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7 Attorneys for CITY OF SAN JOSE

8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11
12 LORI RODRIGUEZ, THE SECOND
AMENDMENT FOUNDATION, INC., THE
13 CALGUNS FOUNDATION, INC.,

14 Plaintiffs,

15 v.

16 CITY OF SAN JOSE, et al.,

17 Defendants.
18

Case Number: 5:15-CV-03698-EJD

**DECLARATION OF MARK VANNI IN
SUPPORT OF MOTION FOR
SUMMARY JUDGMENT OR, IN THE
ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT**

DATE: November 10, 2016
TIME: 9:00 a.m.
COURTROOM: 4
JUDGE: Hon. Edward J. Davila

19 I, Mark Vanni, hereby declare:

20 1. I am a Deputy City Attorney for the City of San Jose, licensed to practice law
21 in the courts of this State and before the United States District Court for the Northern
22 District of California. I was assigned to work on this lawsuit and have personal knowledge
23 of the facts contained herein.

24 2. Attached hereto as Exhibit A is a true and correct copy of SJPD Duty Manual
25 section L5705 that was in effect at the time the firearms were confiscated.

26 3. Attached hereto as Exhibit B is a true and correct copy of the City's Petition
27 initiating *City of San Jose v. Edward Rodriguez, et al.* (Santa Clara Superior Court No. 1-
28 13-CV-241669).

EXHIBIT A

Line/Operations Procedures

Firearms booked for safekeeping are held for five (5) business days and then returned to its rightful owner. (12028.5 PC)

L 5703

TAKING OF AMMUNITION FOR SAFEKEEPING:

Officers will not take ammunition for safekeeping when removal of the weapon(s) alone will abate the threatened danger. Officers will exercise reasonable judgment in determining that all weapons have been removed before leaving the ammunition with the owner. When an officer reasonably believes that a person is withholding a weapon, all ammunition located may be taken into custody and booked for safekeeping.

L 5704

BOOKING FIREARMS FOR SAFEKEEPING- DOMESTIC VIOLENCE INCIDENTS

Added 06/06/05

When responding to a domestic violence incident, the officer shall as necessary for the protection of the officer or other persons present:

- Take custody of any firearm in plain sight or discovered pursuant to a consensual search or other lawful search
- Ask if there are any other firearms on the premises
- Contact Communications and request a check be made through the Automated Firearms System to determine if the subject owns a firearm
- Have Communications run a warrant check
 - The warrant check will also verify if a Domestic Violence Restraining Order (DVRO) is in effect and if there is an order prohibiting firearms
 - If the officer determines that a protective order has been issued but not served, the officer shall immediately notify the respondent of the terms of the order
 - Have Communications notify the Sheriff's Office Warrants Unit to have proof of service entered into Domestic Violence Restraining Order System
- Complete the Property Form (Form-13), listing the firearms taken from the owner/possessor
- Give the owner/possessor a copy of the Property Sheet (F-13)
- Give the owner/possessor of the firearm a report receipt (Form 200-45A)
- Advise the owner/possessor to obtain a DOJ Firearms Release Form from the DOJ webpage or contact the Firearms Division for a return application
- Firearms taken into custody must be booked in the Property Room

L 5705

BOOKING FIREARMS FOR SAFEKEEPING - MENTAL HEALTH INCIDENTS

Added 06/06/05

When detaining or apprehending a person at a W&I 5150 incident, the officer shall:

- Have Communications check DOJ Automated Firearms System to determine ownership of firearms
- Ask if there are any firearms on the premises
- Confiscate any firearm owned, in the possession or under the control of the subject

*Property of San Jose Police Department
For Official Law Enforcement Use Only
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DM2012 v2 041812

SJ000105

Line/Operations Procedures

- Check DOJ Supervised Release File and Mental Health Firearms Prohibition system. If weapons are present, subject may be charged
- Complete the Property Sheet (Form-13), listing the firearms taken from the owner/possessor
- Give the owner/possessor a copy of the Property Sheet (Form-13)
- Give the owner/possessor of the firearms a report receipt (Form 200-45A)
- Advise the owner/possessor to obtain a DOJ Firearms Release Form from the DOJ webpage or contact the Firearms Division
- Firearms taken into custody must be booked in the Property Room

L 5706

BOOKING FIREARMS FOR SAFEKEEPING - ACCEPTANCE OF FIREARMS SUBJECT TO RELINQUISHMENT UNDER PROTECTIVE ORDERS

Added 02/10/08

Persons subject to protective orders are required to relinquish any firearms in their possession or control within 24 hours after service of the order, either by surrendering the firearms to a local law enforcement agency or by selling the firearms to a licensed gun dealer. A person who chooses to surrender the firearm to the Department will be directed to respond to the Information Center, and an officer in the Center will take possession of the firearm for safekeeping. The person should be in possession of a DV-800/JV-252, *Proof of Firearms Turned In or Sold*, form. The accepting officer completes sections 4 and 6 of the DV-800/JV-252 form.

The officer who takes possession of the firearms is responsible for completing a Form 2 and booking the surrendered firearms for safekeeping.

EXHIBIT B

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9 Attorneys for Petitioner,
10 CITY OF SAN JOSE

ENDORSED
FILED
2013 FEB 22 PM 3:07
David H. [unclear] Superior Court
County of Santa Clara
Dr. [Signature]

11 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

12 CITY OF SAN JOSE, a municipal
13 corporation,

14 Petitioner,

15 v.

16 EDWARD V. RODRIGUEZ,

17 Respondent.

18 CASE NO. 113CV241659

19 PETITION RE: DISPOSITION OF
20 WEAPONS

21 STATEMENT OF FACTS

22 On Thursday, January 24, 2013, officers from the San Jose Police Department were
23 dispatched to the residence of Respondent Edward V. Rodriguez (hereinafter "Respondent") and his
24 wife in San Jose, California to investigate a domestic disturbance. Respondent's wife had contacted
25 9-1-1 Emergency Response personnel to report that Respondent was seated near a window and
26 yelling in the direction of the exterior of the house. Respondent's wife claimed that Respondent had
27 not been sleeping during the past forty-eight hours and that he may be suffering from a mental illness.
28 She was fearful of Respondent's behavior as well as his access to firearms within the residence.

Upon arrival, an officer made contact with Respondent's wife. He heard odd noises similar to
grunting followed by bizarre speech and cynical laughter. When the officer entered the house and
made contact with Respondent, his laughter turned to an angry facial expression with laughter to
follow again. The officer attempted to converse with Respondent, but he did not engage the officer.

1 Respondent commenced talking about the CIA, the Army and other subjects. He claimed he was
2 affiliated with the CIA.

3 The officer queried Respondent as to whether he had ingested any drugs or prescription
4 medications. He answered that he had only ingested water. Respondent was perspiring heavily and
5 his respiration was rapid and heavy. Family members claimed that his behavior was becoming
6 increasing worse. Respondent's wife stated that after a previous visit by a police officer, he was
7 depressed. During this current police contact, she was fearful of Respondent's behavior.

8 The officer determined that Respondent was delusional and possibly suffering from a mental
9 condition. He was acting irrationally; his mannerisms were bizarre and aggressive. Respondent
10 changed personalities within seconds.

11 Based on the officer's training and experience, coupled with the officer's observations of
12 Respondent and the fact that Respondent attempted to break his own thumb when the officer asked
13 him if he wanted to hurt himself, the officer believed that Respondent was a danger to himself and
14 others. In consideration of the safety of the officer as well as Respondent, the officer awaited the
15 arrival of other officers prior to placing hand-cuffs on Respondent due to his massive girth.

16 Due to Respondent's size and apparent medical condition, San Jose Fire Department
17 personnel and medical personnel responded to the scene. Once Respondent was secured onto the
18 gurney, he continued to break the restraints. Medical personnel requested that an officer accompany
19 them within the ambulance for transport. Respondent was transported to Santa Clara Valley Medical
20 Center for medical treatment and a 72-hour hold and psychological evaluation.

21 During a protective sweep for weapons inside of Respondent's house, the officer located
22 twelve firearms within a gun safe. One firearm belonged to Respondent's wife. However, since
23 Respondent had access to all the firearms, all twelve firearms were confiscated from Respondent's
24 residence by the officers and booked into the San Jose Police Department for safekeeping.

25 The following is a description of the twelve aforementioned firearms:

- 26 1) .44 caliber Dan Wesson Magnum revolver;
- 27 2) .44 caliber Smith & Wesson Magnum revolver;
- 28 3) 12-gauge Browning single-barrel shotgun;

- 1 4) 12-gauge Browning double-barrel shotgun;
- 2 5) .22 caliber Ruger semi-automatic rifle;
- 3 6) .30 caliber Ruger handgun;
- 4 7) .22 caliber Winchester rifle;
- 5 8) .22 caliber Marlin Firearms semi-automatic rifle;
- 6 9) .22 caliber Remington semi-automatic rifle ;
- 7 10) 7mm caliber Browning semi-automatic rifle;
- 8 11) 12-gauge Winchester single-barrel shotgun; and
- 9 12) .357 Smith & Wesson Magnum revolver.

ARGUMENT

11 Welfare and Institutions Code Section 8102 was amended in response to the action *Bryte v.*
 12 *City of La Mesa* (1989) 207 Cal.App.3d 687, and became effective September 27, 1989 under an
 13 urgency measure passed by the California Legislature. Pursuant to this section, the City of San Jose
 14 now petitions the Court to retain possession of said weapons and to allow forfeiture of said weapons.
 15 According to the responding officer's crime report, a copy of which is attached to the Declaration of
 16 Officer Steven Valentine¹, filed herewith, Respondent appears to be a danger to himself and/or
 17 others.

18 Furthermore, during the 1990 legislative session, Welfare and Institutions Code Section 8103
 19 was amended to add subsection (f), which criminalizes, among other things, possession or ownership
 20 of firearms by any person who has been admitted to a health care facility pursuant to Sections 5150,
 21 5151 and 5152. This prohibition is effective unless and until the person obtains a Court Order finding
 22 the person to be likely to use firearms in a safe and lawful manner.

23 At the time of filing this Petition, it is not known whether Respondent was officially admitted to
 24 the health care facility or whether he was released after an evaluation by hospital personnel. Should
 25 Respondent request a hearing on this matter, this Petitioner will obtain such information and submit
 26 same to the Court at or before the hearing.

27
 28 ¹At the time that this Petition was filed with the Court on 2/22/13, Petitioner had not yet secured the Declaration of Officer Steven Valentine in support of this Petition. Accordingly, with the Court's indulgence, Petitioner will supplement this Petition with Officer Valentine's Declaration as soon as further contact is made with him.

1 If Respondent was not admitted, Section 8103 does not apply and the Court should simply
2 make the determination under Section 8102. If Respondent was admitted, the Court may not return
3 the weapons because Respondent would not be permitted to possess such weapons, unless and until
4 Respondent petitions the Court and obtains an order pursuant to Section 8103(f)(4).

5 Even in a case implicating Section 8102, the determination should be made as to whether
6 return of the weapons would be likely to endanger Respondent or others. If the Court finds that such
7 danger exists, the Petition should be granted and the weapons forfeited. If the Court is unable to find
8 that such danger exists, the Court should rule that the City of San Jose shall retain custody of the
9 weapons until Respondent obtains a Court Order pursuant to Section 8102. If no order is obtained
10 within two (2) years, the City of San Jose should then be able to dispose of the weapons. It would be
11 unduly burdensome and it would present storage and procedural problems to require the City of San
12 Jose to retain the weapons for a period longer than two (2) years.

13 CONCLUSION

14 Based upon the above argument, the City of San Jose respectfully requests this Court to order
15 the San Jose Police Department to retain Respondent's weapons and that the weapons be forfeited.

16 DATED: February 22, 2013

RICHARD DOYLE, City Attorney

17
18 By: Mark Vanni
19 MARK J. VANNI
Associate Deputy City Attorney

20 Attorneys for Petitioner,
21 CITY OF SAN JOSE
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24
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EXHIBIT C

1 Donald E. J. Kilmer, Jr. [SBN: 179986]
LAW OFFICES OF DONALD KILMER
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San Jose, California 95125
3 Voice: (408) 264-8489
Fax: (408) 264-8487

4 Attorney for Respondent:
5 LORI RODRIGUEZ

6
7
8 SUPERIOR COURT OF CALIFORNIA
SANTA CLARA COUNTY
9 CIVIL LAW DIVISION

10 CITY OF SAN JOSE,
11 Petitioner,

12 vs.

