Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 1 of 31

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

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

Plaintiffs,

No. 5:15-CV-03698

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

vs.

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

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 2 of 31

A P P E A R A N C E S 1 2 3 For the Plaintiffs: LAW OFFICES OF DONALD KILMER BY: DONALD E.J. KILMER, ESQ. 4 1645 Willow Street Suite 150 5 San Jose, CA 95125 408-264-8489 6 7 8 For the Defendants: CITY OF SAN JOSE OFFICE OF THE CITY ATTORNEY 9 BY: MARK VANNI, DEPUTY CITY ATTORNEY 10 200 East Santa Clara Street 16th Floor 11 San Jose, CA 95113 408-535-1997 12 13 Court Reporter: ADVANTAGE REPORTING SERVICES 14 BY: AUDREY KLETTKE, 15 CSR NO. 11875 1083 Lincoln Avenue 16 San Jose, CA 95125 (408) 920-0222 17 18 -000-19 20 21 22 23 24 25

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 3 of 31

INDEX OF EXAMINATION PAGE: By Mr. Kilmer -000-INDEX OF EXHIBITS PAGE: Notice of Deposition А 16-page document entitled "San Jose Police В Department General Defense Hardcopy" Bates numbers SJ000001 - SJ000016 Five-Page document entitled "Event Details С Report" Bates numbers SJ000017- SJ000021 Declaration of Officer Steven Valentine D -000-

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 4 of 31



DEPOSITION OF OFFICER STEVEN VALENTINE

1	1	3	?

2	Α.	Yes.
3	Q.	When you made the improvised note or should
4	we ca	ll it an improvised receipt? Would that be fair?
5	Α.	Yes.
6	Q.	did you make a copy for yourself as well?
7	Α.	Well, I would have had a copy I would have
8	had t	he same list to transcribe to the Form 13. So I
9	would	say yes.
10	Q.	And that would have been part of your notes that
11	you k	ept during the event, correct?
12	Α.	Yes.
13	Q.	And that note would have been destroyed later
14	with	the other notes that you destroyed?
15	Α.	Yes.
16	Q.	Does the San Jose Police Department have a form
17	to do	cument consensual searches?
18	Α.	Yes.
19	Q.	Did you have that form with you that night?
20	Α.	Yes.
21	Q.	Did you use one?
22	Α.	No.
23	Q.	Why not?
24	Α.	It wasn't a typical situation where you would
25	use o	ne.

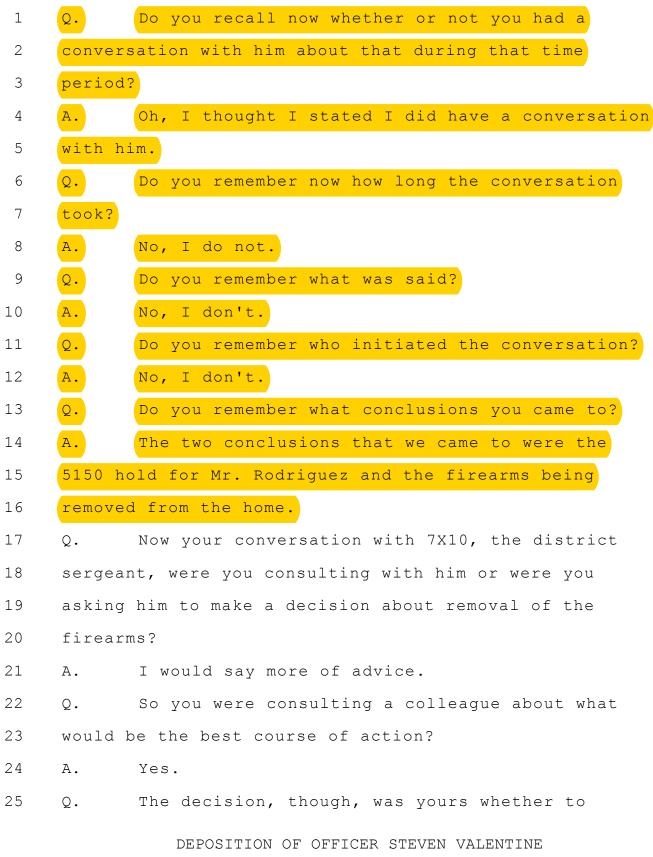
5150."	
	What does that mean, if you know?
Α.	The event would have been dispatched as what
would	be called a welfare check. That's your WELCK.
That's	an abbreviation for welfare check. And then the
final	disposition of the case was a 5150.
Q.	And do you know who made that change from
welfar	e check to 5150?
Α.	Would have been me.
Q.	What was your who was the strike that.
	Was there an officer in charge of the scene that
night?	
A.	Yes.
Q.	And who was that officer?
A.	Me.
Q.	Is that because you arrived first or because you
were t	he ranking officer?
A.	Because it's my beat.
Q.	So would you have made all of the command
decisi	ons there that night?
Α.	Yes.
Q.	And that would include the decision to seize any
weapon	s at the site?
Α.	Yes.
Q.	Did you consult with anybody else about that
	<pre>would That's final Q. welfar A. Q. A. Q. A. Q. were t A. Q. decisi A. Q. decisi A. Q.</pre>

