

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

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

For the Plaintiffs:

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1 INDEX OF EXAMINATIONS:

2

3 Page

4 By Mr. Vanni ..... 4

5 By Mr. Kilmer ..... 84

6

7

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8

9

10 INDEX OF EXHIBITS:

11

12 Page

13 A City of San Jose's Amended Notice of Oral Depositions 9

14

15 B Complaint 9

16

17 C San Jose Police Department general offense hardcopy, GO#SJ 2-13-130240074, property report (Bates stamps SJ000011-15) 20

18

19 D Lincoln series safes, copy of brochure cover (Bates stamp JA - 72) 41

20

21 E San Jose Police Department general offense hardcopy, GO#SJ 2-13-130240074, handwritten property report (Bates stamps SJ000003-06) 51

22

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--oOo--

25

1 night of the incident which is January 24th, 2013. Is  
2 that statement correct?

3 A. Yes.

4 Q. And you've also alleged at the time one of  
5 those firearms was your separate property.

6 A. Yes.

7 Q. Is that accurate? Yes?

8 A. Yes.

9 Q. Which firearm was that?

10 A. The .357.

11 Q. When you say "357" --

12 A. Magnum, Smith & Wesson.

13 Q. Let's focus on that particular firearm first.  
14 How did you acquire that firearm?

15 A. Edward and I purchased -- went to go purchase  
16 it prior to living in that house. I was living with my  
17 parents.

18 Q. Were you married at the time you purchased it?

19 A. Yes.

20 Q. Who purchased the firearm? Was it you or  
21 Edward?

22 A. I don't remember.

23 Q. Do you have any documentation with regard to  
24 that particular firearm?

25 A. I'd have to look. I think I have the receipt

[18]

1 for that.

2 Q. Okay. Any other -- I've never purchased a  
3 firearm, so I don't know what other documentation that  
4 you get. Other than the receipt, is there something  
5 else that you would receive, a certificate or license or  
6 something like that?

7 A. Not then that I remember. Just the receipt.

8 Q. Okay.

9 A. And the owner's manual. Back --

10 Q. Go on.

11 A. Back then, they didn't even make you show that  
12 you could use it, that you could load it and unload it.  
13 Now they do, but back then they didn't. That was a long  
14 time ago.

15 Q. Do you remember where you bought it?

16 A. No. I know it was a sporting goods store, but  
17 I just can't remember where.

18 Q. If you do happen to come across that receipt, I  
19 ask that you don't destroy it or anything like that  
20 because it may be something that we want to see over the  
21 course of this litigation. Understood?

22 A. Understood.

23 Q. Okay. Thank you. With regard to that .357  
24 Smith & Wesson, the Magnum, did you have that firearm  
25 during the entire marriage with Edward?

[19]

1           A. Yes.

2           Q. You're still married so -- and when you did  
3 have that firearm, did you store it with the other  
4 firearms that you and Edward owned?

5           A. Yes.

6           Q. Okay. Let's talk about the other 11 firearms.  
7 Do you recall how those firearms were acquired?

8           A. Which ones?

9           Q. That's a good question. Are you able to  
10 just -- off the top of your head, are you able to name  
11 the type and model of the firearm?

12          A. Okay. I know there are two Browning shotguns  
13 and -- purchased.

14          Q. Um-hum.

15          A. There's --

16          Q. Let's do this. I'm going to go ahead and mark  
17 as Exhibit C this document here, copy of a portion of  
18 the police report in this case.

19                   (Defendants' Exhibit C is marked.)

20 BY MR. VANNI:

21          Q. I want to go ahead and just scan through  
22 Exhibit C. There's some additional information --

23          A. Okay.

24          Q. -- on the other pages, little bit more detail.

25          A. (Reviewing document.)

[20]

1 A. Yes.

2 Q. Were any of them given to you as gifts?

3 A. If the Glenfield is the one I'm thinking it is,  
4 that was my great uncle's. That -- I guess you could  
5 say given to me. Given to both of us really. My dad  
6 had it. And it was from World War II. If that's the  
7 one -- one of these is that, I think that's it.

8 Q. Okay. Do you know if any of the firearms Nos.  
9 1 through 11, do you know if any of them were given as  
10 gifts directly to Edward Rodriguez?