13 EDWARD RODRIGUEZ,
14 Respondent.

15 _____
16 LORI RODRIGUEZ,
17 Co-Respondent.

Case No.: 1-13-CV-241669

**RESPONDENT'S and/or
CO-RESPONDENT'S RESPONSE
AND REQUEST FOR HEARING**

Welfare and Institutions Code §§ 8100 et
seq

18 By and through undersigned counsel, LORI RODRIGUEZ, Co-Respondent,
19 hereby requests a hearing in the above-entitled matter.

- 20 1. LORI RODRIGUEZ is the Wife of Respondent EDWARD RODRIGUEZ.
- 21 2. The firearms that are subject to disposition by this Court in this action
22 either: (a) belong to LORI RODRIGUEZ , or (b) she has a community
23 property interest in said firearms.
- 24 3. LORI RODRIGUEZ is eligible to own, possess and acquire firearms.
- 25 4. LORI RODRIGUEZ has the means to safely store firearms and ammunition
26 in the family home and deny access to said firearms and ammunition to her
27 husband EDWARD RODRIGUEZ, who currently remains a prohibited
28 person.

1 5. LORI RODRIGUEZ reserves all of her substantive and procedural rights,
2 including the right to file supplemental pleadings, file pre-trial motions and
3 conduct discovery.
4

5 Respectfully Submitted,

6 Date: April 12, 2013

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10 Donald Kilmer
Attorney for LORI RODRIGUEZ

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Donald Kilmer
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EXHIBIT D

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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

BEFORE THE HONORABLE PETER H. KIRWAN, JUDGE

DEPARTMENT 8

---oOo---

CITY OF SAN JOSE,

PETITIONER,

-VS-

E. RODRIGUEZ,

RESPONDENT.

)
)
)
) NO. 1-13-CV-241669
)
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)
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---oOo---

REPORTER'S TRANSCRIPT OF PROCEEDINGS

AUGUST 9, 2013

---oOo---

A P P E A R A N C E S:

FOR THE PLAINTIFF:

MARK VANNI
Attorney at Law

FOR THE DEFENDANT:

DONALD KILMER
Attorney at Law

OFFICIAL COURT REPORTER:

MELISSA CRAWFORD, CSR, RPR
CSR NO. 12288

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PETITIONER'S EXHIBITS

DESCRIPTION

MARKED

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Document

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RESPONDENT'S EXHIBITS

DESCRIPTION

MARKED

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Document

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1 San Jose, California

August 9, 2013

2 P R O C E E D I N G S

3 THE COURT: All right, we're going to go on the record
4 this morning. This is the matter of City of San Jose versus
5 Rodriguez. Can I please get appearances?

6 MR. VANNI: Yes, Your Honor. Good morning. Mark
7 Vanni on behalf of the City of San Jose.

8 MR. KILMER: Good morning, Your Honor. Donald Kilmer
9 on behalf of Lori Rodriguez. Ms. Rodriguez is seated next to me
10 at counsel table.

11 THE COURT: All right. Good morning to each of you.
12 We've got an officer here; is that correct?

13 MR. VANNI: We do, Your Honor.

14 THE COURT: Okay. Do you want state your appearance,
15 sir?

16 OFFICER VALENTINE: Officer Steven Valentine, San Jose
17 PD. Badge 3985.

18 THE COURT: All right, this matter is on calendar this
19 morning. It's a continued hearing from our law and motion
20 calendar. Relates to a disposition of firearms. Mr. Kilmer
21 requested a hearing. I want to reiterate the fact that we're
22 going to do this efficiently and we're going to streamline it.
23 To the extent that you want to provide some testimony, I'm going
24 to require that you do it by offer of proof. If the other side
25 has any questions, or whatnot, they can ask. All right? So
26 we'll start with the City of San Jose. Mr. Vanni?

27 MR. VANNI: Yes, Your Honor. We have our officer
28 present today. Do you want me to give an offer of proof as to

1 his statement?

2 THE COURT: Yes.

3 MR. VANNI: Well, as stated in the City's declaration
4 that was attached to its petition, Officer Steve Valentine
5 received a call for service at the Rodriguez family home because
6 of a -- to investigate a domestic disturbance. Officer
7 Valentine arrived on scene. Made contact with Ms. Rodriguez.
8 Then made contact with Mr. Rodriguez where he noticed, or
9 observed, that Mr. Rodriguez was acting delusional. He was
10 rambling and speaking about the CIA and the Army and individuals
11 watching him.

12 Officer Valentine was also informed, prior to
13 arriving, that there were guns in the home. So that added a
14 level of sensitivity to the matter. Although the guns were not
15 out. Officer Valentine, after observing Mr. Rodriguez and his
16 behavior, determined that he was a danger to himself and to
17 others and determined to place him on a 5150 hold and transport
18 him to Valley Medical Center. When officer Valentine, with the
19 assistance of other officers who arrived, detained
20 Mr. Rodriguez, he attempted to injure himself by pulling his
21 thumb back.

22 When Mr. Rodriguez was then transported to Valley
23 Medical Center Officer Valentine remained behind. He informed
24 Ms. Rodriguez that pursuant to the Welfare and Institutions Code
25 Section 8102 he would need to confiscate the weapons.
26 Ms. Rodriguez then went and opened the safe. It was a dual
27 combination key safe. And then Ms. Rodriguez then had to obtain
28 the key. She opened the safe and Officer Valentine saw 12

1 weapons inside. Various handguns and rifles. Those weapons
2 were confiscated and they're documented in the police report.
3 And they remain currently in the possession of the City of San
4 Jose.

5 When Mr. Rodriguez was at Valley Medical Center he was
6 evaluated and determined to be a danger to himself and was
7 admitted pursuant to 5151 and 5152, which means that he,
8 himself, was a prohibited party under Welfare and Institutions
9 Code 8103. That issue is not in dispute with the opposing party
10 and the City.

11 So the issue now before the Court is whether or not
12 weapons can be returned to the home where somebody who is a
13 prohibited party resides. And the City believes that to do so
14 would result in a likely danger to others and to Mr. Rodriguez.
15 While Lori Rodriguez has promised and pledged to maintain the
16 weapons in a safe without providing access to Mr. Rodriguez,
17 given the observations that Officer Valentine observed on that
18 evening, as well as past instances, the City of San Jose has
19 responded to that house on a number of occasions because of --
20 to do welfare checks and to look into Mr. Rodriguez's mental
21 state, the City believes that there is just too much of a risk
22 that Mr. Rodriguez would be able to access those weapons and --
23 either through coercing Ms. Rodriguez or overpowering her. And
24 unfortunately there is just no way once the weapons are back in
25 Ms. Rodriguez's possession to determine or to confirm that she's
26 indeed holding them the way that she pledges.

27 THE COURT: All right. Officer Valentine, we're going
28 to swear you in. I'm going to ask if you affirm the statements

1 that have been made for an offer of proof. Could I ask you to
2 please stand and raise your right hand.

3 MR. KILMER: You want to swear both witnesses at the
4 same time, Your Honor?

5 THE COURT: We can do that. Ms. Rodriguez, would you
6 stand up, please.

7 (Whereupon, the witnesses were duly sworn in this
8 matter.)

9 OFFICER VALENTINE: Yes, I do.

10 RESPONDENT LORI RODRIGUEZ: Yes, I do.

11 THE COURT: And, Officer Valentine, I want to ask you
12 on the record, you heard the statements that were made by
13 counsel for the City as an offer of proof to what you would
14 testify if you were here testifying under oath. Do you confirm
15 those statements and the accuracy of those statements?

16 OFFICER VALENTINE: Yes, Your Honor.

17 THE COURT: Okay. All right. Mr. Kilmer, do you have
18 any questions for Officer Valentine?

19 MR. KILMER: Just briefly, Your Honor.

20 THE COURT: Okay.

21 **CROSS-EXAMINATION**

22 BY MR. KILMER:

23 Q. Officer Valentine, you testified, by way of offer of proof,
24 that the guns were in a gun safe. Were there any guns that were
25 not in the gun safe at the house?

26 A. No, there was not.

27 Q. Did you -- in addition to removing the firearms, did you
28 remove any ammunition?

1 A. No, I did not.

2 Q. Did you see any ammunition?

3 A. I believe there was ammunition, yes.

4 Q. And you left the ammunition at the house?

5 A. Yes.

6 Q. Where was the ammunition that you left at the house stored?

7 A. In the safe.

8 Q. When -- did Ms. Rodriguez open the safe or did you open the
9 safe after she gave you the combination?

10 A. Ms. Rodriguez opened it.

11 Q. Okay. And what did she do? What was the procedure she
12 went through to open the safe?

13 A. I believe it was a two combination. She had -- couldn't
14 recall exactly what the combination was. It took her a couple
15 minutes.

16 Q. Okay.

17 A. And then she had to use a key also and she opened up the
18 safe.

19 Q. Okay. Was the key used to unlock the combination dial or
20 was it actually used to unlock the safe?

21 A. I did not observe her open the safe. I believe I was still
22 doing paperwork for the transport of Mr. Rodriguez.

23 MR. KILMER: Your Honor, may I have this brochure
24 marked for identification as Exhibit A? I have previously
25 provided a copy to opposing counsel. I have a courtesy copy for
26 the Court as well.

27 THE COURT: All right. You can hand that to my clerk.

28 THE CLERK: Marked for identification only as

1 Respondent's Exhibit Number 1.

2 (Whereupon, Respondent's Exhibit 1 was marked for
3 identification.)

4 MR. KILMER: Do I want to have the witness look at the
5 exhibit or the -- I think you have the exhibit.

6 THE COURT: Yeah.

7 Q. (By Mr. Kilmer) Officer, I'm handing you a document that
8 has been marked for identification as Exhibit 1. And I'm going
9 to turn to a page in here. It's towards the middle of the
10 brochure. It says -- unfortunately there are no page numbers.
11 It says Lincoln Series. And I'm going to ask you to take a look
12 at a safe in the lower right-hand corner that says LX 25. Does
13 that appear to be the kind of safe that you were retrieving the
14 firearms from?

15 A. To be honest with you, I couldn't even tell you what the
16 safe looked like. I just remember the door being opened when I
17 started retrieving the firearms from inside the safe. The
18 appearance, I don't -- I never saw the outside of that door.

19 Q. Okay.

20 A. I just -- like I said, I was outside doing paperwork. I
21 came in and I started inventorying the firearms.

22 Q. Okay. Does that look to you --

23 A. I wish I could tell you more.

24 Q. That's okay. I'm not asking you to testify to anything you
25 don't know.

26 MR. KILMER: Your Honor, I believe that we can enter
27 into a stipulation at this point that I previously arranged with
28 the City Attorney's office. That is that the gun safe at the

1 Rodriguez home meets all of the requirements of the regulations
2 promulgated by the Office of the Attorney General of the State
3 of California.

4 MR. VANNI: And, Your Honor, that's certainly a
5 stipulation I'd be willing to enter to. It appears if you are
6 going to purchase a gun safe this would be the safe to purchase.

7 MR. KILMER: Your Honor, I ask that this exhibit be
8 admitted.

9 THE COURT: Any objection?

10 MR. VANNI: No, Your Honor.

11 THE COURT: All right. This will be admitted as
12 Respondent's 1.

13 (Whereupon, Respondent's Exhibit 1 was admitted into
14 evidence.)

15 MR. KILMER: I will be handing it back to your clerk.
16 I have no further questions of this witness, Your Honor.

17 THE COURT: Okay. Anything further, Mr. Vanni?

18 MR. VANNI: No, Your Honor. But I would request that
19 the City's petition as well be marked as Exhibit 1 I guess.

20 THE COURT: Let's make sure that -- because -- I
21 believe I got a couple things from the City. The actual
22 petition itself you're asking that that be admitted into
23 evidence?

24 MR. VANNI: Excuse me, the declaration of Officer
25 Valentine.

26 THE COURT: Any objection?

27 MR. KILMER: No objection, Your Honor.

28 THE COURT: All right. That'll be admitted. Let's

1 just do them consecutive. That'll be next in order.

2 THE CLERK: All right.

3 (Whereupon, Petitioner's Exhibit 2 was admitted into
4 evidence.)