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 7 of 31

Q. Okay. 1 2 You can go down to -- you can go to 24 January Α. 03:57 on Page 3. 3 4 Okay. That's at the bottom of the page? Ο. 5 The very last entry. Α. 6 Ο. Okav. 7 Α. That's a unit I.D. 71X4 calling for normal That's saying that we no longer have a 8 traffic. 9 dangerous situation occurring. 10 To go any further than that when he was in the 11 ambulance and we were all talking, that would be a 12 little bit -- that would be pretty vague. There is 13 about a 30-minute window that could have happened. 14 Okay. But by 03:57 Mr. Edwards [sic] was in the Q. 15 ambulance? 16 Α. I don't know if he was in the ambulance but he 17 was at least secured. We had the situation where we 18 didn't no longer request any assistance. 19 So any discussion about the firearms took place 0. 20 after Mr. Rodriguez was secured? 21 MR. VANNI: Objection; misstates his testimony. 22 MR. KILMER: All right. I will strike the 23 question. 24 BY MR. KILMER: Any discussion about seizing the Q. 25 firearms took place after the scene was safe?

1	A. Yes.
2	Q. I will ask you to turn to Page 4 of this report.
3	And there is an entry at there is three entries at
4	04:21. I will direct your attention to the third one.
5	And the entry is by 71X4, and the entry says "VMC
6	following the rig. Event closed."
7	Would it be fair to say at that point in time
8	Mr. Rodriguez was in the ambulance
9	A. Yes.
10	Q on his way to VMC?
11	Just above that at 04:13 there is an entry by
12	7X10. That's your district sergeant, correct?
13	A. Yes.
14	Q. And then there is a letters AM next to that.
15	Do you know what that means?
16	A. He cleared the seen.
17	Q. He left?
18	A. He went back into service, yes.
19	Q. Did you have any conversations with him after he
20	cleared the scene?
21	A. Not that I can recall.
22	Q. So if you had a conversation with the district
23	sergeant about seizing the weapons, it would have taken
24	place between 03:57 and 04:13, correct?
25	A. Yes.

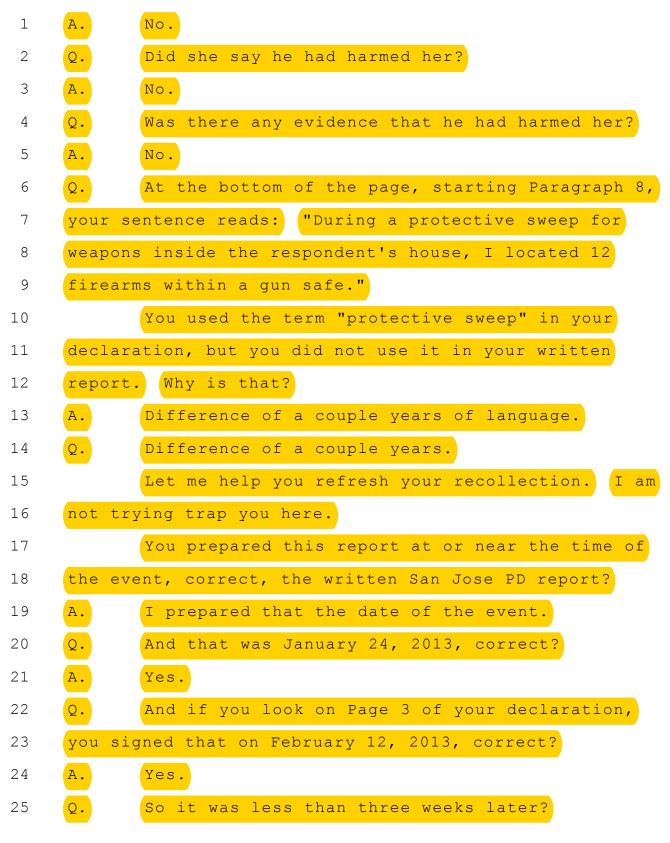
Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 9 of 31