11 A. No.

12 Q. With regard to the Smith & Wesson .357 Magnum,  
13 No. 12, the one that you said was your firearm, was that  
14 one registered in your name?

15 A. Yes.

16 Q. How about the other eleven, 1 through 11, do  
17 you know who those firearms were registered to?

18 MR. KILMER: Objection.

19 MR. VANNI: What's the --

20 MR. KILMER: Problem is that most of these are  
21 long guns, and long guns are not registered prior to  
22 January 2014.

23 BY MR. VANNI:

24 Q. Fair enough. With the exclusion of the long  
25 guns, do you know who those firearms are registered to?

[23]

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?

[40]



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.)

[41]

1 A. Correct.

2 Q. Was there any ammunition inside of the safe?

3 A. Yes.

4 Q. My understanding is that the ammunition, that  
5 wasn't confiscated?

6 A. Correct.

7 Q. If you know, how much ammunition was inside of  
8 that safe?

9 A. Guesstimating, probably a box for each of the  
10 handguns and maybe four or five boxes of shotgun shells.  
11 I'd have to actually -- it's been years since I've  
12 looked at it.

13 Q. How much -- I don't know what a typical box of  
14 ammunition for a handgun is, but is it 24 rounds? How  
15 many rounds are in a box?

16 A. I know the boxes are like this (indicating).  
17 But I really couldn't tell you how many are in there.

18 Q. That's fine. Is there a standard number?

19 A. I don't know. I never paid attention to that.

20 Q. Okay. Now, I understand with this particular  
21 safe, that requires a key and a combination?

22 A. Correct.

23 Q. Was there any other method other than a key and  
24 a combination to secure the safe?

25 A. No.

[45]

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.

[46]

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.

[48]

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

[50]

1 A. Since we purchased it.

2 Q. Since this incident has occurred, you've  
3 alleged that the combination has been changed; is that  
4 correct?

5 A. Yes.

6 Q. Did you get to pick the combination, or did you  
7 use random numbers?

8 A. I got to pick the combination when the  
9 locksmith came out.

10 Q. I don't need to know the combination, but is  
11 there any particular significance to the number that you  
12 used, like a birthday?

13 MR. KILMER: I'm going to object at this point.

14 MR. VANNI: I just want to know if there's any  
15 particular significance to it.

16 MR. KILMER: Can we go off the record for a  
17 minute.

18 (Discussion off the record.)

19 (Break taken from 11:13 to 11:17 a.m.)

20 MR. VANNI: So after a brief break, go back on  
21 the record.

22 Mr. Kilmer, you're withdrawing any objection  
23 you had to that line of questioning?

24 MR. KILMER: I objected to the particular  
25 question and the inquiry for the reasons stated, that

[58]

1 the deposition may become part of a public record, and  
2 hints about passwords to gun safes are -- or any safe is  
3 a dangerous thing to put in the public record.

4 And we had a brief discussion about whether or  
5 not we could seal this part of the deposition, and that  
6 causes certain logistic problems.

7 So I had a conference with my client out in the  
8 hall. She disclosed to me her method for choosing the  
9 new combination. And with that stated, I'll withdraw  
10 the objection to the line of questioning. Instruct my  
11 client to answer. We'll take it question by question.

12 BY MR. VANNI:

13 Q. That's fair. Let me ask it this way.

14 Is the password -- the combination that was --  
15 that it was changed to, is it a combination that your  
16 husband Edward Rodriguez would likely know or be able to  
17 guess?

18 A. Not understanding --- if he knew how I chose it,  
19 would he be able to guess, or would he be able to guess  
20 right now without any information?

21 Q. Let's take both questions. If he -- without  
22 any information, would he be able to guess it?

23 A. No.

24 Q. So it's not your anniversary or your birthday?

25 A. No.

[59]

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

[60]



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

[70]

1 could go buy one, wait, and go home with it?