5 THE COURT: Anything further with respect to Officer
6 Valentine?

7 MR. VANNI: No, Your Honor.

8 THE COURT: Okay. The Court has a couple quick
9 questions. Officer Valentine, how many times, to your
10 knowledge, had the San Jose Police been out there for
11 disturbance-type calls.

12 OFFICER VALENTINE: To my knowledge, I believe it was
13 at least two times before I arrived that I knew -- that we had
14 already been there before.

15 THE COURT: All right. And these involved
16 specifically Mr. Rodriguez?

17 OFFICER VALENTINE: Yes, Your Honor.

18 THE COURT: Okay. All right. And what's the
19 timeframe, in terms of the span, between those calls?

20 OFFICER VALENTINE: Usually, if I would know, it would
21 be no more than six months. We're going through a new system.
22 So we don't have all the information available to us right away.
23 It's a lengthy process.

24 THE COURT: All right. Okay. All right, anything
25 further from the City at this point?

26 MR. VANNI: If we could maybe just get some foundation
27 from Officer Valentine about his background and dealing with
28 people with mental illness. If the Court would like me to do

1 that I can do that.

2 THE COURT: I don't know that that's necessary.

3 MR. KILMER: I don't think it is, Your Honor. I think
4 the officer is eminently qualified to determine if somebody is
5 to be taken in for a 5150 hold.

6 MR. VANNI: That's fine.

7 THE COURT: Right. Okay.

8 MR. VANNI: Nothing further.

9 THE COURT: Nothing further. All right, Mr. Kilmer?

10 MR. KILMER: If the City is closing it's evidence I'd
11 ask the Court to just go ahead and deny the petition at this
12 point because there's been no evidence presented that Ms. Lori
13 Rodriguez is either a prohibited person or that she's a danger
14 to herself or others or that she wouldn't store the firearms in
15 a safe manner.

16 THE COURT: So, in essence, you're asking for the
17 equivalent of a nonsuit at this point.

18 MR. KILMER: At this point in time, Your Honor, if the
19 Court does deny it then I'm prepared to put on a case.

20 THE COURT: Yeah, and I am going to deny it. I think
21 there is evidence. She clearly lives there. The guns were
22 there. There is an issue that's been raised, and I think it's
23 been confirmed through some of the testimony, about concern that
24 the guns being there would present a problem. So I'm going to
25 deny your motion. So if you want to present your evidence at
26 this point.

27 MR. KILMER: Thank you, Your Honor. Well, then I
28 guess I'm going to recall the officer at this point.

DIRECT EXAMINATION

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BY MR. KILMER:

Q. Officer Valentine?

A. Yes.

Q. Or is it Balentine?

A. Valentine.

Q. Officer Valentine, on the day in question -- I believe it was January 24th of this year?

A. Yes.

Q. Were there any firearms out of the safe or present during that event?

A. Not to my knowledge, no.

Q. Okay. You testified earlier that on at least one prior occasion, perhaps two, that the San Jose Police had been called out to the Rodriguez home; is that correct?

A. Yes.

Q. On any one of those prior two occasions were firearms present or out during the situation?

A. I did not respond to those prior occasions.

Q. Do you have any testimony that you can offer to this Court that firearms were out or present during any of those prior occasions?

A. No, I do not.

MR. KILMER: Nothing further of this witness, Your Honor.

THE COURT: All right. Any further testimony you want provide at this point?

MR. KILMER: I'd like to put my client on now, Your

1 Honor.

2 THE COURT: You can make an offer of proof.

3 MR. KILMER: Thank you, Your Honor.

4 THE COURT: Let me just say, Ms. Rodriguez, we've
5 sworn you in under penalty of perjury. I've asked your lawyer
6 to make an offer of proof. It's a way of really streamlining
7 the evidence. I want you to listen very carefully to it. At
8 the conclusion I'm going to ask if you agree and confirm to the
9 statements that are made. And you're going to be under oath,
10 okay? All right.

11 **DIRECT EXAMINATION**

12 BY MR. KILMER:

13 Q. Ms. Rodriguez, on June 14th we filed a declaration that you
14 filed on May 29th, 2013. And I'm going to hand you a copy of
15 what is a declaration and offer of proof and ask that you review
16 that document.

17 THE COURT: I'm sorry, counsel, what's the date?

18 MR. KILMER: It was a declaration offer of proof filed
19 on June 14th, Your Honor.

20 THE COURT: Okay.

21 Q. (By Mr. Kilmer) Ms. Rodriguez, I'd ask you to turn to what
22 is attached to your declaration as Exhibit A. I'll ask if you
23 can identify that exhibit.

24 A. This is a provisional receipt from the purchase of the
25 safe.

26 Q. All right. And could you please turn to Exhibit B. Please
27 identify that exhibit?

28 A. This is the receipt from the locksmith that I changed the

1 lock on the safe.

2 Q. And when did you have the lock changed?

3 A. April 26th of this year.

4 Q. All right. How is it that your gun safe works? You heard
5 the officer testify there is a key and a dial. Can you explain
6 to the Court how your gun safe works?

7 A. You need the key to unlock the dial to be able to enter the
8 combination. And then it's a combination lock to open the safe.

9 Q. All right. And how many numbers are required to -- first
10 of all, how many numbers are on the dial of the gun safe?

11 A. 0 to 99.

12 Q. All right. So it's a hundred possible combinations?

13 A. Probably more than that.

14 Q. And it requires three numbers?

15 A. Yes.

16 Q. You have to go left, right, left?

17 A. Yes. And several times past the number and stop, and then
18 several times the other way and stop.

19 Q. Okay. And for clarification for the Court, the key, that
20 was talked about earlier, does not open the gun safe?

21 A. No.

22 Q. All right. The key just unlocks the dial?

23 A. Correct.

24 Q. And how many keys are there for unlocking the dial?

25 A. Two.

26 Q. And where are those keys kept?

27 A. I have them.

28 Q. Okay. I'd ask you to turn to Exhibit C of your offer of

1 proof. And identify that document, please.

2 A. This is when I did the fingerprint check and sent it off so
3 that I could be approved to own firearms.

4 Q. Okay. And the date on that note? At the top of the
5 document is the State of California Department of Justice Bureau
6 of Firearms, personal firearms eligibility check notification;
7 is that correct?

8 A. Yes.

9 Q. The date on that is May 8th, 2013?

10 A. Yes.

11 Q. So on that date you were cleared to own and possess
12 firearms?

13 A. Correct.

14 Q. Since May 8th of 2013, have you committed any felonies?

15 A. No.

16 Q. Have you been taken in for a 5150 hold yourself?

17 A. No.

18 Q. Have you had any restraining orders filed against you?

19 A. No.

20 Q. As far as you know, as you sit here today, you're still
21 authorized to own, possess, acquire and own firearms and
22 ammunition?

23 A. Yes.

24 Q. Thank you. The declaration that you submitted says that
25 you're aware of the potential criminal liability if you allow
26 your husband access to the safe. You understand that's a pretty
27 serious consequence, correct?

28 A. Yes.

1 Q. And you know you can go to prison if you quite possibly
2 even negligently or intentionally allow your husband to have
3 access to firearms and ammunition?

4 A. Yes.

5 Q. And you're willing to assume that risk?

6 A. Yes.

7 Q. All right.

8 MR. KILMER: Nothing further, Your Honor.

9 THE COURT: Okay. Mr. Vanni?

10 MR. VANNI: Just one question.

11 **CROSS-EXAMINATION**

12 BY MR. VANNI:

13 Q. Ms. Rodriguez, on the date of the incident there's a
14 reference in Officer Valentine's report that you stated that you
15 were fearful of your husband's behavior. Is that an accurate
16 statement?

17 A. Fearful for myself or fearful for --

18 Q. Yes or no? The fearful -- the statement is that you were
19 fearful of your husband's behavior.

20 A. I don't know that fearful is the right word. So I can't
21 really say yes or no to that.

22 Q. Okay. Well, were you afraid for your husband's safety or
23 for your safety?

24 A. Um --

25 Q. Or for the safety --

26 A. Not afraid for safety. Just he needed help.

27 MR. VANNI: Okay. Nothing further, Your Honor.

28 THE COURT: I have a couple quick questions. Who

1 purchased the guns?

2 RESPONDENT LORI RODRIGUEZ: A combination. Some were
3 my family's guns that have been there for years. One is I
4 actually purchased. A couple he did. And some were given to
5 us. Array of different ways.

6 THE COURT: All right. And prior to the incident that
7 is at issue here involving Officer Valentine's investigation,
8 did he have access to the guns?

9 RESPONDENT LORI RODRIGUEZ: No.

10 THE COURT: All right. Has he ever had access to
11 those guns?

12 RESPONDENT LORI RODRIGUEZ: Years ago. But I had had
13 both keys for years at that point.

14 THE COURT: All right. Anything further?

15 MR. VANNI: No, Your Honor.

16 THE COURT: No. All right. What I want to do is I'm
17 going to submit it on the evidence. I want to hear from both
18 counsel. Here is obviously the issue, the issue is we've got
19 somebody living with Ms. Rodriguez, her husband, who can't -- is
20 not allowed to use the firearms. The defense is predicated upon
21 the fact that these firearms are going to be kept in a safe.
22 Kept from him. He won't have access to them. I think what I
23 want to hear from both sides is what the Court should do in this
24 situation, and any authority you have that you want the Court to
25 review, all right? So we'll start with the City.

26 MR. VANNI: Well, Your Honor, Mr. Kilmer is correct
27 that the City has no evidence that Lori, herself, is a
28 prohibited party. The issue though is with her husband. And

1 the standard under 8102 is whether or not return of the weapons
2 would be a likely danger to others, as well to Mr. Rodriguez.
3 And the unfortunate set of circumstances in these types of cases
4 is if that -- if that burden is shown, which the City believes
5 it has because the mental health professionals at Valley Medical
6 Center have determined that Mr. Rodriguez is a prohibited party.
7 That at the time that Officer Valentine took him in he was a
8 danger to himself and to others. And we haven't heard any
9 medical testimony or any offer of proof as to what Mr. Rodriguez
10 has been doing to kind of change his mental behavior or
11 remediate his mental illness. So there is just no way if these
12 weapons are returned that anybody can monitor and ensure that
13 Mr. Rodriguez will not have access to them.

14 The City has proposed a few options. Either the guns
15 be held at another location away from the home. They could also
16 be sold. The City is certainly interested or willing to enter
17 into that type of stipulation to sell them through a third party
18 gun dealer. Or they could be held in the house if they're
19 rendered inoperable. I'm not a gun expert myself, but I imagine
20 the weapons can be taken apart and the firing mechanisms can be
21 kept outside of the home. So unfortunately, however, the City
22 believes that returning these weapons to the Rodriguez family
23 home will be a likely danger to both Mr. Rodriguez, as well as
24 to Ms. Rodriguez and the community at large.

25 THE COURT: Let me ask you a question. Mr. Kilmer, I
26 believe in his brief, raised the issue of, assuming a
27 hypothetical, that the Court agrees and precludes return of the
28 firearms. What's to prevent Ms. Rodriguez from going out

1 tomorrow and purchasing more firearms and bringing them back to
2 the house?

3 MR. VANNI: That is a correct statement. There is
4 nothing that will prevent her from doing that.

5 THE COURT: Okay. Anything further?

6 MR. VANNI: No, Your Honor.

7 THE COURT: All right. Mr. Kilmer?

8 MR. KILMER: Thank you, Your Honor. That's really the
9 nub of the case, Your Honor. We really can't be sitting here
10 seriously considering that maybe the serial number on the side
11 of the weapon somehow makes it more lethal. Because if this
12 Court orders a Smith and Wesson revolver sold, that's a current
13 collection of the Rodriguez guns, and she goes out tomorrow and
14 buys a different Smith and Wesson revolver with a different
15 serial number that somehow everybody is safe.

16 The Second Amendment is fraught with peril. We're not
17 here arguing against the public policy. But this is a classic
18 case where public policy can run headlong into Constitutional
19 Rights. And the Supreme Court has instructed us on the two
20 cases cited in my brief that the decision about the individual
21 right to keep and bear arms has already been made. And it's
22 made in the Second Amendment. We're not here arguing that there
23 can't be reasonable instructions imposed. We're not here
24 arguing that we can't impose higher restrictions on
25 Ms. Rodriguez than would apply to any other gun owner. And that
26 is that she has a duty to transfer the firearms in addition to
27 keeping them in a gun safe and keeping them away from another
28 adult in the house.