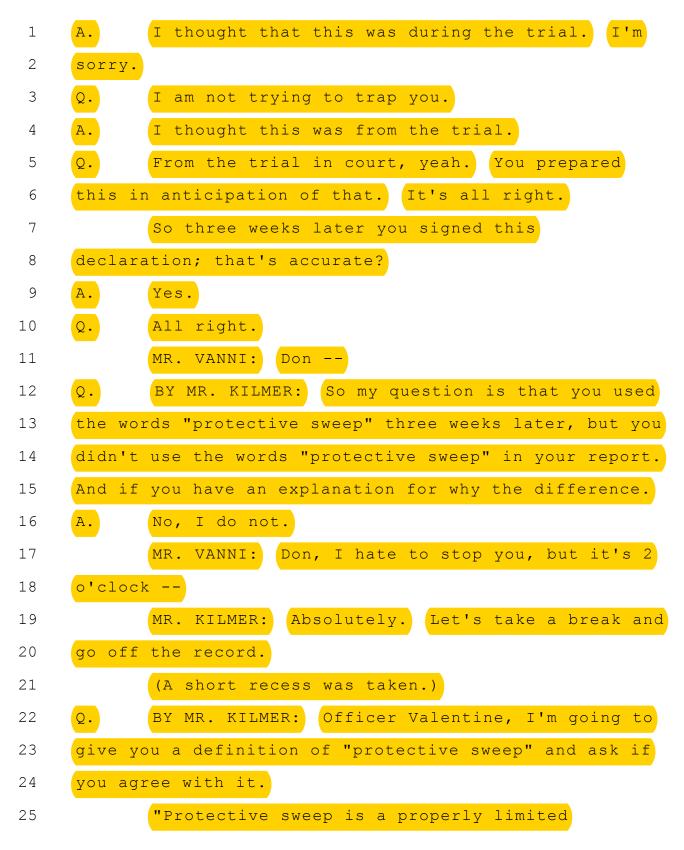
Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 10 of 31

It was not meant to suggest that there was --Q. 1 2 this was a marital disturbance or a dispute between a 3 husband and wife, was it? 4 Just a family disturbance. Α. 5 It wasn't meant to suggest that it was a call Ο. 6 for domestic violence, was it? 7 Α. No. 8 In Paragraph 3 -- I'm sorry. Strike that. Ο. 9 Paragraph 4, at lines 8 and 9, you state that: 10 "During the contact, she" -- and I am assuming you are referring to Lori Rodriguez -- "was fearful of 11 respondent's behavior." 12 13 Do you remember writing that? 14 Α. Yes. 15 Did you mean that Lori was afraid of her husband Ο. 16 or that she was afraid for him? 17 She was fearful of her husband at the time. Α. 18 You believe that she was afraid that he would Ο. 19 hurt her? 20 I would speculate. I just remember her telling Α. 21 me. 22 Q. Could that be read both ways, that she was also afraid for her husband instead of her husband? 23 She was fearful of her husband. 24 Α. 25 Had her husband harmed her? Q.