2 A. Yes.

3 Q. Is that correct?

4 A. Yes.

5 Q. All right. Since this incident in 2013, have  
6 you gone out and purchased a new firearm?

7 A. No.

8 Q. Have you tried to purchase a new firearm?

9 A. No.

10 Q. Are you able to afford to purchase a new  
11 firearm?

12 A. Yes and no.

13 Q. Okay.

14 A. I could. I just at this point don't want to  
15 spend the money on certain -- that's primarily what has  
16 stopped me is don't really want to spend the money on  
17 that particular item when there's other things that we  
18 need to spend money on. Money has been tight lately.

19 Q. Okay. So one of your claims is that you have a  
20 Second Amendment right to keep and bear arms and things  
21 like that, especially in your home. Is that your  
22 understanding of what your Second Amendment rights are?

23 A. Yes.

24 Q. And so other than not wanting to spend the  
25 money to get a new firearm, is there any reason, other

[71]

1 conclusion. Misstates the law.

2 BY MR. VANNI:

3 Q. I'm asking if she's -- is that your  
4 understanding of the law, that if you gave Edward  
5 Rodriguez a firearm --

6 MR. KILMER: That's a different question.

7 BY MR. VANNI:

8 Q. Let's do it more generally.

9 What is your understanding of the law if you  
10 give Edward Rodriguez a firearm?

11 A. That from my understanding, I would be  
12 committing a felony.

13 Q. Okay. What's your understanding of the law if  
14 you were allowed to essentially let Edward have access  
15 to the firearms, not give it to him but just he could  
16 get to those firearms, do you have an understanding of  
17 what would occur?

18 MR. KILMER: Objection. Calls for speculation.  
19 Calls for a legal conclusion.

20 BY MR. VANNI:

21 Q. Unless your attorney instructs you not to  
22 answer --

23 MR. KILMER: I'm going to instruct her not to  
24 answer that one.

25 MR. VANNI: Want to read back the question?

[75]

1 MR. KILMER: I'm going to instruct her not to  
2 answer the question in its current form. I think it's a  
3 legitimate inquiry, and I'm happy to help counsel phrase  
4 the question if he wants.

5 BY MR. VANNI:

6 Q. What is your understanding of what would occur  
7 or could occur to you in the event that Edward Rodriguez  
8 were to gain access to these firearms if they were  
9 returned to you?

10 MR. KILMER: Okay. And you're limiting the  
11 question to the firearms that she would have dominion  
12 and control over, not just any firearm in the universe?

13 MR. VANNI: Yes, the ones that she would have  
14 dominion and control over, yes.

15 MR. KILMER: Thank you. That's a valid  
16 question.

17 You can answer.

18 THE WITNESS: My understanding, as long as he's  
19 prohibited, he cannot have access to the safe, to  
20 anything.

21 BY MR. VANNI:

22 Q. All right. If these firearms were returned to  
23 you, how would you ensure that he didn't get access to  
24 these firearms?

25 A. Same as before. They would go in the safe.

[76]

1 MR. VANNI: Okay.

2 EXAMINATION BY MR. KILMER:

3 Q. Lori, do you recall when the city attorney was  
4 asking you about criminal liability for allowing Edward  
5 to have firearms? Do you remember that line of  
6 questioning?

7 A. Yes.

8 Q. You understand that you have -- you would have  
9 criminal liability if you affirmatively gave a gun to  
10 Edward. And you testified to that?

11 A. Yes.

12 Q. Is it your understanding that you would also  
13 have potential criminal liability if you were negligent  
14 in allowing Edward to have access to the firearms that  
15 you control?

16 A. Yes.

17 Q. Thank you.

18 MR. VANNI: No follow-up from there.

19 (Whereupon, the deposition of LORI RODRIGUEZ  
20 was adjourned at 11:59 a.m.)

21

22

23

\_\_\_\_\_  
LORI RODRIGUEZ

24

Date: \_\_\_\_\_

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CERTIFICATE

I, KIM MEIEROTTO, CSR #11602, do hereby certify:

That prior to being examined, the witness named in the foregoing deposition was by me duly affirmed to testify to the truth, the whole truth and nothing but the truth;

That said witness was given opportunity to read and sign the deposition transcript;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction.

I further certify that I am not interested in the outcome of this action.

Witness my hand this 6th day of June, 2016.

Kim Meierotto  
KIM MEIEROTTO, CSR  
CSR #11602