1 There is no question that Mr. Rodriguez is
2 disqualified from owning firearms at this point. And I'd be a
3 stone-cold fool to come into here and argue that he should have
4 his gun rights restored so close to his recent episode.

5 THE COURT: Let me call you on that a little bit. In
6 fairness I'm doing this with everybody because I want to get to
7 the bottom here.

8 MR. KILMER: Sure.

9 THE COURT: I mean the elephant in the room is he goes
10 back and somehow he overpowers her or pressures her or something
11 to open the safe. I mean that's a real concern I have. At the
12 end of the day this is a public safety issue. The guns are
13 right there. They're low hanging fruit. Yeah, they're behind
14 the safe. But, you know, I don't know the dynamics of the
15 relationship. I know the police have been out there. I know
16 there is a history of instability. I'm real concerned about
17 releasing these weapons back to home, even behind the safe, when
18 he's got the authority -- or not the authority, I'm sorry. He's
19 got the ability to, you know, coerce her somehow into opening
20 that safe. That concerns me.

21 MR. KILMER: Your Honor, you raise a good point. But
22 here's the counter factual; Mr. Rodriguez does not have a red
23 letter painted on his forehead. Nobody knows when he's walking
24 the street that he's a prohibited person. He can walk into any
25 gun store in the city and shop for a gun. The sale will be
26 halted once he tries to fill out the paperwork and produces his
27 driver's license because that's what the system is designed to
28 do. But he can walk into any gun store and pick up a shotgun

1 and see if, you know, is this the right gun? Does this hand gun
2 fit my hand? Quite frankly, if he is mentally unstable he can
3 walk into any neighbor's house and try to overpower them and
4 have them open their gun safe.

5 THE COURT: Yeah, but there this is a distinction
6 here. I mean these are -- this is his home. This is his home.
7 And there's a history of the police being out there.

8 MR. KILMER: But it's also her home, Your Honor. And
9 she doesn't lose her rights because she is married to somebody
10 who is currently prohibited. And that's -- it's a tough
11 decision to make. No question. But this is a classic case of a
12 clash of values here. The public policy is very clear.
13 Mr. Rodriguez is prohibited and shouldn't have guns. We're not
14 here arguing that he shouldn't have them.

15 But also the public policy in the State of California,
16 guns have to be kept in gun safes. Guns have to be registered
17 to their proper owner. People have to understand that there are
18 consequences. California's gun laws are a legend in the
19 country. They're complicated. There is a lot of them. The
20 Department of Justice publishes a shorthand definition for
21 everybody about handguns and rifles and the safe storage of
22 firearms. We're sitting here saying that the public policy of
23 imposing criminal sanctions on people for misuse of firearms,
24 requiring them to have gun safes, requiring the guns to be
25 registered. And if none of that can work to prevent
26 Mr. Rodriguez from having a gun, then no gun control works.

27 THE COURT: But the underlying public policy behind
28 all of these is public safety, correct? I mean that's, at the

1 end of the day, is what my responsibility is, is public safety.
2 And that's what guides me. And I'm not saying I'm ignoring her
3 Constitutional Rights or anybody else's rights. But at the end
4 of the day it's my call. I have to determine whether it's
5 appropriate to release those guns given the facts in this
6 particular case and the situation.

7 MR. KILMER: But, again, you're going to have to
8 resolve the issue of what difference does it make which guns she
9 has in her safe. You can't order the confiscation of the gun
10 safe. Quite frankly, I'm surprised that the police didn't
11 confiscate the ammunition as well because Mr. Rodriguez is also
12 prohibited from having ammunition. They didn't think it was
13 important enough to take the ammunition.

14 Now if you rule against her today she can walk out of
15 here and into any gun store and qualify to buy a handgun or
16 shotgun and ten days later go pick it up and put in that gun
17 safe. And then the community is no safer than if you release
18 these particular guns.

19 It's her decision, Your Honor. If she makes a
20 decision at some point in the future that these guns need to be
21 sold and "I'm going to get rid of the gun safe," that's her
22 decision. If she decides she wants to keep one gun in her home
23 for her safety, that's her decision as well. That's what the
24 Constitution says. And that's why --

25 THE COURT: And I don't deny that. But that's really
26 not the issue before me. The issue before me is whether -- I
27 can't order her not to do something she's got a right to do down
28 the road. What I can do is I can prevent those guns from being

1 returned to the home.

2 MR. KILMER: Okay. So what's to prevent -- I mean,
3 Your Honor, how much sense does it make for you to order the
4 guns sold and they go on consignment sale in the gun store and
5 then she turns around and goes back and buys them?

6 THE COURT: Yeah. And I don't know the answer to that
7 question.

8 MR. KILMER: The answer is that you can't prevent
9 that.

10 THE COURT: Yeah. All right. Anything further?

11 MR. VANNI: No, Your Honor.

12 MR. KILMER: Submitted, Your Honor.

13 THE COURT: All right. So, I'm prepared to issue my
14 decision. I'm not going to order the release of the guns to the
15 respondent. I don't think it's appropriate under the
16 circumstances. I appreciate all the comments that have been
17 made. It's an interesting issue. I spent some time with this
18 ahead of time. At the end of the day there's enough concern on
19 my part about the public safety that I'm not going to do that.

20 With that said, I think there are viable alternatives
21 that need to be explored. This is the community possession of
22 the respondent and whether it's by sale or release to a separate
23 place. I'm going to let you folks work that out. So with
24 respect to the request to release the guns back to
25 Ms. Rodriguez, I'm going to deny that request, all right? I'm
26 going to ask that the City prepare the order.

27 MR. KILMER: And may we have a stay on that decision
28 for 60 days, Your Honor?

1 THE COURT: And tell me why.

2 MR. KILMER: I respectfully disagree with the Court's
3 conclusion. I'd like to take it up with the Court of Appeal and
4 the Federal Court.

5 THE COURT: I think you have to ask for the stay
6 through the Court of Appeal though. I mean the City is going to
7 hold the guns anyway. I'm not sure what affect the stay would
8 have here.

9 MR. KILMER: The problem is, Your Honor, at this point
10 in time the government can't be charging my client storage fees
11 or anything like that. Once you order disposition of the guns
12 and they have to keep them in their evidence room they can start
13 charging her fees for storage. I just don't want that to happen
14 while we resolve this.

15 THE COURT: Do you want to comment on that?

16 MR. VANNI: I believe the City can charge and
17 sometimes does charge for the storage of weapons in that
18 circumstance. I can't promise that the police department won't
19 do that, especially after a court order from this Court. So in
20 that mind -- in that vein it's a substantial likelihood that
21 Ms. Rodriguez might be charged for storage of those weapons.

22 THE COURT: So are you opposing the request for stay?

23 MR. VANNI: On the record I'll oppose it, yes, Your
24 Honor. I do think the Court's decision is a valid decision and
25 that returning the weapons will be a likely danger to the
26 community at large.

27 THE COURT: I think -- I'm going to deny the stay
28 without prejudice. I think probably the way to do this is if,

1 in fact, you appeal this, Mr. Kilmer, you can request that the
2 Court of Appeal issue a stay of the order, okay?

3 MR. KILMER: Thank you, Your Honor.

4 THE COURT: All right. Thank you.

5 (Whereupon, this matter adjourned.)

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1 STATE OF CALIFORNIA)
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2 COUNTY OF SANTA CLARA) ss.

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I, MELISSA CRAWFORD, HEREBY CERTIFY:

That I was the duly appointed, qualified shorthand reporter of said court in the above-entitled action taken on the above-entitled date; that I reported the same in machine shorthand and thereafter had the same transcribed through computer-aided transcription as herein appears; and that the foregoing typewritten pages contain a true and correct transcript of the proceedings had in said matter at said time and place to the best of my ability.

I further certify that I have complied with CCP 237(a)(2) in that all personal juror identifying information has been redacted, if applicable.

DATED: OCTOBER 17, 2013

MELISSA CRAWFORD, CSR, RPR
CSR No. 12288

ATTENTION:
CALIFORNIA GOVERNMENT CODE
SECTION 69954(D) STATES:

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EXHIBIT E

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10 Attorneys for CITY OF SAN JOSE

FILED
2013 SEP 30 A 10:56
David H. Yamaguchi, Clerk of the Superior Court
County of Santa Clara, California
UCS
T. Mai

11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF SANTA CLARA
13 UNLIMITED JURISDICTION

14 CITY OF SAN JOSE,
15 Petitioner,
16 v.
17 EDWARD RODRIGUEZ,
18 Respondent,
19 LORI RODRIGUEZ,
20 Intervenor.

Case Number: 1-13-CV-241669

ORDER RE: DISPOSITION OF WEAPONS

(WELFARE & INSTITUTIONS CODE §8102)

21 This matter having come on for hearing in the above-captioned Court on August 9,
22 2013, the Honorable Peter Kirwan, presiding; Mark J. Vanni having appeared for Petitioner
23 CITY OF SAN JOSE; and Donald Kilmer appearing on behalf of Intervenor. Having
24 considered testimony and arguments of counsel, and for good cause shown;

25 ///
26 ///
27 ///
28 ///

THE FOREGOING INSTRUMENT IS
A CORRECT COPY OF THE ORIGINAL
ON FILE IN THIS OFFICE
ATTEST DAVID H. YAMAGUCHI

AUG 30 2013

CHIEF EXECUTIVE OFFICER/CLERK
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA
IN AND FOR THE COUNTY OF SANTA CLARA

BY *[Signature]* DEPUTY



ORDER RE: DISPOSITION OF WEAPONS

1-13-CV-241669

1005667

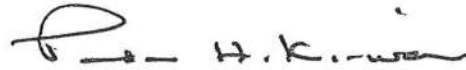
K. Kubo

Legal Process Clerk

1 IT IS HEREBY ORDERED that City's Petition for Disposition of Weapons is
2 GRANTED.

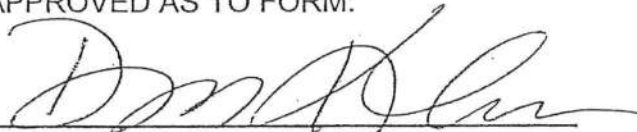
3 The City agrees to hold the weapons pending final disposition or resolution of this
4 matter in accordance with its general practices.

5
6
7 Dated: 9/10/13



8 THE HONORABLE PETER KIRWAN
9 SUPERIOR COURT JUDGE

10 APPROVED AS TO FORM:

11 

12 DONALD KILMER
13 Counsel for Intervenor

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20 THE FOREGOING INSTRUMENT IS
21 A CORRECT COPY OF THE ORIGINAL
22 ON FILE IN THIS OFFICE
23 ATTEST: DAVID H. YAMASAKI

24 AUG 30 2016

25 CHIEF EXECUTIVE OFFICER/CLERK
26 SUPERIOR COURT OF THE COUNTY OF SANTA CLARA
27 IN AND FOR THE COUNTY OF SANTA CLARA

28 BY  DEPUTY

K. Kubo

Legal Process Clerk



EXHIBIT F

Filed 4/2/15 City of San Jose v. Rodriguez CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

CITY OF SAN JOSE,

Plaintiff and Respondent,

v.

EDWARD V. RODRIGUEZ,

Defendant;

LORI RODRIGUEZ,

Intervener and Appellant.

H040317

(Santa Clara County

Super. Ct. No. 1-13-CV241669)

I. INTRODUCTION

The City of San Jose police officers who responded to a domestic disturbance call at the home of Edward V. Rodriguez determined that he was a danger to himself and others and had him transported to Santa Clara Valley Medical Center for 72-hour treatment and evaluation under Welfare and Institutions Code section 5150.¹ The police officers also seized 12 firearms from the home pursuant to section 8102, subdivision (a), which requires confiscation of any firearms owned by or found in the possession or control of a person detained for an examination of his or her mental condition.

¹ All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

The City of San Jose (City) subsequently filed a petition for disposition of the firearms in which the City requested a court order allowing forfeiture of the confiscated firearms pursuant to section 8102, subdivision (c). Edward V. Rodriguez's wife, appellant Lori Rodriguez, opposed the petition and sought return of the firearms to her.² After an evidentiary hearing, the trial court determined that return of the confiscated firearms to the Rodriguez home would be likely to result in the endangerment of Edward or others, and granted City's petition.

