

Exhibit “K”

Deposition Transcript of

Kim Caniglia

June 27, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA

VS

C.A. NO. 15-525-M-LDA

ROBERT F. STROM, as the Finance Director
of the CITY OF CRANSTON, et al

D-E-P-O-S-I-T-I-O-N

DEPOSITION of Kim Caniglia, taken in the above-entitled
cause on behalf of the Defendants, pursuant to notice,
before Brenda A. Scharver, Notary Public in and for the
State of Rhode Island, at the offices of DeSisto Law, 60
Ship Street, Providence, Rhode Island on June 27, 2018
scheduled for 10:00 a.m.

APPEARANCES:

FOR THE DEFENDANT:
DeSISTO LAW
BY: PATRICK K. CUNNINGHAM, ESQ.

FOR THE PLAINTIFF:
THOMAS W. LYONS, III, ESQ.

1 MR. LYONS: Objection.

2 A I put the gun back where it normally is. I hid the
3 magazine because I was worried about Ed.

4 Q When you say that, what were you worried about?

5 A His-- I was worried about his state of mind. I was
6 worried about what he had just said.

7 Q When you say you were worried about his state of mind,
8 with respect to what particularly?

9 MR. LYONS: Objection

10 A That he wasn't happy, that I didn't know how to make him
11 happy, the argument that we just had.

12 Q But why would you hide the magazine?

13 A It seemed a reasonable thing to do.

14 Q Why would it be reasonable?

15 A Because Ed was depressed.

16 Q Were you afraid he was going to do something with the gun
17 and the magazine?

18 A Yes.

19 Q It's okay. Again, I'm sorry that this leads to emotion.
20 I thought that was why, but again, we don't want to put
21 words in your mouth.

22 I believe you said during the incident you were going
23 to call 911?

24 A Yes.

1 A I probably told her that I was worried about going home,
2 that I was worried about what I was going to find.

3 Q When you say you were worried about going home and
4 worried about what you were going to find, what were you
5 worried you were going to find?

6 A I was afraid that I was going to find Ed hanging from the
7 rafters, that's what I was worried about.

8 Q You were afraid you were going to find him, when you say
9 "hanging from the rafters"?

10 A Hanging.

11 Q Were you afraid that he was going to use the gun?

12 A No.

13 Q Why weren't you afraid that he was going to use the gun?

14 A I don't know.

15 Q You were afraid he was going to commit suicide?

16 A I was incredibly worried.

17 Q You were incredibly worried that he was going to commit
18 suicide or harm himself in some way; is that correct?

19 A Yes.

20 Q So after you have the discussion with Barbara, you call
21 the Cranston Police Department; is that correct?

22 A Yes.

23 Q Do you remember what you informed the Cranston Police
24 Department on that telephone call?

1 A Not verbatim.

2 Q What do you remember concerning what you said on that
3 telephone call?

4 A That I would like to have an officer come with me to my
5 house to check on my husband, I was worried about him. I
6 may have said that we had an argument the night before
7 and that he has been depressed. I don't remember word
8 for word.

9 Q So you requested some sort of escort from where you were
10 to your house?

11 A Yes.

12 Q You also informed officers that your husband may have
13 been depressed?

14 A Yes, only I think they asked me why.

15 Q Did you inform the officer of the gun incident?

16 A On the phone?

17 Q Yes.

18 A I don't know. I don't remember.

19 Q So you don't remember if you told the officer about the
20 gun incident or the words your husband used?

21 A No, I don't remember. I don't remember.

22 MR. LYONS: So far we're just talking about
23 the phone call?

24 MR. CUNNINGHAM: Phone call, yes, just the

1 phone call.

2 Q On the phone call did you inform the Cranston police
3 officer that you were afraid of your husband?

4 A No.

5 Q You don't remember saying that?

6 A I don't remember saying that. I was afraid for my
7 husband.

8 Q But you don't remember saying you were afraid of your
9 husband?

10 A No.

11 Q So as we sit here today, again I don't want to put words
12 in your mouth, but from what I'm understanding there are
13 two things that you remember about the phone call, that
14 you requested an escort to the house and that you
15 informed the police department that your husband was
16 depressed?