DEPOSITION OF OFFICER STEVEN VALENTINE

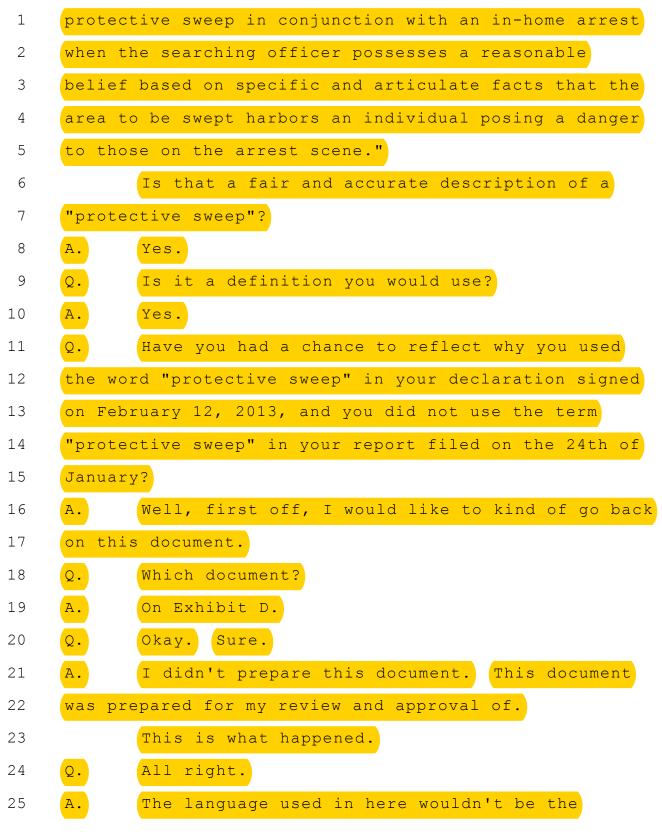


DEPOSITION OF OFFICER STEVEN VALENTINE



DEPOSITION OF OFFICER STEVEN VALENTINE

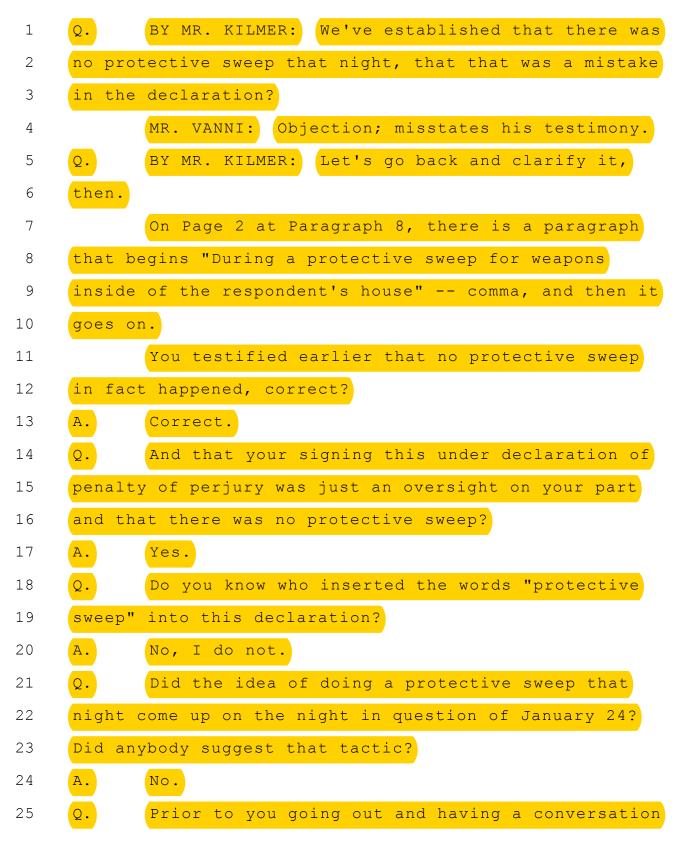
Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 13 of 31



Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 14 of 31



Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 15 of 31



Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 16 of 31

1	with yo	our lawyer, you were pointing to Paragraph 3 on
2	Page 1	of Exhibit D. Is there something important on
3	Paragra	aph 3 that you would like to tell me about?
4	Α.	No. We've clarified it.
5	Q.	Is there another mistake on this declaration?
6	A.	No.
7	Q.	Now in your both your report and this
8	declara	ation you state that the firearms were located in
9	a gun :	safe; is that correct?
10	A.	Yes.
11	Q.	Was the safe open when you arrived?
12	A.	No.
13	Q.	Were any guns outside of the safe when you
14	arrive	d?
15	A.	No.
16	Q.	Did Mr. Rodriguez at any time threaten to use a
17	gun?	
18	Α.	Yes.
19	Q.	He did. Is that in your report?
20	Α.	I will go back on that. He mentioned the use of
21	guns.	
22	Q.	In what way did he mention the use of guns?
23	Α.	In a lot of his nonsense talk.
24	Q.	What did he say?
25	Α.	Talking about shootings in schools and what was
		DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 17 of 31

1	in the	news those days.
2	Q.	Did he mention using a gun himself?
3	Α.	No, he did not.
4	Q.	So he was talking about the school shootings.
5	Did he	mention shootings in any other context?
6	Α.	Just shootings.
7	Q.	But school shootings, correct?
8	Α.	He specifically said a school shooting.
9	Shootir	ng up schools, yes.
10	Q.	Did he mention guns or shooting at any other
11	time?	
12	Α.	He talked about the guns in the gun safe.
13	Q.	What did he say?
14	Α.	He just talked about the guns in the gun safe.
15	Q.	How did he talk about them? Did he describe
16	them?	
17	Α.	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	Α.	I don't know.
21	Q.	Did you question Mr. Rodriguez about the guns in
22	the gur	n safe?
23	Α.	Yes.
24	Q.	What did you say to him?
25	A.	I just asked him how many guns there were in the