On appeal, Lori contends that the trial court erred because the order granting City's petition is not supported by substantial evidence of danger and also violates her right to keep and bear arms under the Second Amendment to the United States Constitution. For the reasons stated below, we determine that the trial court's order under section 8102, subdivision (a) is supported by substantial evidence. We also determine that Lori has not shown that her Second Amendment rights were violated by the trial court's order.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. *City's Petition for Disposition of the Firearms*

On February 22, 2013, City filed a petition for disposition of the firearms pursuant to section 8102, subdivision (c) that named Edward as the respondent. City stated that the firearms that were the subject of the petition came into police custody on January 24, 2013, when police officers responding to a domestic disturbance call at the Rodriguez home determined that Edward was a danger to himself or others. Edward was then transported to a medical center on a 72-hour hold for medical treatment and a

² Since Edward V. Rodriguez and appellant Lori Rodriguez have the same surname, we will refer to them by their first names for purposes of clarity and meaning no disrespect.

psychological evaluation pursuant to section 5150. After Edward was transported, police officers conducted a protective sweep and confiscated 12 firearms from the home.

In its petition, City requested that the trial court make a finding under section 8102 as to whether return of the weapons would be likely to endanger Edward or others and, if the finding of danger was made, order that the petition be granted and the weapons forfeited. Alternatively, if no finding of danger was made, City requested that the San Jose Police Department retain custody of the weapons for no more than two years unless Edward obtained a court order allowing their return.

B. Lori's Response to City's Petition

Edward did not file a response to City's petition for disposition of firearms. Lori filed a response in opposition to the petition in which she designated herself as Edward's "co-respondent." In her supporting declaration, Lori stated that she had been married to Edward for nearly 20 years; Edward was placed on a psychiatric hold pursuant to section 5150 on January 24, 2013; Edward was currently prohibited from owning, acquiring, or possessing firearms or ammunition; and the confiscated firearms had been kept in a safe in their home and were community property.

Lori further declared that no firearms were involved in the event that triggered Edward's January 24, 2013 episode; she had opened the gun safe for the police officers who took all of their firearms; and she acknowledged that she had a legal duty to prevent Edward from obtaining access to any firearms or ammunition under her control while he remained a prohibited person. Additionally, Lori attached documents to her declaration that showed her ownership of a firearm safe and her April 2013 change to the safe's combination.

In her hearing brief, Lori argued that the trial court had "no power to interfere with [her] Second Amendment 'right to keep and bear arms,' " since she was not prohibited from acquiring or possessing firearms and had promised to take all steps required under California law to secure the firearms in a gun safe.

On June 21, 2013, the parties filed a stipulation and order stating that the parties agreed that “Lori Rodriguez has standing in this action in that she has at least a community property interest in the firearms at issue in these proceedings.”

C. Evidentiary Hearing

The following is a summary of the evidence presented at the August 9, 2013 evidentiary hearing on City’s petition.

On January 24, 2013, Police Officer Steven Valentine and other City of San Jose police officers arrived at the Rodriguez home to investigate a domestic disturbance. They were responding to Lori’s 911 call regarding Edward’s behavior and her concern that he might be suffering from a mental illness. Police officers had previously responded to at least two calls of a domestic disturbance at the Rodriguez home and were aware that there were firearms in the home.

Upon his arrival at the Rodriguez home on January 24, 2013, Officer Valentine observed that Edward was perspiring heavily and had rapid respiration. Officer Valentine also observed that Lori was afraid of Edward. Edward claimed that he was affiliated with the CIA, was acting irrationally, and had bizarre and aggressive mannerisms. Officer Valentine believed that Edward was delusional.

When Officer Valentine asked Edward if he wanted to hurt himself, Edward responded by attempting to break his own thumb. Based on his observations and Edward’s attempt to hurt himself, Officer Valentine determined that Edward, who weighed nearly 400 pounds, was a danger to himself and others.

San Jose Fire Department personnel and medical personnel arrived to transport Edward to Santa Clara Valley Medical Center (VMC) for a 72-hour hold and psychological evaluation pursuant to former section 5150.³ After Edward was secured on

³ At the time of Edwards’s detention, former section 5150 provided in part: “When any person, as a result of mental disorder, is a danger to others, or to himself or (continued)

the gurney, he continued to break the restraints. Medical personnel requested that a police officer accompany them in the ambulance. Edward was then transported to VMC, where he was determined to be a danger to himself and others and admitted to the hospital pursuant to former section 5151⁴ and section 5152.⁵

Officer Valentine remained at the Rodriguez home after Edward was transported. He advised Lori that that he would need to confiscate the weapons in the home pursuant to section 8102. Lori unlocked a gun safe by using the key she kept in her possession and a combination lock. Police officers then removed 12 firearms, including three revolvers, three shotguns, a handgun, a rifle, and four semi-automatic rifles. Police officers did not find any firearms outside the gun safe. The firearms had been purchased by Lori or Edward or acquired from her family. Although one firearm belonged to Lori, all 12 firearms were confiscated because Edward had access to them.

In February 2013, City filed a petition for disposition of the firearms to which Lori filed a response in April 2013. In May 2013, Lori received notification from the

herself, or gravely disabled, a peace officer, member of the attending staff, as defined by regulation, of an evaluation facility designated by the county, designated members of a mobile crisis team provided by Section 5651.7, or other professional person designated by the county may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and approved by the State Department of Social Services as a facility for 72-hour treatment and evaluation.”

⁴ At the time of Edward’s detention, former section 5151 provided in part: “If the facility for 72-hour treatment and evaluation admits the person, it may detain him or her for evaluation and treatment for a period not to exceed 72 hours. . . . Prior to admitting a person to the facility for 72-hour treatment and evaluation pursuant to Section 5150, the professional person in charge of the facility or his or her designee shall assess the individual in person to determine the appropriateness of the involuntary detention.”

⁵ Section 5152, subdivision (a) provides in part: “Each person admitted to a facility for 72-hour treatment and evaluation under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive whatever treatment and care his or her condition requires for the full period that he or she is held.”

California Department of Justice Bureau of Firearms that she is eligible to both possess and purchase firearms. At the hearing, Lori testified that she has not committed a felony and has not been detained under section 5150.

D. Trial Court Order

In its order of September 30, 2013, the trial court granted City's petition for disposition of weapons. The order also states: "The City agrees to hold the weapons pending final disposition or resolution of this matter in accordance with its general practices."

During the hearing on the petition, the trial court provided the court's reasoning for granting the petition. The court stated: "I mean the elephant in the room is [Edward] goes back and somehow he overpowers [Lori] or pressures her or something to open the safe. I mean that's a real concern I have. At the end of the day this is a public safety issue. The guns are right there. They're low hanging fruit. Yeah, they're behind the safe. But, you know, I don't know the dynamics of the relationship. I know the police have been out there. I know there is a history of instability. I'm real concerned about releasing these weapons back to home, even behind the safe, when he's got . . . the ability to, you know, coerce [Lori] somehow into opening that safe. That concerns me."

The trial court also stated: "[A]t the end of the day, is what my responsibility is, is public safety. And that's what guides me. And I'm not saying I'm ignoring her Constitutional Rights or anybody else's rights. . . . I have to determine whether it's appropriate to release those guns given the facts in this particular case and the situation." The court then ruled, "I'm not going to order the release of the guns to the respondent. I don't think it's appropriate under the circumstances."

The trial court's order did not require forfeiture or destruction of the confiscated firearms. During the hearing, City's attorney noted that other options were available for disposition of the firearms: "The City has proposed a few options. Either the guns be held at another location away from the home. They could also be sold. The City is

certainly interested or willing to enter into that type of stipulation to sell them through a third party gun dealer. Or they could be held in the house if they're rendered inoperable.”

As to Lori's claim of a community property interest in the confiscated firearms, the trial court stated: “I think there are viable alternatives that need to be explored. This is the community possession of the respondent and whether it's by sale or release to a separate place. I'm going to let you folks work that out. So with respect to the request to release the guns back to [Lori], I'm going to deny that request.”

Thereafter, Lori filed a notice of appeal from the September 30, 2013 order.

III. DISCUSSION

On appeal, we understand Lori to challenge the trial court's order granting City's petition for disposition of firearms on two grounds, insufficiency of the evidence and violation of her Second Amendment right to keep and bear arms. We will begin our evaluation of her claims with an overview of the statutory framework for the confiscation of firearms from a person who has been detained for examination of his or her mental condition and the disposition of confiscated firearms.

A. *The Statutory Framework*

“Two firearm statutes come into play when a person is detained under section 5150 as a danger to himself [or herself] or others. Section 8103 will prohibit his [or her] possession of firearms for a five-year period.^[6] Section 8102^[7] authorizes

⁶ Section 8103, subdivision (f)(1) provides in part: “No person who has been (A) taken into custody as provided in Section 5150 because that person is a danger to himself, herself, or to others, (B) assessed within the meaning of Section 5151, and (C) admitted to a designated facility within the meaning of Sections 5151 and 5152 because that person is a danger to himself, herself, or others, shall own, possess, control, receive, or purchase, or attempt to own, possess, control, receive, or purchase any firearm for a period of five years after the person is released from the facility.” The person may request a hearing to lift the restriction. (§ 8103, subd. (f)(3).)

⁷ Section 8102, subdivision (a) provides in part: “Whenever a person, who has been detained or apprehended for examination of his or her mental condition . . . is found (continued)

confiscation of any weapons he [or she] already possesses.” (*People v. Keil* (2008) 161 Cal.App.4th 34, 37 (*Keil*)).) Section 8102 also authorizes “possible forfeiture of weapons belonging to persons detained for examination under section 5150 because of their mental condition. [Citations.]” (*City of San Diego v. Boggess* (2013) 216 Cal.App.4th 1494, 1500 (*City of San Diego*)).

As stated in *City of San Diego*, “ [s]ection 8102 directly safeguards public health and safety by allowing law enforcement officers to confiscate any firearm in the possession or control of a person who is appropriately detained or apprehended for a mental examination. Keeping a firearm away from a mentally unstable person is a reasonable exercise of the police power. It is not unreasonable to conclude there is a significant risk that a mentally unstable gun owner will harm himself [or herself] or others with the weapon.’ [Citation.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1500.)

The statutory scheme also provides the procedure for the return of the confiscated firearms to the person who was detained under section 5150. At the time of the August 2013 hearing on City’s petition for disposition of firearms, former section 8102, subdivision (b) (now § 8102, subd. (b)(2)) provided in part: “Where the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated.”

If the law enforcement agency that confiscated the firearms does not make the firearms available for return upon release of the detained person, the person may request

to own, have in his or her possession or under his or her control, any firearm whatsoever, or any other deadly weapon, the firearm or other deadly weapon shall be confiscated by any law enforcement agency or peace officer, who shall retain custody of the firearm or other deadly weapon.”

a hearing on return of the firearms. (§ 8102, subds. (e), (f).) The law enforcement agency may also request a hearing: “Upon the release of a person as described in subdivision (b), the confiscating law enforcement agency shall have 30 days to initiate a petition in the superior court for a hearing to determine whether the return of a firearm or other deadly weapon would be likely to result in endangering the person or others, and to send a notice advising the person of his or her right to a hearing on this issue.” (§ 8102, subd. (c).) “Section 8102 thus ‘places the onus upon law enforcement to initiate the forfeiture proceeding, and to bear the burden of proof on the issue of the danger presented by return of the weapons.’ [Citations.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1500.)

“If, after a hearing, the court determines that the return of the firearm or other deadly weapon would likely endanger the person or others, the law enforcement agency may destroy the firearm within 180 days from the date that the court makes that determination, unless the person contacts the law enforcement agency to facilitate the sale or transfer of the firearm to a licensed dealer pursuant to Section 33870 of the Penal Code.” (§ 8102, subd. (h).)

The standard of review for the trial court’s order granting a petition for disposition of firearms under section 8102 is substantial evidence. (*City of San Diego, supra*, 216 Cal.App.4th at p. 1501.) “In determining whether a trial court’s ruling is supported by substantial evidence, the appellate court should view the whole record in the light most favorable to the ruling, resolving all evidentiary conflicts and drawing all reasonable inferences supporting the court’s decision. [Citation.]” (*Ibid.*) “We affirm if ‘substantial evidence supports the court’s determination that return of the firearms to appellant would be likely to result in endangering appellant or other persons.’ [Citation.]” (*Keil, supra*, 161 Cal.App.4th at p. 38.)