17 A I don't remember the exact words, but I believe they
18 asked me why, and I had told them that he was depressed,
19 I was worried for him, I was worried about what I would
20 find.

21 Q When you say worried about what you would find, did you
22 express that to the police officer?

23 A Yes, I was worried about Ed.

24 Q And again, when you say you were worried about what you

1 nine lines down and go to the middle of the paragraph
2 where it states, "wife shared that her hope was that her
3 husband could get some help here in the ER"; do you see
4 that?

5 A Yes.

6 Q Do you remember sharing that concern or hope?

7 A It was taken out of context.

8 Q What was taken out of context?

9 A This statement.

10 Q Let me start with this: Did you make the statement that
11 you hoped that your husband could get some help in the ER
12 or something similar to that statement?

13 A Yes.

14 Q You just expressed to me that it was taken out of
15 context. Could you explain to me how it was taken out of
16 context, how you believe it was taken out of context?

17 A Because prior to that I had told her that he was not
18 happy, he was in a depression and I didn't know why and I
19 didn't know how to help him and I hoped that he could get
20 help in the ER.

21 Q So you were concerned about his depression?

22 A Yes. There was something wrong with my husband.

23 Q And you hoped that he could get some type of help for
24 that while he was in the hospital?

Exhibit “L”

***Deposition Transcript of
Officer John Mastrati
May 31, 2018***

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA
Plaintiff

VS.

C.A. NO. 15-525

ROBERT F. STROM, as the Finance Director
of THE CITY OF CRANSTON, et al.
Defendants

DEPOSITION OF OFFICER JOHN MASTRATI, a
Defendant in the above-entitled case, taken on
behalf of the Plaintiff, before Linda L.
Guglielmo, RPR-RMR, a Notary Public in and for the
State of Rhode Island, at the offices of Strauss,
Factor, Laing & Lyons, One Davol Square,
Providence, Rhode Island, on May 31, 2018 at 10:00
A.M.

APPEARANCES:

FOR THE PLAINTIFF.....STRAUSS, FACTOR, LAING & LYONS
BY: THOMAS W. LYONS, ESQ.
RHIANNON S. HUFFMAN, ESQ.

FOR THE DEFENDANTS.....DeSISTO LAW
BY: PATRICK K. CUNNINGHAM, ESQ.

Officer John Mastrati - May 31, 2018

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1 to seize firearms for safekeeping if you thought a
2 person was suicidal?

3 A. Yes.

4 MR. CUNNINGHAM: Objection.

5 Q. Who told you that?

6 A. It would be during our trainings, things to
7 consider, somebody that's suicidal and has
8 weapons, to notify a supervisor, let them know of
9 the situation, and they make the call from there.

10 Q. The supervisor makes the call?

11 A. Something like that, yes. I have the
12 supervisor notified and have them come to the
13 scene.

14 Q. Okay. That's your understanding of what the
15 Cranston police procedure is in those
16 circumstances?

17 A. Yes.

18 Q. Okay. Do you recall who told you that?

19 A. No.

20 Q. All right. But your recollection was it was part
21 of an in-service training?

22 A. Part of the in-service, yes, to consider
23 weapons that are around that individual.

24 Q. Right. Right. But was it also part of the
25 in-service training that the procedure in those

Officer John Mastrati - May 31, 2018

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1 understood correctly, his behavior changed when
2 you pulled on to the street?

3 A. Yes, he had unusual behavior, yes.

4 Q. Just what was the unusual behavior?

5 A. To be exact, I would rather have my report.

6 Q. And when you say a Terry pat, you're referring to
7 a Supreme Court case?

8 A. Yes.

9 Q. Okay. What's your understanding of what that case
10 says?

11 A. Terry pat is a pat on the outside of the
12 clothing for any weapons.

13 Q. What is your understanding of what the decision in
14 the Terry case permits you to do as a police
15 officer?

16 A. We're allowed for articulable -- perform a
17 pat-down of the outer clothing without any
18 manipulation of anything on the person.

19 Q. And under what circumstances can you do that?

20 A. For officer safety and anything that you feel
21 as though there might be weapons present.

22 Q. With respect to seizing firearms when someone may
23 be suicidal, what's your basis -- what's your
24 understanding of your legal authority to do that?

