just when
21 the detectives would come on seen, then we provide
22 them with the information of the witness.

23 Q When witnesses in officer-involved
24 shootings, let's say, who are related to the person
25 who was shot, are interviewed by Barstow P.D.

1 officers regarding officer-involved shootings and the
2 interviewing officer knows that the civilian involved
3 in the officer-involved shooting is dead, does the
4 Barstow Police Department have any type of custom or
5 practice or policy that you know of regarding telling
6 or not telling the witness that the person who was
7 shot is dead before they're interviewed?

8 MR. FERGUSON: I'm going to object to the
9 question that it's vague and ambiguous. It's
10 overbroad. It lacks foundation. It exceeds
11 information beyond the scope of the P.M.K.
12 designation as well as misconstruing prior testimony,
13 because I believe the captain said, O.I.S.s are not
14 to be investigated in the criminal sense by Barstow
15 police officers. And I think your question was
16 couched in that term. And, therefore, you're
17 misinterpreting prior -- prior statements from --
18 from the captain.

19 MR. STEERING: Can I have the question read back,
20 please, J'nel.

21 (Record read as follows:

22 "Q When witnesses in officer-involved
23 shootings, let's say, who are related to the
24 person who was shot, are interviewed by
25 Barstow P.D. officers regarding

1 officer-involved shootings and the
2 interviewing officer knows that the civilian
3 involved in the officer-involved shooting is
4 dead, does the Barstow Police Department
5 have any type of custom or practice or
6 policy that you know of regarding telling or
7 not telling the witness that the person who
8 was shot is dead before they're
9 interviewed?")

10 MR. FERGUSON: And moreover, Barstow Police
11 Department did not interview the family. So the
12 question is an incomplete hypothetical, calls for
13 speculation as framed.

14 MR. STEERING: There was a -- was it Lewis who
15 was present during all of the interrogations?

16 MR. FERGUSON: No, he wasn't.

17 MR. STEERING: Well, somebody was from Barstow.

18 MR. FERGUSON: No, they weren't.

19 MR. STEERING: Yeah, they were. I have it.

20 MR. FERGUSON: They weren't doing -- no Barstow
21 officer questioned these people about the
22 circumstances of the event. You know that. I know
23 that. Everybody knows that.

24 MR. STEERING: No, I don't know that.

25 Okay. Let's take a five-minute break and

1 let me look at my notes and see if we're done with
2 the captain.

3 MR. FERGUSON: Okay.

4 (Recess taken from 10:49 a.m. to 10:56 a.m.)

5 BY MR. STEERING:

6 Q This is what I was inartfully trying to get
7 before. What I'm trying to get at is, do you know
8 of -- well, let me ask you this: How many
9 officer-involved shootings by Barstow P.D. are you
10 aware of? I'm not asking good or bad. I'm not
11 asking whether it was right or wrong. I'm just
12 asking, let's say, in the last five years -- how
13 about that? -- do you have any idea how many Barstow
14 P.D. shootings you are aware of?

15 A In the last five years?

16 Q Yeah.

17 A Three.

18 Q Was one by Thomas Lewis?

19 A Yes, sir.

20 Q And do you know how long ago that was?

21 A That was just 20- -- just a couple years
22 ago. And I'm not sure the exact year, sir.

23 MR. STEERING: Hang on one second. Bear with me.
24 I'm sorry. My wife called me on the cell phone.

25 MR. FERGUSON: I told her not to call you.

1 BY MR. STEERING:

2 Q Was Lewis' shooting inside a private
3 residence or a private area that could serve as a
4 residence like a hotel room?

5 A Yeah. It was in the -- yes. It was on
6 private property and it was right at the door of a
7 private residence, yes.

8 Q Was it inside the residence?

9 A No. It was right at the front door of the
10 residence.

11 Q Was a search warrant obtained for the
12 residence?

13 A Yes.

14 Q Do you know of any Barstow officer-involved
15 shootings where a search warrant wasn't obtained?

16 A Was not?

17 Q Yes.

18 A I'm not a hundred percent sure, no.

19 Q Okay. Based on your training as a police
20 captain and your many years of experience as a police
21 officer, do you believe that -- that it is proper for
22 a police officer to obtain a search warrant for any
23 officer-involved shooting when the officer-involved
24 shooting takes place inside a private residence?

25 MR. FERGUSON: Objection. The question exceeds

1 the scope of P.M.K. designation. It's an incomplete
2 hypothetical and calls for speculation as framed.

3 You can answer.

4 BY MR. STEERING:

5 Q He's not telling you not to answer, sir.
6 He's just making objections.

7 A If it's in a private residence, to process
8 it without any exceptions, then, yes, a search
9 warrant is required.

10 Q Right. But what I'm asking is, does the
11 Barstow Police Department get search warrants for
12 every officer-involved shooting by a Barstow police
13 officer that takes place inside a private residence?

14 MR. FERGUSON: I think he already answered that
15 by saying he's not sure.

16 BY MR. STEERING:

17 Q Can I have an answer? I don't remember
18 that -- listen, can I just have an answer?

19 A Inside a residence, yes.

20 Q And why?

21 A Because if we don't have -- like I said, if
22 we don't have one of the exceptions, then we're
23 investigating an officer-involved shooting where a
24 death occurred, so there is a homicide there. And to
25 do that in a private residence, we need a search

1 warrant.

2 Q Okay.

3 A So it depends on the circumstances of that
4 particular O.I.S. But if it is in a private
5 residence and it's the option of not getting a search
6 warrant/getting a search warrant, we're going to
7 petition the court for a search warrant.

8 MR. STEERING: I don't have any further
9 questions.

10 Anybody else have questions?

11 MS. HOEHN: Nothing for me.

12 MR. STEERING: Okay. I'm not sure what the court
13 reporters are doing these days with the transcripts.

14 (Discussion held off the record.)

15 MR. FERGUSON: Yeah. And I am ordering a
16 certified copy, please.

17 MS. HOEHN: And the county would also like to
18 order a certified copy, please.

19 (THE DEPOSITION CONCLUDED AT 11:02 A.M.)
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DEPONENT'S DECLARATION

I, ANDREW ESPINOZA, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions, or deletions that I was desirous of making, and that the foregoing is a true and correct transcript of my testimony contained therein.

Executed this _____ day _____ 20____,
at _____, _____.
(City) (State/Country)

ANDREW ESPINOZA

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF ORANGE)
3

4 I, J'nel Erskine, Certified Shorthand Reporter,
5 Certificate No. 11746, for the State of California,
6 do hereby certify:

7 That the foregoing proceedings were taken before
8 me at the time and place therein set forth, at which
9 time the witness was put under oath by me;

10 That the testimony of the witness and all
11 objections made at the time of the examination were
12 recorded stenographically by me and were thereafter
13 transcribed;

14 That the foregoing is a true and correct
15 transcript of my shorthand notes so taken.

16 I further certify that I am neither counsel for
17 nor related to any party to said action.

18 Dated September 30, 2020.
19
20
21

22 

23 _____
24 J'nel Erskine
25 Certified Shorthand Reporter No. 11746