B. Analysis

1. Substantial Evidence

We understand Lori to argue on appeal that the trial court's order granting City's petition for disposition of firearms and declining to return the firearms to her is not supported by substantial evidence. According to Lori, the evidence showed that she is not prohibited from owning or possessing firearms and if the confiscated firearms were returned to her, she could secure them in a gun safe to prevent Edward from having unauthorized access. Lori also offers to have the title to the firearms transferred to her. In addition, Lori points out that City's counsel conceded during the hearing that there is nothing to prevent her from buying more firearms and bringing them to the Rodriguez home.

In response, City relies on the statement in *City of San Diego* that “[t]he court may properly consider whether the circumstances leading to the section 5150 detention might occur again and whether possession or control of those confiscated weapons in such circumstance would pose a risk of danger to appellant or to others.” [Citation.]” (*City of San Diego, supra*, 216 Cal.App.4th at p. 1502.) City asserts that the undisputed evidence shows that the circumstances here included Edward's behavior when Officer Valentine detained him, as well as Edward's size and the prior police responses to the Rodriguez home. City also asserts that return of the confiscated firearms to Lori would have “the practical effect of returning them to Edward,” who is prohibited from accessing firearms.

We begin by noting that section 8102 expressly provides the procedure for the return of firearms confiscated by a law enforcement agency only to the person who was detained under section 5150. Section 8102 is silent as to the return of the confiscated firearms to any other person. Accordingly, the only issue to be decided at a hearing under section 8102, subdivision (c) is whether return of the firearms to the previously detained person “would be likely to result in endangering the person or others.” (§ 8102,

subd. (c); see also *id.*, subd. (h).) On appeal from a trial court order denying return of confiscated firearms under section 8102, the reviewing court decides the narrow issue of whether substantial evidence supports the trial court's determination that return of the firearms to the person who was detained under section 5150 would be likely to result in endangering that person or other persons. (*Keil, supra*, 161 Cal.App.4th at p. 38.)

In this case, Edward did not oppose the City's petition for disposition of the firearms. The parties filed a stipulation and order stating that the parties agreed that "Lori Rodriguez has standing in this action in that she has at least a community property interest in the firearms at issue in these proceedings." Since the parties stipulated that Lori has standing in this matter, we will consider whether the trial court's order granting City's petition is supported by substantial evidence that return of the firearms to the Rodriguez home would be likely to result in endangering Edward or others. (§ 8102, subds. (c), (h).)

Having reviewed the record in the light most favorable to the trial court's order (*City of San Diego, supra*, 216 Cal.App.4th at p. 1501), we agree with City that the trial court's order is supported by substantial evidence. The evidence showed that there had been two prior calls of a domestic disturbance at the Rodriguez home; Lori made the 911 call regarding Edward's condition on the day of his detention; Lori appeared to be afraid of Edward; Edward's behavior was bizarre and delusional; Edward had attempted to break his own thumb; Edward weighed 400 pounds and had broken free of the gurney restraints; and medical personnel had requested that a police officer accompany them in the ambulance transporting Edward to the hospital. VMC personnel then determined that Edward was a danger to himself and others and he was admitted to the hospital pursuant to sections 5151 and 5152. Moreover, the trial court was not convinced by Lori's testimony that she could safely store the firearms and prevent Edward from having access to them. " 'A reviewing court neither reweighs evidence nor reevaluates a witness's credibility.' [Citation.]" (*People v. Albillar* (2010) 51 Cal.4th 47, 60.)

We therefore conclude that substantial evidence supports the trial court's order granting City's petition for disposition of firearms under section 8102 on the ground that return of the confiscated firearms to the Rodriguez home would be likely to result in endangering Edward or others.

2. Constitutional Claim

Lori's chief contention on appeal is that the trial court's order granting City's petition for disposition of firearms violates her Second Amendment right to keep and bear arms for home protection. She explains that "[d]epriving an owner of her own guns deprives her of the value of the property and means of exercising the core right of self-defense. [Citation.]" City urges that Lori's constitutional and community property rights may be lawfully impacted by a lawful restriction on her husband Edward's property interest in the confiscated firearms.

At the outset, we note that Lori does not challenge the trial court's order as violating Edward's Second Amendment rights. Constitutional challenges to the trial court's refusal under section 8102 to return confiscated firearms to a person who was detained due to his or her mental condition have been rejected. (See *Rupf v. Yan* (2000) 85 Cal.App.4th 411, 427-428; *People v. One Ruger .22-Caliber Pistol* (2000) 84 Cal.App.4th 310, 312.)

Lori's constitutional claim involves only her own Second Amendment right to keep and bear arms. For several reasons, we determine that Lori has not shown that her Second Amendment rights were violated by the trial court's September 30, 2013 order granting City's petition for disposition of firearms.

First, Lori acknowledges in her opening brief that the trial court's order does not bar her from acquiring new firearms, noting the trial court's "uncontradicted finding . . . that Lori cannot be prohibited from acquiring new firearms." Lori further acknowledges that under section 8101, she may not allow Edward access to any new firearms that she may acquire. Section 8101 provides: "(a) Any person who shall knowingly supply, sell,

give, or allow possession or control of a deadly weapon to any person described in Section 8100 or 8103 shall be punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or in a county jail for a period of not exceeding one year, by a fine of not exceeding one thousand dollars (\$1,000), or by both the fine and imprisonment. [¶] (b) Any person who shall knowingly supply, sell, give, or allow possession or control of a firearm to any person described in Section 8100 or 8103 shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, three, or four years.”

Second, we understand Lori to argue that she has a Second Amendment right to return of the particular firearms that were confiscated under section 8102 for home protection. However, Lori has not provided any legal authority for the proposition that the spouse of a person whose firearms were confiscated under section 8102 has a Second Amendment right to the return of those confiscated firearms for home protection. In her briefing, she generally argues that the United States Supreme Court expanded Second Amendment rights in *District of Columbia v. Heller* (2008) 554 U.S. 570 (*Heller*) and *McDonald v. City of Chicago* (2010) 561 U.S. 742 (*McDonald*).

However, the Supreme Court decisions in *Heller* and *McDonald* did not state that the Second Amendment right to keep and bear arms extends to keeping and bearing either any particular firearms or firearms that have been confiscated from a mentally ill person. Moreover, the *Heller* and *McDonald* decisions may be read to the contrary.

The *McDonald* court reiterated that “[i]n *Heller*, we held that the Second Amendment protects the right to possess a handgun in the home for the purpose of self-defense.” (*McDonald, supra*, 561 U.S. 742, 791.) However, the court also stated: “It is important to keep in mind that *Heller* while striking down a law that prohibited the possession of handguns in the home, recognized *that the right to keep and bear arms is not ‘a right to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose.’* [Citation.] We made it clear in *Heller* that our holding did not cast

doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ [Citation.]” (*McDonald, supra*, 561 U.S. at p. 786, italics added.)

Third, we note that the trial court’s order does not actually require forfeiture or destruction of the confiscated firearms. Both the trial court and City’s attorney suggested there were other viable options for disposition of the firearms, such as sale or storage outside the home.

Finally, we consider whether the provisions of Penal Code section 33850 et seq. impact Lori’s Second Amendment claim. Lori has acknowledged that Penal Code section 33850 provides a procedure for the return of firearms in police custody to persons who claim ownership of the firearms.

Under Penal Code section 33850, a “person who claims title to any firearm” in law enforcement custody may seek the return of that firearm. (Pen. Code, § 33850, subd. (a).)⁸ The person seeking return of any firearms must file an application for a Penal Code section 33865 notification that specifies the make and model of the firearms that are being sought and provides detailed information about any handguns. (Pen. Code, §§ 33850, 33865, subd. (c)(3).) The firearms cannot be returned by a court or law enforcement agency unless the person seeking them obtains a Penal Code section 33865 notification that the person is eligible to possess a firearm and “the firearm has been recorded in the Automated Firearms System in the name of the individual who seeks its return.” (Pen. Code, § 33855, subd. (b).)

⁸ Penal Code section 33850, subdivision (a) provides in part: “Any person who claims title to any firearm that is in the custody or control of a court or law enforcement agency and who wishes to have the firearm returned shall make application for a determination by the Department of Justice as to whether the applicant is eligible to possess a firearm.”

After oral argument, we asked the parties to provide supplemental briefing with respect to the impact of Penal Code section 33850 et seq. on Lori's Second Amendment claim, by responding to the following questions: (1) "The record on appeal includes a copy of a May 8, 2013 Department of Justice Bureau of Firearms notice stating that Lori Rodriguez is 'eligible to both possess and purchase firearms as of the date the [personal firearms eligibility] check was completed.' What evidence in the record, if any, shows that Rodriguez either has or has not sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq?"; (2) "Assuming that Rodriguez has not sought return of the confiscated firearms under Penal Code section 33850 et seq., what is the impact on her claim that the trial court's order of September 30, 2013, violates her rights under the Second Amendment?"; and (3) "Assuming that Rodriguez has sought return of the confiscated firearms under Penal Code section 33850 et seq., what is the impact on her claim that the trial court's order of September 30, 2013, violates her rights under the Second Amendment?"

In their supplemental briefing, the parties agree that the record does not indicate that Lori has sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq. We understand Lori to contend that her failure to utilize the firearms return procedure provided by Penal Code section 33850 et seq. has no impact on her Second Amendment claim, for three reasons. First, Lori asserts that she properly sought return of the confiscated firearms by intervening in City's petition for disposition of firearms under section 8102. Second, Lori maintains that she may raise a constitutional claim without exhausting the administrative remedy provided by Penal Code section 33850 et seq. Finally, Lori appears to argue that the trial court proceedings on City's section 8102 petition precluded her from seeking return of the confiscated firearms under Penal Code section 33850.

City responds that whether or not Lori has sought return of the confiscated firearms under Penal Code section 33850 et seq. has no impact on her claim that the

trial court's September 30, 2013 order violates her Second Amendment rights. City notes that prior to amendment in 2013, section 8102 was silent as to Penal Code section 33850 et seq.,⁹ and emphasizes its position that the trial court's order is constitutional because substantial evidence supports the trial court's finding that return of the confiscated firearms would likely endanger Edward and others.

The parties' supplemental briefing confirms that Lori has not sought return of the confiscated firearms under the procedure provided by Penal Code section 33850 et seq., although the firearms remain in the custody of law enforcement and Lori has obtained notification from the California Department of Justice Bureau of Firearms that she is eligible to both possess and purchase firearms. Lori has not provided any authority for the proposition that trial court proceedings on a section 8102 petition preclude a person who claims title to the confiscated firearms from seeking their return under Penal Code section 33850 et seq. Moreover, we believe that the record on appeal shows that the

⁹ As amended in 2013, section 8102, subdivision (b) provides: "(1) Upon confiscation of any firearm or other deadly weapon from a person who has been detained or apprehended for examination of his or her mental condition, the peace officer or law enforcement agency shall issue a receipt describing the deadly weapon or any firearm and listing any serial number or other identification on the firearm and shall notify the person of the procedure for the return, sale, transfer, or destruction of any firearm or other deadly weapon which has been confiscated. A peace officer or law enforcement agency that provides the receipt and notification described in Section 33800 of the Penal Code satisfies the receipt and notice requirements. [¶] (2) If the person is released, the professional person in charge of the facility, or his or her designee, shall notify the person of the procedure for the return of any firearm or other deadly weapon which may have been confiscated. [¶] (3) Health facility personnel shall notify the confiscating law enforcement agency upon release of the detained person, and shall make a notation to the effect that the facility provided the required notice to the person regarding the procedure to obtain return of any confiscated firearm. [¶] (4) For purposes of this subdivision, the procedure for the return, sale, or transfer of confiscated firearms includes the procedures described in this section and the procedures described in Chapter 2 (commencing with Section 33850) of Division 11 of Title 4 of Part 6 of the Penal Code." (Stats. 2013, ch. 747, § 2.)

procedure provided by section 33850 et seq. for return of firearms in the possession of law enforcement remains available to Lori.