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 18 of 31

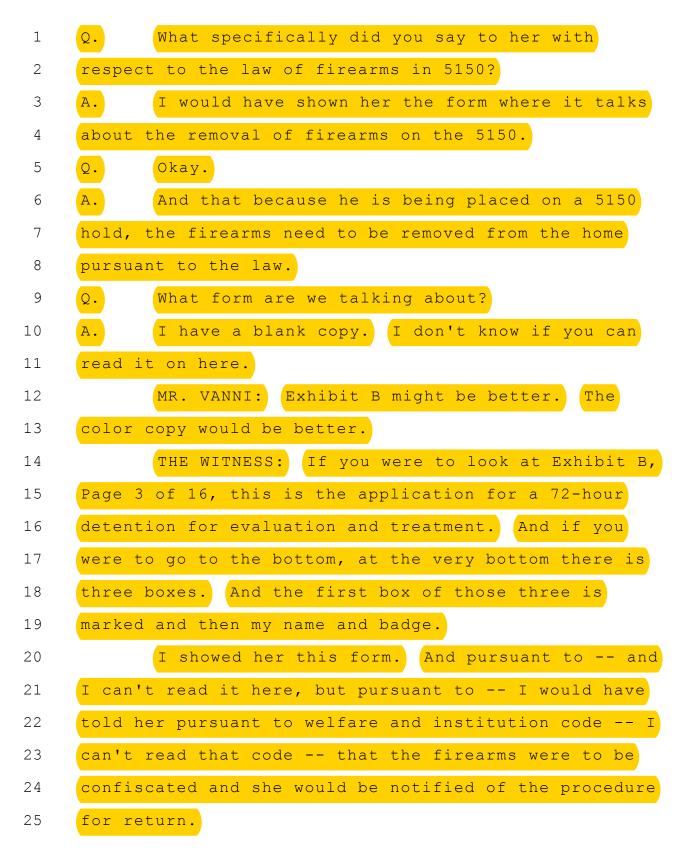
1 gun safe. 2 And what did he tell you? Q. He said a lot. 3 Α. Did anybody else at the scene threaten to use 4 Q. а 5 gun? 6 Α. No. 7 Q. How did the safe get opened? 8 I was not there when the safe was opened. Α. 9 Q. Who was? 10 I don't recall who the officers were inside when Α. 11 the safe was opened. 12 Did you direct the gun safe to be opened? Q. 13 Α. Yes. 14 And why did you do that? Q. 15 I had gained consent to remove the firearms, and Α. 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 And who did you obtain the consent from? Q. 20 Ms. Rodriguez. Α. 21 She is sitting here next to me? Ο. 22 Α. Yes. 23 Did you attempt to obtain consent from Q. 24 Mr. Rodriguez? 25 Α. No.