25 A. For someone that's suicidal, I would notify a

Officer John Mastrati - May 31, 2018

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1 supervisor of the situation and that there's
2 firearms present, and to seize them would be for
3 the well-being of that person and the safety of
4 others.

5 Q. Okay. You just referred, for example, to a Terry
6 pat, which you can do of a person?

7 A. Yes.

8 Q. And you can seize their firearms if you detect
9 them during the Terry pat, right?

10 A. Yes.

11 Q. Okay. Is it your understanding that the Terry
12 case gives you the authority to seize the firearms
13 of a person who may be suicidal, or does your
14 legal authority come from a different source than
15 the Terry decision?

16 A. For me, the Terry decision would be -- I use
17 it for any illegal firearms. I never seized on a
18 suicidal subject. I never obtained a firearm from
19 a Terry pat on a suicidal subject.

20 Q. My question is with respect to the Terry pat, you
21 cited a legal authority for that --

22 A. Yes.

23 Q. -- the Terry decision?

24 A. Yes.

25 Q. What is your legal authority to seize the firearms

Officer John Mastrati - May 31, 2018

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1 of a person who may be suicidal?

2 A. It would be pretty much for safety, his
3 safety and other people's safety. So I figure it
4 would be a duty to seize that firearm to prevent
5 him from hurting himself or hurting others.

6 Q. Okay. I'll be more specific. Are you aware of,
7 for example, a different U.S. Supreme Court case
8 that gives you the authority to do that?

9 A. No.

10 Q. Are you aware of a constitutional provision that
11 gives you the authority to do that?

12 A. No.

13 Q. Are you aware of the decision of any other court
14 that gives you the authority to do that?

15 A. No.

16 Q. Are you aware of any Rhode Island statute that
17 gives you the authority to do that?

18 A. No.

19 Q. Does the Cranston Police Department have a written
20 policy or procedure or general order that gives
21 you the authority to do that?

22 A. No.

23 Q. Your understanding of your authority to do that
24 comes from the in-service training you have
25 received or -- let me withdraw the question. Does

Officer John Mastrati - May 31, 2018

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1 Q. If you go to Page 8 of this, there's a paragraph
2 which is -- it appears to be English letter I, I
3 say that to distinguish it from Roman Numeral I,
4 which is right underneath it, but it's called
5 Disposal of Evidence; do you see that?

6 A. Yes.

7 Q. Do you ever get involved in disposal of evidence?

8 A. No.

9 Q. Do you ever get involved in returning evidence to
10 its rightful owners?

11 A. No.

12 Q. Are you aware of any laws respecting the return of
13 firearms to people after they're seized by the
14 police?

15 A. No.

16 EXHIBIT 6 (PLAINTIFF'S EXHIBIT 6
17 MARKED FOR IDENTIFICATION)

18 Q. Officer Mastrati, let me show you what's been
19 marked as Exhibit 6 which is Cranston Police
20 Department General Order 320.70, which is entitled
21 Public Mental Health. Are you familiar with this
22 order?

23 A. Yes.

24 Q. If you go down to Roman Numeral IV on the first
25 page, it says Procedures; do you see that?

Officer John Mastrati - May 31, 2018

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1 causing personal harm to himself?

2 A. Yes.

3 Q. What do you base that on?

4 A. I base that off his statements and presenting
5 a firearm.

6 Q. Are you aware of whether any Rhode Island statute
7 in effect at the time addressed the situations
8 under which a person can be compelled to go to a
9 hospital or mental health facility?

10 A. No.

11 Q. Are you aware of whether or not, for example, a
12 court order may be required?

13 A. No.

14 Q. Has that been any part of your training at either
15 the Cranston Police Department or at the training
16 academy?

17 A. I don't think so.

18 Q. Okay. If you go down to the last section on that
19 page which has the letter V, and it says training?

20 A. Yes.

21 Q. It says, "Cranston Police Department will provide
22 entry-level personnel with training on this
23 subject and will provide refresher training at
24 least every three years." Do you see that?

25 A. Yes.

Exhibit “M”

Deposition Transcript of

Officer Austin Smith

June 1, 2018

In The Matter Of:

*Caniglia vs
Strom, et al*

*Officer Austin Smith
June 1, 2018*



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Officer Austin Smith - June 1, 2018

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1 A. I've probably been on scene at about ten
2 calls where that's happened, approximately.