We therefore determine that Lori has failed to show that the trial court's September 30, 2013 order violates the Second Amendment by precluding her from keeping firearms for home protection. In the absence of any evidence that Lori's Second Amendment right to keep and bear arms was actually violated by the trial court's September 30, 2013 order granting City's petition for disposition of firearms under section 8102, we conclude that her Second Amendment claim lacks merit.

Having also determined that the order may be affirmed under section 8102 because the order is supported by substantial evidence that return of the confiscated firearms to the Rodriguez home would be likely to result in endangering Edward or others, we will affirm the order.

IV. DISPOSITION

The September 30, 2013 order is affirmed.

BAMATTRE-MANOUKIAN, ACTING P.J.

WE CONCUR:

MIHARA, J.

GROVER, J.

EXHIBIT G

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

LORI RODRIGUEZ, THE SECOND
AMENDMENT FOUNDATION, INC.,
THE CALGUNS FOUNDATION, INC.,

Plaintiffs,

CASE NO. 5:15-CV-03698-EJD

vs.

CITY OF SAN JOSE, CITY OF
SAN JOSE POLICE DEPARTMENT,
OFFICER STEVEN VALENTINE,
and DOES 1-20, inclusive,

Defendants.

DEPOSITION OF LORI RODRIGUEZ

Date: Monday, May 23, 2016
Time: 9:56 a.m.
Location: CITY ATTORNEY'S OFFICE
200 East Santa Clara Street
16th Floor
San Jose, CA 95113
Reported by: Kim Meierotto, CSR
License Number 11602

SALOIS & ASSOCIATES
Certified Shorthand Reporters
111 North Market Street, Suite 300
San Jose, CA 95113-1112
(408) 279-DEPO

1 A. Willow Glen High School.

2 Q. Have you ever taken any college courses?

3 A. Yes.

4 Q. Where did you go?

5 A. San Jose State.

6 Q. What did you study while you were there?

7 A. Long time ago. General ed. It just wasn't --
8 school and me just didn't get along.

9 Q. I'm sure that's fine. How long did you spend
10 at San Jose State?

11 A. About a year and a half I think. And I'm
12 guessing because that was a long time ago.

13 Q. That's fine. I should clarify, your best
14 estimate in these types of situations is fine. We don't
15 need exact dates for this type of stuff.

16 A. Okay.

17 Q. Have you ever taken any other training and
18 certification courses?

19 A. No. Some insurance courses along the way, a
20 long time ago, maybe 25 years ago.

21 Q. Have you ever served in the military?

22 A. No.

23 Q. One question I had for you is, are you a member
24 of the Second Amendment Foundation?

25 A. No.

1 Q. How about Calguns Foundation?

2 A. No.

3 Q. And you mentioned your husband earlier, Edward
4 Rodriguez; is that correct?

5 A. Yes.

6 Q. And how long have you been married to Edward
7 Rodriguez?

8 A. 23 years.

9 Q. Have you and Edward Rodriguez ever been legally
10 separated?

11 A. No.

12 Q. In the 23 years that you've been together, have
13 you lived together, cohabitated together, during the
14 entire period?

15 A. Yes.

16 Q. And you mentioned you've lived at the Mia
17 Circle address for 24 years?

18 A. Yes.

19 Q. So during the entire time of your marriage you
20 both have lived at Mia Circle?

21 A. Yes.

22 Q. Have there been any periods of time where you
23 and Edward Rodriguez were cohabitating together, but he
24 wasn't actually there? Like on an extended trip or
25 something like that?

1 Q. Okay. Let's provide a little bit more context.
2 Let's talk about the night of the incident when these
3 firearms were confiscated.

4 You've alleged in your complaint that -- that
5 on that night which -- was it January 24th, 2013? Does
6 that seem about right?

7 A. 23rd or 24th. I think that is approximately
8 the right date.

9 Q. It was in the early morning though. Correct?

10 A. Yes.

11 Q. You allege in your complaint that at the time
12 just prior to the police arriving, your husband was in
13 distress; is that correct?

14 A. Yes.

15 Q. And you were the one that called the police
16 because of that; is that correct?

17 A. Yes.

18 Q. Why did you call the police?

19 A. He had been having problems off and on for a
20 little while. And for me trying to find a way to help
21 him, I was told that you could call the police and ask
22 for a welfare check. At that point it had been going on
23 for a couple weeks at that point. It was time.

24 Q. Prior to this incident, had you ever called the
25 police before for your husband?

1 Officer Valentine looks like. You saw him recently?

2 A. Yes.

3 Q. Was that the officer that you dealt with in the
4 confiscation of the firearms?

5 A. From what I remember, I think so.

6 Q. Okay.

7 A. Quite honestly, they could have all looked like
8 Mickey Mouse that night. I just needed them to be there
9 to help. I wasn't really paying a lot of attention to
10 them as far as what they looked like or that type of
11 thing so --

12 Q. If I was to ask you to provide a description of
13 the officer that -- or the officers that you spoke with,
14 would you be able to do that?

15 A. Officer Valentine now I could. And the only
16 other one was what I considered a young officer, and I
17 can remember him being tall. I think it was light
18 dirty-blond hair, and he was helping me with the guns at
19 the end. And I couldn't -- and there was a woman
20 paramedic. That's pretty much all.

21 Q. That tall young officer, was he Caucasian?
22 African-American?

23 A. Caucasian.

24 Q. Now, at the time of this incident, you had your
25 12 firearms. They were inside of a gun safe. Correct?

1 A. Yes.

2 Q. And that gun safe at this time was locked; is
3 that right?

4 A. Yes.

5 Q. And you know this has been alleged, and I don't
6 think there's any big dispute about it, but I want to
7 ask just to be clear that none of those 12 firearms were
8 out at the time that this incident was occurring; is
9 that correct?

10 A. No, correct.

11 Q. Now, let's talk a little bit about the gun
12 safe. I just want to ask a little bit of background
13 about it because I haven't seen the gun safe. I don't
14 know what it looks like.

15 My understanding is that you own -- excuse
16 me -- that at the time of this incident, the firearm gun
17 safe was a Liberty safe, Lincoln series?

18 A. Yes.

19 Q. LX25?

20 A. That I wouldn't know without looking at the
21 again receipt or the owner's manual.

22 Q. Sure. Sure. Let me go ahead and just -- it's
23 not a very good picture, but let me mark this as Exhibit

24 D.

25 (Defendants' Exhibit D is marked.)

1 need specifics. But does your husband work?

2 A. Currently or --

3 Q. How about at the time this safe was purchased,
4 was he working?

5 A. Yes.

6 Q. Earning a salary?

7 A. Yes.

8 MR. KILMER: This will help, Counsel. We'll
9 just stipulate that the safe is community property.

10 BY MR. VANNI:

11 Q. Okay. That's fine with me.

12 A. And.

13 Q. Go on.

14 A. It looks like this one. I'm assuming it's this
15 one because it's thinner, the thinnest one. And it's
16 not wide like that (indicating). So I'm assuming it's
17 this one. But I'd have to actually look at the actual
18 just to see. I don't know how many other models they
19 have.

20 Q. Okay. Why don't you describe the safe for me a
21 little bit. What does it look like?

22 A. Outside it looks like this (indicating). But
23 then I was reading it holds 24 guns.

24 Q. Um-hum.

25 A. I thought it weighed more than the 730. But I

1 Q. And on the night of the incident, was the safe
2 secured?

3 A. Yes.

4 Q. In order to open it, you needed to have a key
5 and a combination in order to get in?

6 A. Yes.

7 Q. For this particular safe, at the time of the
8 incident -- and most of these questions, unless I say
9 otherwise, we can assume that it's at the time of the
10 incident. Is that fair to say?

11 A. Okay.

12 Q. So with this particular safe, it requires a
13 key. How many keys do you have or did you have at the
14 time to open this safe?

15 A. Two.

16 Q. Where did you keep those keys?

17 A. In an envelope in my file cabinet, and the file
18 cabinet was locked.

19 Q. And the file cabinet, was that in a home
20 office?

21 A. Yes.

22 Q. Did your husband, Edward, have access to that
23 office?

24 A. I don't know if he had a key to the file
25 cabinet.

1 incident occurred, did you need to use a password in
2 order to get into it?

3 A. No.

4 Q. No. It was just a key?

5 A. No. A combination.

6 Q. I'm sorry. A combination. So when you say "a
7 combination," do you mean like a combination lock, or
8 was it a dial pad?

9 A. Combination lock.

10 Q. So it was one like you use in high school where
11 you have to turn to the right and then turn to the left?

12 A. Yes.

13 Q. Now, with the combination lock, did you have
14 the password for the combination memorized or written
15 down somewhere?

16 A. Written down.

17 Q. Written down on a piece of paper?

18 A. In an address book looking like a phone number.

19 Q. Okay. How many numbers did you have to -- does
20 this particular safe require -- is it three numbers?
21 four numbers? -- in order to open it?

22 A. Three.

23 Q. This address book where you had it written
24 down, where was that located?

25 A. In the bedroom.

1 Q. Where in the bedroom?

2 A. In a desk.

3 Q. Was that desk locked?

4 A. No.

5 Q. You said you had it looking like a phone
6 number. Was it under a particular person's name?

7 A. No. Written towards the front but not under a
8 name.

9 Q. Okay. At the time of the incident, did your
10 husband have access to this address book?

11 A. Yes.

12 Q. Now, this gun safe, where was it located in
13 your home?

14 A. In the kitchen.

15 Q. Like I said, I haven't been to your kitchen
16 before, but can you just provide me with just a rough
17 layout of using the stove kind of as a north star so to
18 speak. Can you tell me where it was in relation to the
19 stove.

20 A. If you walk in from the living room -- it's a
21 square room. Straight ahead is the dining room table.
22 If you turn to the left, cabinets, refrigerator. Across
23 the next wall like a U shape, the sink. And then in the
24 island, the stove.

25 Q. Okay.

1 A. And it's -- on -- going forward in the area
2 there's a TV. Next -- same wall as the sink, the TV,
3 and the safe is in that corner, far corner.

4 Q. So at the time that the officers were
5 interacting with your husband in the kitchen, the safe
6 was nearby?

7 A. Opposite end of the room.

8 Q. Other than you, did anybody else have the
9 ability to open that safe?

10 A. No.

11 Q. Can you describe for me how one would go about
12 opening the safe. Do you put in the key first and then
13 do the combination? What would you do if you wanted to
14 open it?

15 A. Put in the key first and then the combination.

16 Q. Now, going back to just after your husband was
17 taken outside to the ambulance and then taken to Valley
18 Medical Center, did any of the police officers talk to
19 you afterwards?

20 A. After he left, then we started to deal with the
21 guns.

22 Q. Okay. Which officer? You mentioned maybe it
23 was Officer Valentine. But can you describe the officer
24 that spoke to you about the guns?

25 A. Again, I just keep saying the officer in

1 charge. I'm assuming it was Officer Valentine. And he
2 had told me before they took Edward that they would have
3 to take the guns.

4 Q. Okay. What did he say to you exactly?

5 A. That they would have to take the guns.

6 Q. Okay. Did he tell you why?

7 A. Not until I asked why.

8 Q. Okay. What did he say when you asked why?

9 A. I don't remember the exact wording, but it was
10 pretty much, with this situation they had no choice. It
11 was procedure.

12 Q. Okay. Did you ever ask any of the police
13 officers to take the firearms?

14 A. No.

15 Q. Did you agree with them that the firearms
16 needed to leave the house?

17 A. No.

18 Q. Let me show you Exhibit -- this form, Exhibit E
19 I'm going to mark as.

20 (Defendants' Exhibit E is marked.)

21 BY MR. VANNI:

22 Q. I'm showing you what's been marked as Exhibit
23 E. It's a yellow form. Unfortunately it's not the
24 greatest copy. But in reviewing that form, have you
25 seen that document before?

1 A. Correct.

2 Q. So then how did the safe then get opened so the
3 officers could confiscate those weapons?

4 A. I told them I had to go find the key. So I did
5 that. Then I had to go get the combination. And then I
6 tried to open the safe. And by then, I was done.

7 And after I had tried two or three times, one
8 of the officers, the young officer I think, actually
9 opened it, because I couldn't -- it's a series of turns
10 and I -- at that point I was done.

11 Q. Okay.

12 A. And that safe has always caused me problems
13 so --

14 Q. All right. Let me go back a little bit. So
15 you went to go find the key. And you had to go into
16 your filing cabinet?