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 19 of 31

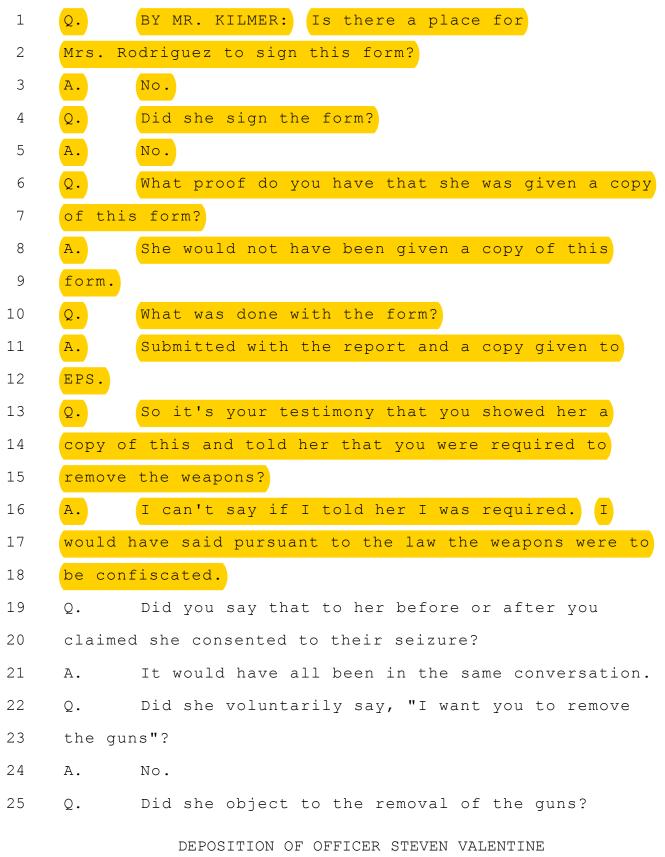
1	Q.	That would have been a futile act because he
2	wasn't	in his right mind, was he?
3	Α.	I don't even know if he was there when we talked
4	about :	it.
5	Q.	Is the consent that you obtained from
6	Mrs. Ro	odriguez documented anywhere in your report?
7	Α.	No.
8	Q.	Is it documented anywhere in your declaration?
9	Α.	No.
10	Q.	How did you obtain this consent?
11	Α.	Through verbal consent from Mrs. Rodriguez.
12	Q.	We've already established that San Jose PD has
13	writte	n consent forms and that you had some with you
14	that n	ight; is that correct?
15	Α.	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. Ro	odriguez
21	Α.	I
22	Q.	to obtain consent?
23	A.	I informed her of the laws pursuant to a 5150
24	hold a	nd requested that requested her consent to
25	remove	the firearms, and she agreed.

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 20 of 31



DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 21 of 31



Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 22 of 31

And when did you make the decision to remove the 1 Q. 2 firearms? Sometime after 3 Α. I think we went over this. Mr. Rodriguez was secured. 4 5 During that -- that brief conversation at 03:57 Q. 6 when the situation was declared normal and 04:13 when 7 your district sergeant cleared, correct? 8 Α. Yes. 9 Q. It was during that time period that you decided 10 that you were going to confiscate the weapons? 11 Α. Yes. 12 What is the San Jose Police Department policy Q. 13 with regard to the seizure of firearms during a welfare 14 check? 15 MR. VANNI: Objection; lacks foundation. 16 BY MR. KILMER: Is there a San Jose Police Q. 17 Department policy with regard to the seizure of 18 firearms during a welfare check? 19 No, there is not a policy. No. Α. 20 Does the San Jose Police Department have a Ο. 21 policy with regard to the seizure of firearms during a 22 5150? 23 Α. Yes. 24 Q. What is that policy? 25 I would have to read the duty manual. Α. DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 23 of 31

1	Α.	No. You can see what page it is and then you
2	can jus	st I'm very computer illiterate so maybe there
3	is a qu	icker way. And then you just scroll down until
4	you get	to that page.
5	Q.	What would be another way that you would make an
6	inquiry	7?
7	Α.	You could do a search. But I have had very
8	little	success with the search. I just find it easier
9	to	
10	Q.	Just do the brute force approach?
11	Α.	Yes.
12	Q.	Do you remember how long the section was on
13	confisc	cation of firearms?
14	Α.	No.
15	Q.	Couple paragraphs? Three paragraphs?
16	Α.	No.
17	Q.	Do you remember what words you used to obtain
18	Ms. Roc	driguez's consent?
19	Α.	No.
20	Q.	Do you remember if you asked for consent to
21	search	or to seize?
22	A.	I would have definitely told her that we were
23	seizing	g them. Our intention was to seize them.
24	Q.	So you made it clear to her that you were going
25	to seiz	the weapons?

DEPOSITION OF OFFICER STEVEN VALENTINE

1 Α. Yes. 2 With or without her consent? Ο. 3 Α. No. 4 So if she would have said no, you would have Ο. 5 walked away and left the guns there? 6 MR. VANNI: Objection; calls for speculation. 7 MR. KILMER: No, it doesn't. 8 THE WITNESS: No. 9 Q. BY MR. KILMER: No? 10 Α. No. 11 So even over her objection, you would have taken Ο. 12 the guns? 13 No. Α. No. Okay. 14 Q. 15 So if she had objected and said you are not 16 getting the guns, that would have been the end of the 17 matter; you would have left and left the guns there? 18 Α. No. 19 All right. That's what -- what would you have Q. 20 done? 21 There would have been a discussion in regards to Α. 22 warrants, other avenues at our disposal. 23 Q. Did you convey that information to 24 Ms. Rodriguez, that you would have obtained a warrant 25 if she didn't consent?