3 Q. What were the circumstances under which firearms
4 were seized for safekeeping?

5 MR. CUNNINGHAM: Objection.

6 Q. I understand it may be different, there may be
7 different circumstances. I'm asking you for a
8 general description of what kind of circumstances
9 have resulted in the seizure of firearms for
10 safekeeping?

11 A. Essentially, if there are firearms there we
12 feel -- we make a determination, we talk to a
13 supervisor, that someone having these firearms in
14 their possession may be unsafe to them or to the
15 general public and to us.

16 Q. Just so we're clear, we're talking about
17 circumstances in which there's not a criminal
18 investigation going on?

19 A. Yes. That's what I thought we're talking
20 about.

21 Q. Right. I just wanted to make sure we were on the
22 same page. So, what were the circumstances that
23 led the police department to conclude that a
24 person was unsafe -- it was unsafe for a person to
25 have firearms? Again, I realize it may differ

Officer Austin Smith - June 1, 2018

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1 you see that?

2 A. Yes.

3 Q. "To define the limits of law enforcement authority
4 during the execution of a criminal process."

5 A. Yes.

6 Q. What do you understand criminal process to mean?

7 A. If a crime has been committed.

8 Q. Are you aware of any Cranston Police Department
9 general order that sets forth its limits of
10 authority when there is not a criminal process?

11 A. No. Probably something in here about it,
12 though. I'm just not very familiar with it.

13 Q. Okay. Do you recall whether there's anything in
14 this general order that sets forth the Cranston
15 Police Department's limit of authority when there
16 is not a criminal process?

17 A. I don't recall.

18 Q. Have you ever been involved in returning firearms
19 to anyone?

20 A. No.

21 Q. I'm going to show you what was marked as Exhibit 5
22 during Officer Mastrati's deposition, which, for
23 the record, is a copy of Cranston Police
24 Department General Order 350.20 entitled Bureau of
25 Criminal Identification. Was this one of the

Exhibit “N”

***Deposition Transcript of
Sergeant Brandon Barth
July 19, 2018***

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,

vs.

C.A. No. 15-525

ROBERT F. STROM
as the Finance Director of
THE CITY OF CRANSTON, et al.,

DEPOSITION OF SERGEANT BRANDON BARTH,
a witness in the above-entitled cause, taken on
behalf of the Plaintiff, before Devin J. Baccari,
CSR, at the Law Office of Strauss, Factor, Laing &
Lyons, One Davol Square, Suite 305, Providence,
Rhode Island, on July 19, 2018, scheduled at 10:00
a.m.

PRESENT:

FOR THE PLAINTIFF:

STRAUSS, FACTOR, LAING & LYONS
BY: THOMAS W. LYONS, ESQUIRE
RHIANNON S. HUFFMAN, ESQUIRE

FOR THE DEFENDANTS:

DESISTO LAW LLC
BY: PATRICK K. CUNNINGHAM, ESQUIRE

Sergeant Brandon Barth - July 19, 2018

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1 A. Not that I remember, no.

2 Q. When you met with Ms. Murphy in June, did you
3 look at any documents?

4 A. Not that I remember, no, besides the incident
5 report and the interrogatories.

6 Q. Okay.

7 MR. CUNNINGHAM: Tom, just to clarify
8 the record, we also met for about ten minutes
9 before we came over here this morning.

10 Q. (By Mr. Lyons) Okay. Did you look at any
11 documents when you met with Mr. Cunningham before
12 you came over here?

13 A. The interrogatories.

14 Q. The interrogatories. Okay. Have you looked at
15 any other documents to prepare for this
16 deposition whether it was with one of the
17 attorneys or otherwise?

18 A. I reviewed the Community Care Doctrine. I
19 don't, again, know the correct terminology on it,
20 but in the meetings with Caroline she had
21 mentioned that, so I took it upon myself to kind
22 of look at it.

23 Q. Okay. So you looked at an actual document that
24 discussed the Community Care Doctrine?

25 A. No. It was more of, maybe, a Wikipedia entry

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1 the computer recently?