17 A. Yes.

18 Q. At the time that you went to go look for the
19 key, did any officer accompany you?

20 A. No.

21 Q. So you were by yourself?

22 A. Yes.

23 Q. How about the combination, that was in your --
24 is your house a two-story house?

25 A. No.

1 Q. One-story house?

2 A. Yes.

3 Q. You had to go to your bedroom to get the

4 combination from the address book. Correct?

5 A. Yes.

6 Q. Did any officer accompany you?

7 A. No.

8 Q. And you mentioned -- you testified that you
9 tried twice to open the safe?

10 A. I think twice. It may have been three times.
11 I know that at that point I couldn't.

12 Q. When you say you mean you were "done," what do
13 you mean by that?

14 A. I was just -- as even before with this safe, I
15 would get frustrated, and I would have to just walk away
16 for a few minutes and then go back and try again.

17 Q. Prior to this incident, had you been able to
18 successfully open the safe?

19 A. Yes.

20 Q. How about your husband, was he ever able to
21 open the safe?

22 A. Yes. Not very often though. He never needed
23 to.

24 Q. Okay. Why did he never need to?

25 A. He would say he needed something out of it.

1 Q. Now, with some additional information would he
2 be able to guess the password?

3 A. Possibly part of it but not all of it.

4 Q. Not all of it. Does the gun safe still require
5 a key in order to access, or did you change that
6 function as well?

7 A. A key still.

8 Q. Where do you keep the key nowadays?

9 A. Actually the same place.

10 Q. Behind a locked file cabinet?

11 A. Right in the file cabinet. I may move it from
12 one file to another and bury it between papers but still
13 in that file cabinet.

14 Q. With regard to this combination lock, do you
15 have it written down somewhere?

16 A. No.

17 Q. So it's all up in your head now?

18 A. Yes.

19 Q. Going back to when the safe was opened, so your
20 testimony is that you didn't actually open the safe.

21 The officers -- one of the officers opened the safe?

22 A. Yes.

23 Q. But he was able to open it because you provided
24 him with the key and the combination?

25 A. I did the key. And then I gave him -- I gave

1 him what was written down for a combination. I just
2 didn't know what combination of that written number was
3 the combination.

4 Q. But the officer who did open the safe was able
5 to figure it out in order to open the safe?

6 A. I gave him some kind of parameters -- it could
7 be this or this -- and then he opened it.

8 Q. At any point prior to the officers opening the
9 safe, did you voice any objection to them opening up the
10 gun safe?

11 A. Not after we had questioned why a couple times,
12 two or three times. It was in my mind made clear to me,
13 I did not have a choice, so why continue.

14 Q. Let me go back to that line of question about
15 why you didn't have a choice. At any point did -- and
16 this is with respect to you, not with anybody else --
17 did you at any point during this interaction with the
18 officers after Edward had left, did anyone threaten you
19 with arrest if you didn't comply?

20 A. No.

21 Q. Did anybody tell you or threaten you that you
22 were committing a crime if you didn't comply?

23 A. No.

24 Q. Did any officer draw their firearm?

25 A. No.

1 Q. So your husband is in Fremont Hospital. And do
2 you know if he was evaluated or anything like that?

3 A. I would assume. I didn't -- I don't know that
4 I talked -- I might have talked to the doctors at
5 Fremont Hospital maybe a couple times. I don't know
6 that I talked to anybody at Valley Medical.

7 Q. Okay. When was your husband discharged from
8 the hospital?

9 A. I want to say it was about a week.

10 Q. And when he was discharged, did he return home,
11 or did he go anywhere else?

12 A. Home.

13 Q. But because of this evaluation, do you
14 understand that your husband is what's referred to as a
15 "prohibited party"?

16 A. What do you mean by "prohibited"?

17 Q. That's my next question. So that your husband
18 can no longer own, control, possess firearms for a
19 period of about five years from the date of this
20 incident. Do you understand that to be?

21 A. Yes.

22 Q. Is there currently any prohibition on your
23 ability to own, control, possess a firearm?

24 A. No.

25 Q. So if you wanted to go to a gun store, you

EXHIBIT H

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LORI RODRIGUEZ; THE
SECOND AMENDMENT
FOUNDATION, INC.; and
THE CALGUNS FOUNDATION,
INC.,

Plaintiffs,

vs.

No. 5:15-CV-03698

CITY OF SAN JOSE, CITY
OF SAN JOSE POLICE
DEPARTMENT, OFFICER
STEVEN VALENTINE, and
DOES 1 to 20,

Defendants.

DEPOSITION OF OFFICER STEVEN VALENTINE

DATE: Thursday, April 28, 2016
TIME: 12:59 p.m.
LOCATION: LAW OFFICES OF DONALD KILMER
1645 Willow Street
Suite 150
San Jose, CA 95125

REPORTED BY: AUDREY KLETTKE, CSR NO. 11875

#51543

1 in the news those days.

2 Q. Did he mention using a gun himself?

3 A. No, he did not.

4 Q. So he was talking about the school shootings.

5 Did he mention shootings in any other context?

6 A. Just shootings.

7 Q. But school shootings, correct?

8 A. He specifically said a school shooting.

9 Shooting up schools, yes.

10 Q. Did he mention guns or shooting at any other

11 time?

12 A. He talked about the guns in the gun safe.

13 Q. What did he say?

14 A. He just talked about the guns in the gun safe.

15 Q. How did he talk about them? Did he describe

16 them?

17 A. No. Just let us know that he had a gun safe

18 full of guns.

19 Q. Was that in response to a question?

20 A. I don't know.

21 Q. Did you question Mr. Rodriguez about the guns in
22 the gun safe?

23 A. Yes.

24 Q. What did you say to him?

25 A. I just asked him how many guns there were in the

1 gun safe.

2 Q. And what did he tell you?

3 A. He said a lot.

4 Q. Did anybody else at the scene threaten to use a
5 gun?

6 A. No.

7 Q. How did the safe get opened?

8 A. I was not there when the safe was opened.

9 Q. Who was?

10 A. I don't recall who the officers were inside when
11 the safe was opened.

12 Q. Did you direct the gun safe to be opened?

13 A. Yes.

14 Q. And why did you do that?

15 A. I had gained consent to remove the firearms, and
16 had instructed the officers who were backing up or
17 filling with me to stay with the safe while it was
18 opened.

19 Q. And who did you obtain the consent from?

20 A. Ms. Rodriguez.

21 Q. She is sitting here next to me?

22 A. Yes.

23 Q. Did you attempt to obtain consent from
24 Mr. Rodriguez?

25 A. No.

1 Q. That would have been a futile act because he
2 wasn't in his right mind, was he?

3 A. I don't even know if he was there when we talked
4 about it.

5 Q. Is the consent that you obtained from
6 Mrs. Rodriguez documented anywhere in your report?

7 A. No.

8 Q. Is it documented anywhere in your declaration?

9 A. No.

10 Q. How did you obtain this consent?

11 A. Through verbal consent from Mrs. Rodriguez.

12 Q. We've already established that San Jose PD has
13 written consent forms and that you had some with you
14 that night; is that correct?

15 A. Yes.

16 Q. Why didn't you use a written consent form?

17 MR. VANNI: I think it was asked and answered.

18 THE WITNESS: The situation didn't call for it.

19 Q. BY MR. KILMER: What did you say to

20 Mrs. Rodriguez --

21 A. I --

22 Q. -- to obtain consent?

23 A. I informed her of the laws pursuant to a 5150
24 hold and requested that -- requested her consent to
25 remove the firearms, and she agreed.

1 Q. What specifically did you say to her with
2 respect to the law of firearms in 5150?

3 A. I would have shown her the form where it talks
4 about the removal of firearms on the 5150.

5 Q. Okay.

6 A. And that because he is being placed on a 5150
7 hold, the firearms need to be removed from the home
8 pursuant to the law.

9 Q. What form are we talking about?

10 A. I have a blank copy. I don't know if you can
11 read it on here.

12 MR. VANNI: Exhibit B might be better. The
13 color copy would be better.

14 THE WITNESS: If you were to look at Exhibit B,
15 Page 3 of 16, this is the application for a 72-hour
16 detention for evaluation and treatment. And if you
17 were to go to the bottom, at the very bottom there is
18 three boxes. And the first box of those three is
19 marked and then my name and badge.

20 I showed her this form. And pursuant to -- and
21 I can't read it here, but pursuant to -- I would have
22 told her pursuant to welfare and institution code -- I
23 can't read that code -- that the firearms were to be
24 confiscated and she would be notified of the procedure
25 for return.

1 Q. It's a written policy?

2 A. Yes.

3 Q. Is the policy augmented by any custom within the
4 department?

5 A. What do you mean "custom"?

6 Q. I mean, as you sit here today you don't know
7 what the written policy is. Do you know what the
8 custom or practice is of the department?

9 A. We have a written policy. We don't have a
10 custom.

11 Q. But as you sit here today, you don't know what
12 that --

13 A. I guess what I would do is I would -- if the
14 situation arose, I would read the duty manual.

15 Q. Did you read the manual that night?

16 A. Yes.

17 Q. You did?

18 A. Yes.

19 Q. And do you remember what conclusion you came to
20 after reading the policy?

21 A. The firearms would be removed from the home.

22 Q. When did you consult the duty manual?

23 A. In that same window.

24 Q. Between the situation being declared and normal
25 and the district sergeant clearing the scene?

1 A. No. And I said discussions. Not that we would
2 have. We would have just discussed it.

3 Q. Would have discussed.

4 What would have been the purpose of the
5 discussion?

6 A. Find out if the situation arises to that level.

7 Q. Would the discussion have been to get her to
8 change her mind?

9 A. No.

10 Q. At any time did you tell Ms. Rodriguez that you
11 were required to seize the guns?

12 A. I would have just told her pursuant to the law
13 we were going to need to confiscate the firearms.

14 Q. And her response was?

15 A. She understood.

16 Q. And after that, she found the combination to the
17 safe and somebody helped her open it?

18 MR. VANNI: Objection; calls for speculation.

19 Q. BY MR. KILMER: If you know.

20 A. I don't know.

21 Q. Do you know if any of the other officers at the
22 scene prepared a written report?

23 A. No, they did not.

24 Q. So the only person preparing a report was you?

25 A. Yes.

1 her cooperation.

2 MR. VANNI: Objection; misstates his testimony.
3 I think he said that pursuant to the law they had to
4 confiscate the firearms.

5 MR. KILMER: Let me rephrase the question.

6 Q. BY MR. KILMER: That you told Ms. Rodriguez that
7 pursuant to the law you had to confiscate the firearms,
8 and then after that she cooperated in opening the safe
9 and allowing the weapons to be taken into custody or
10 into police possession.

11 With regard to the timing of those events, would
12 you have any reason to contradict that, the timing of
13 that? In other words, your statement to her about the
14 law's requirements came before --

15 A. What am I contradicting? That's why I am
16 confused.

17 Q. Strike that. Let me rephrase the question.

18 Your statement to Lori Rodriguez that the law
19 required you to confiscate the weapons came before she
20 cooperated in opening the safe.

21 MR. VANNI: I'm going to object again and say
22 that misstates his testimony that he said that the law
23 required him to take the weapons.

24 Q. BY MR. KILMER: Did you say to Ms. Rodriguez
25 that you were required by law to seize the weapons?

1 A. I told her pursuant to the law I was to
2 confiscate the weapons.

3 Q. What is the difference between pursuant to the
4 law and required by the law?

5 A. To me pursuant is I'm conveying the law. And
6 really no difference to required.

7 Q. Okay. So when you say pursuant to the law, you
8 are going to seize --

9 A. Confiscate.

10 Q. -- you are going to confiscate the weapons.

11 I am asking you: Is it an accurate statement
12 that she cooperated in opening the safe after you told
13 her that pursuant to the law you were going to
14 confiscate the weapons?

15 A. Yes.

16 MR. KILMER: Let's take a quick break. I want
17 to confer with my client. And I have just a couple
18 more questions and we'll get you guys out of here.

19 (A short recess was taken.)

20 Q. BY MR. KILMER: During the conversation you had
21 with Ms. Rodriguez about confiscating the firearms, did
22 you inform her that she had the right to refuse?

23 A. Yes.

24 Q. You did specifically remember saying that to
25 her?