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 25 of 31

1	Α.	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	discuss	sion?
6	Α.	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	Α.	No.
10	Q.	At any time did you tell Ms. Rodriguez that you
11	were re	equired to seize the guns?
12	A.	I would have just told her pursuant to the law
13	we were	e going to need to confiscate the firearms.
14	Q.	And her response was?
15	Α.	She understood.
16	Q.	And after that, she found the combination to the
17	safe ar	nd somebody helped her open it?
18		MR. VANNI: Objection; calls for speculation.
19	Q.	BY MR. KILMER: If you know.
20	Α.	I don't know.
21	Q.	Do you know if any of the other officers at the
22	scene p	prepared a written report?
23	Α.	No, they did not.
24	Q.	So the only person preparing a report was you?
25	Α.	Yes.

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 26 of 31

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 am16 confused.

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

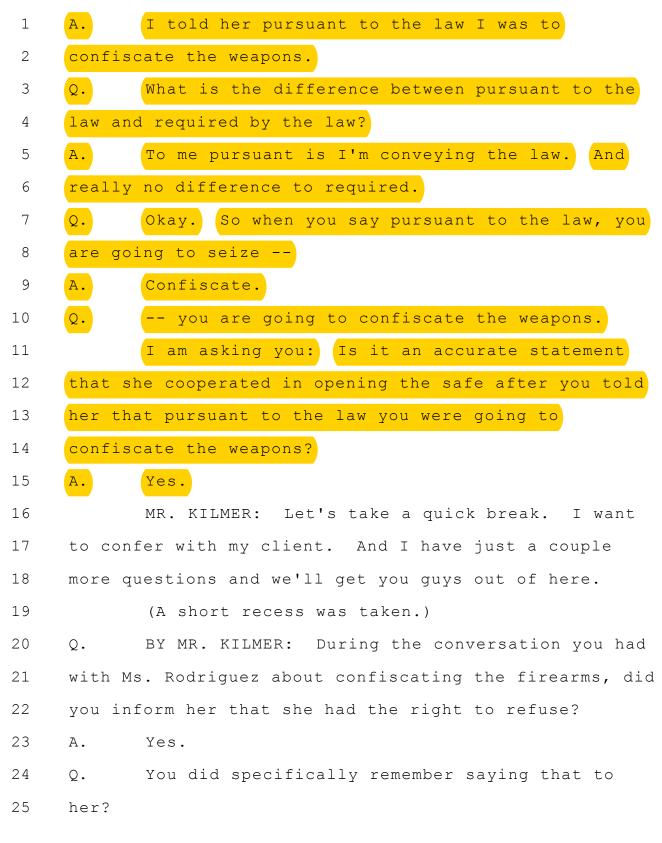
18 Your statement to Lori Rodriguez that the law 19 required you to confiscate the weapons came before she 20 cooperated in opening the safe.

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 t	1 03	Ms. 1	Rodriguez
25	that y	you were	required	by l	aw t	o sei	ze	the	weapons?

DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 27 of 31

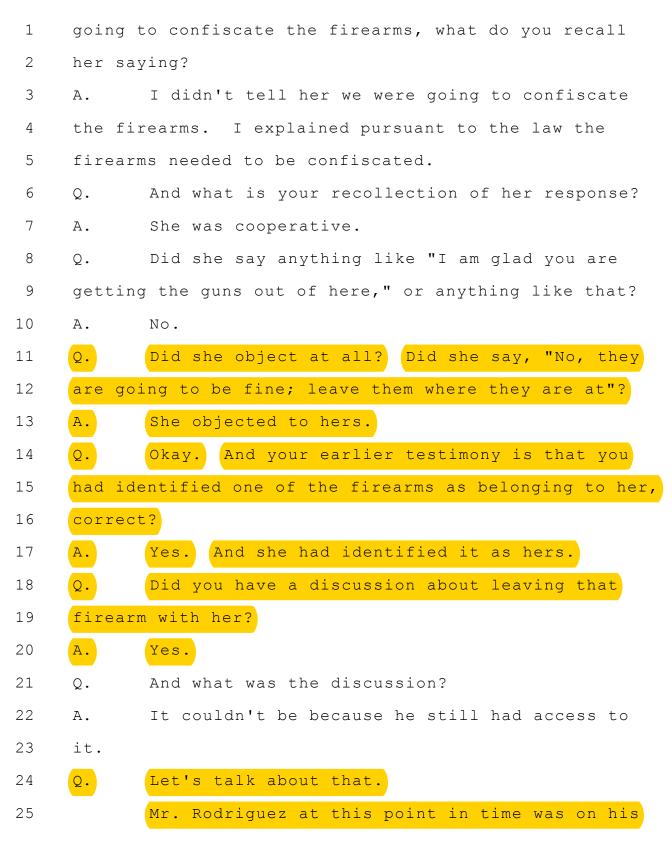


DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 28 of 31

1	Q.	And what was the response that you expected?
2	Α.	I didn't expect anything.
3	Q.	Didn't you expect her to cooperate and open the
4	safe?	
5	Α.	No.
6	Q.	Then why did you ask her to open it?
7	Α.	Because you can't remove the firearms if it's
8	not og	pen.
9	Q.	So you were going to remove the firearms you
10	had a	lready made the decision to remove the firearms at
11	that :	point?
12	Α.	Yes.
13	Q.	Did you convey that conviction that level of
14	convi	ction to her that you were going to remove the
15	firea	rms?
15 16	firea A.	rms? I told her that we're going to confiscate the
		I told her that we're going to confiscate the
16	Α.	I told her that we're going to confiscate the
16 17	A. firea Q.	I told her that we're going to confiscate the rms.
16 17 18	A. firea Q. combi:	I told her that we're going to confiscate the rms. And it was after that that she gave you the
16 17 18 19	A. firea Q. combi:	I told her that we're going to confiscate the rms. And it was after that that she gave you the nation to the safe, correct, or gave one of the
16 17 18 19 20	A. firea Q. combi:	I told her that we're going to confiscate the rms. And it was after that that she gave you the nation to the safe, correct, or gave one of the ers the combination of the safe?
16 17 18 19 20 21	A. firea Q. combi: offic A.	I told her that we're going to confiscate the rms. And it was after that that she gave you the nation to the safe, correct, or gave one of the ers the combination of the safe? Yes. What else did she say? What do you recall her
16 17 18 19 20 21 22	A. firea Q. combi: offic A. Q.	I told her that we're going to confiscate the rms. And it was after that that she gave you the nation to the safe, correct, or gave one of the ers the combination of the safe? Yes. What else did she say? What do you recall her
16 17 18 19 20 21 22 23	A. firea Q. combi: offic A. Q.	I told her that we're going to confiscate the rms. And it was after that that she gave you the nation to the safe, correct, or gave one of the ers the combination of the safe? Yes. What else did she say? What do you recall her g?

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 29 of 31



way to Valley Medical, correct? 1 2 Or in the ambulance outside. One of the Α. Yes. 3 two. 4 And your understanding of a 5150 hold is that Q. 5 the person is usually held for 72 hours observation, 6 correct? 7 Α. Up to 72 hours. 8 It could be longer? Q. 9 Α. Out of my hands. You don't know? 10 Ο. I have seen it for four hours. 11 Α. 12 So Mr. Rodriguez would have not had immediate Q. 13 access to the firearms because he would have been in the hospital, right? 14 15 I don't know. Α. 16 You directed that he be transported to Valley Q. 17 Medical, correct? 18 Α. Yes. 19 And so Ms. Rodriguez was being left home Okay. Q. 20 alone with the firearms, correct? 21 Yes. Α. 22 Q. And Mr. Rodriguez was going to be in the 23 hospital? 24 Α. Yes. 25 So in what way did he have access to the Q. DEPOSITION OF OFFICER STEVEN VALENTINE

Case 5:15-cv-03698-EJD Document 36-1 Filed 09/16/16 Page 31 of 31

1 firearms at that point in time?

2 A. He still lived there.

3 Officer Valentine, were you made aware that the Ο. plaintiffs offered to dismiss you from this case in 4 5 exchange for a stipulation that you were the only 6 officer that interacted with Lori with regard to the 7 seizure of the firearms? 8 I was the only one who interacted. Α. 9 Ο. But were you made aware that the plaintiffs 10 offered to dismiss you from the case in exchange for a 11 stipulation that you were the only officer that 12 interacted with her with regard to the seizure the 13 firearms? 14 No, I wasn't. Α. 15 One last thing. And this doesn't require a Ο. 16 response from you necessarily but my client wanted me 17 to convey this to you that the case is about the 18 constitution of public policy. And except for the 19 initial seizure of the firearms and the return of my 20 client's property, we don't believe that you did

21 anything wrong that night except for the issue of the

22 seizure and the failure to return them. And my client 23 did want to thank you for the compassion and 24 professional conduct yo showed to her husband. 25 A. Thank you.