2 MR. CUNNINGHAM: Objection.

3 Q. (By Mr. Lyons) Okay. When you read about the
4 Community Care Doctrine on the computer sometime
5 between June and today, what did it say?

6 A. It was basically the rights of police officers
7 or the rights of police officers when it comes to
8 public safety. And when I saw the term "public
9 safety," it more jogged my memory that I've -- I
10 know this, this is things that I practice every
11 day.

12 So if the terminology of Community Care,
13 if that was ever said in the training or it was
14 on a particular document or a policy, I'm not
15 sure. But when I saw about public safety and
16 certain instances where police officers maybe not
17 in a criminal act where they're more using public
18 safety as the matter, not a criminal matter, it's
19 a public safety matter, that that's kind of what
20 jogged my memory that that's what we were dealing
21 with here.

22 Q. All right. So do you recall having any prior
23 education or training on the issue of dealing
24 with public safety outside the criminal context?

25 A. Specifically, no, but standard procedures in

Sergeant Brandon Barth - July 19, 2018

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1 Q. Okay. What are the exceptions of which you're
2 aware?

3 A. Exceptions would be if -- plain view exigent
4 circumstances. Open field type of -- open
5 field type -- open field, I don't know the direct
6 terminology there. Any searches due to an
7 arrest. There's six total, and I apologize, I
8 don't remember the --

9 Q. Okay. Well, if any more come back to you while
10 we're talking, let me know.

11 A. Okay.

12 Q. And we're not going to go through this right now,
13 but we're going to talk about this some more
14 later on in the deposition.

15 A. Okay.

16 Q. Although, I'm going to ask one more. When you
17 talk about maintaining the public safety, is
18 that, in your mind, an exception to the usual
19 Fourth Amendment rules?

20 A. I'd say yes.

21 Q. Okay. We'll come back to that then.

22 Are you aware that other Cranston police
23 officers have had their deposition taken?

24 A. Aware just through the attorney's office, but
25 I'm assuming it was the people that responded to

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1 taking the totality of the situation, you know,
2 again, here's a wife that decided to stay at a
3 hotel because she was concerned of what her
4 husband may do. So wasn't hysterics, but, you
5 know, there was definitely concern for the fact
6 that she called the police and wouldn't go back
7 to her house without us.

8 Q. Okay. Did she indicate to you whether she wanted
9 all four police officers to go to the house?

10 A. I don't think she indicated that. That was
11 what the response was going to be regardless just
12 based on what she had told us about the incident
13 prior.

14 Q. So even if Mrs. Caniglia had indicated, for
15 example, that she only wanted one police officer
16 to go with her to the house, would you still have
17 responded the same way?

18 A. Yes.

19 Q. Okay. How was Mr. Caniglia's emotional state
20 when you spoke with him?

21 A. I'd say aggravated. He wasn't happy that we
22 were there based on the incident prior to that,
23 so -- but, otherwise, he wasn't, you know, overly
24 angry or hysterical or anything like that. There
25 was definitely annoyance, some trepidation about

Sergeant Brandon Barth - July 19, 2018

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1 A. I'm sure he did when I spoke with him either
2 in person or on the phone, but the exact
3 questions that he asked me I'm not sure of.

4 Q. Does the Cranston Police Department use written
5 forms to obtain consent to do searches?

6 A. Sometimes, yes.

7 Q. Okay. Did you use a written form in this case?

8 A. No.

9 Q. Why not?

10 A. Because of the totality of the circumstances,
11 that Mr. Caniglia had corroborated what Mrs.
12 Caniglia had said. Even with his misgivings
13 about going to the hospital, we felt that Mr.
14 Caniglia was a harm to himself in the least and
15 possibly a harm to his wife until he sought
16 medical help.

17 And not being a medical professional, I
18 don't know how long that takes, so we didn't seek
19 that. We just took possession of the firearms at
20 that point.

21 Q. Okay. Do you recall where the firearms were
22 located?

23 A. I believe there were two firearms that were
24 taken from the home. The first one, I don't
25 recall where that one was located. The second

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1 transported them back to our headquarters.

2 Q. Okay. I understand from your Answers to
3 Interrogatories you were not involved in whether
4 or not to return Mr. Caniglia's firearms to him.

5 A. No, that has nothing to do with me.

6 Q. Okay. Have you ever been involved in that kind
7 of decision with respect to anyone else?

8 A. No.

9 Q. Did you have any discussion with Mrs. Caniglia
10 about obtaining a return of the firearms?

11 A. No, not that I recall.

12 Q. Did you have any discussion with Mr. Caniglia
13 about obtaining a return of the firearms?

14 A. No.

15 Q. Do you know if any Cranston police officer told
16 either Mr. or Mrs. Caniglia that they would get
17 the firearms back after Mr. Caniglia was checked
18 out by the hospital and discharged?

19 A. I don't know if anyone had that conversation
20 with them.

21 Q. What would the usual procedure be for the
22 Cranston Police Department in these
23 circumstances?

24 A. Once the person is transported to the hospital
25 and any firearms are taken possession of, I don't

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1 in an instance where the public safety would be
2 an exception, because if you find somebody
3 that's -- mentions doing harm to themselves, is not
4 in their right frame of mind, is not acting like
5 a reasonable person would, is an instance where
6 exceptions to the search and seizure rules.

7 Q. Okay. Is it your understanding that this
8 exception is expressly set forth, for example, in
9 the constitution or a statute?

10 A. Not to my knowledge that I can recall that it
11 is. I'd have to research it.

12 Q. Okay. So what's the basis? Where does this
13 exception come from legally?

14 A. Again, I go back to the Community Care
15 Doctrine. I've always, in my head, refer -- not
16 referred to it, but acted as a public safety in
17 these types of incidents where it's not criminal
18 but there's still, maybe, some harm to the
19 public.

20 Q. Okay. Are you aware of any decision by a court
21 which sets forth this exception for maintaining
22 public safety?

23 A. I don't recall, no.

24 Q. Have you received any instruction from any lawyer
25 or law -- any lawyer, I'll put it that way, as to

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1 which where did I learn this and where did I
2 learn that, I can't recall specifically to this
3 particular question, but I'm sure I've had -- I
4 know I've had training on dealing with people
5 with mental health issues and kind of the
6 response thereto, but specifically what was
7 discussed at that training I don't recall.

8 Q. Okay. If you go to the next page, it refers to
9 seizing and retaining a person's weapons without
10 a warrant for safekeeping or otherwise as based
11 on the totality of the circumstances. Do you see
12 that?

13 A. Yes.

14 Q. What is the totality of the circumstances?

15 A. Sometimes it could be a person's demeanor,
16 statements made by individuals involved, any
17 physical evidence that you may see on scene,
18 anything that corroborates it, but a lot of times
19 you may only get a verbal statement from one
20 party and a verbal statement from another party,
21 so you may look at a person's demeanor and try to
22 make a judgment on this statement based on
23 demeanor.

24 As in the Caniglia's case with Mrs.
25 Caniglia, the totality would be she was so

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1 concerned that she stayed at a hotel that night.
2 That kind of added to the totality of that
3 particular call.

4 Q. Okay. But your recollection was when you saw her
5 at Scramblers her demeanor was that she was calm?

6 A. Yes.

7 Q. Okay. And when you spoke to Mr. Caniglia, he was
8 agitated about the fact that the police had come
9 to his house, but, otherwise, he was calm?

10 A. Agitated. He wasn't -- like I said, wasn't
11 happy with us being there but wasn't hysterical.

12 Q. Okay. Apart from the fact that he wasn't happy
13 with you being there, how was his demeanor?

14 A. Again, angry but not overtly angry. He was --
15 there was a lot of discussion back and forth
16 between the officers and him about going to the
17 hospital. He did not want to go, from what I
18 remember, to the hospital under those
19 circumstances. Ultimately, he did consent to
20 going after talking to him some time, you know,
21 in regards to the situation. But, otherwise, it
22 was more just anger, but not hysterical anger.

23 Q. Do you know if he consented to go to the hospital
24 after he was told that if he did not consent his
25 firearms would be seized?

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1 say that that was from my experience as a police
2 officer. Again, I'm not a medical professional,
3 so I don't know whether a statement like that
4 rises to that level. But in my experience when
5 someone makes any type of statement to harm
6 themselves, whether it's through anger or
7 anything else, they're not in their right frame
8 of mind and they need to at least speak to a
9 medical professional in regards to that.

10 Q. Can you read your Interrogatory Number 7 and your
11 response.

12 (Witness complied.)

13 A. Okay.

14 Q. (By Mr. Lyons) All right. And there are eight
15 factors that you list in this response that I
16 understand constitute the totality of the
17 circumstances here; is that fair to say?

18 A. Yes.

19 Q. Okay. Number 1 is plaintiff and his wife were
20 involved in divorce proceedings. Do you see
21 that?

22 A. Yes.

23 Q. Did you hear Mrs. Caniglia say that?

24 A. I don't recall specifically if it was her or
25 another officer telling me at the time, but --

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1 Q. Do you know if, in fact, they were in divorce
2 proceedings?

3 A. That I don't know.

4 Q. Okay. You said plaintiff was sick of the
5 arguments between him and his wife and he wanted
6 to work things out is Number 2. Do you see that?

7 A. Yes.

8 Q. Did you hear Mr. Caniglia say that?

9 A. I don't recall specifically like that, but I
10 think when we were speaking to him on the porch
11 was one of the things that he wanted to work it
12 out with his wife, that the argument just kind of
13 escalated and I believe he was referring to the
14 possible divorce or the marital status.

15 Q. Well, did Mr. Caniglia say that they were in
16 divorce proceedings?

17 A. I don't recall if he said it or not or if it
18 was one of the officers that relayed that
19 information.

20 Q. If Mr. Caniglia said he wanted to work things out
21 with his wife, wouldn't that indicate that he was
22 not suicidal?

23 A. Again, I'm not a medical professional so I
24 don't know if that statement would negate the
25 statement from the night before, so it wouldn't

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1 have changed any outcome at that time.

2 Q. Okay. If you go down to Number 4, it says,
3 "During the argument plaintiff grabbed a firearm
4 with one hand and a magazine with the other." Do
5 you see that?

6 A. Yes.

7 Q. Okay. Do you recall someone telling you that, in
8 fact, Mr. Caniglia had a firearm in one hand and
9 a magazine in the other?

10 A. Specific, I don't know if it was him or an
11 officer that had relayed it on scene or if it was
12 Mrs. Caniglia, but going off of the dispatch,
13 Exhibit 22 there, she had mentioned something
14 different, so specifically I don't know who said
15 that.

16 Q. Okay. Would it have made a difference to you
17 here if, in fact, he had not had a magazine in
18 his hand?

19 A. Wouldn't have made a difference. The fact
20 that the -- it's a firearm. It is a true firearm
21 that whether or not it was loaded or not, whether
22 or not he made reference to load it, it doesn't
23 really change much, in my opinion.

24 Q. Number 5 says "plaintiff was upset."

25 A. Yes.

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1 Q. Have you described for me the way in which
2 plaintiff was upset?

3 A. Just the -- the anger and trepidation when we
4 were on scene speaking to him on the porch.

5 Q. And that had to do with the fact that the police
6 had gotten involved?

7 A. Yes.

8 Q. Okay. If you go to Number 8 it says, "Upon
9 returning to the residence, plaintiff's wife
10 parked her car about 100 feet away from the
11 residence and remained in her car until plaintiff
12 left the property by rescue." Do you see that?

13 A. Yes.

14 Q. My understanding, as you testified earlier, that
15 she did that because she was told to by the
16 Cranston Police.

17 A. Yes.

18 Q. Okay.

19 A. May I go back to that?

20 Q. Oh, yes. Yes.

21 A. I just -- she was told to, meaning advised,
22 that we as the police department wanted to make
23 contact. She was concerned about what could have
24 possibly happened. We didn't want Mrs. Caniglia
25 to possibly walk into something tragic. So,

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1 higher level of law enforcement intervention will
2 be required when officers encounter the following
3 scenarios," and Number 1 says, "the person is
4 imminently dangerous to himself or others." Do
5 you see that?

6 A. Yes.

7 Q. Is that what you thought applied here? Did you
8 believe Mr. Caniglia was imminently dangerous to
9 himself or others?

10 A. Yes, based on the totality of the
11 circumstances, the -- you know, what had happened
12 the previous night, I know imminently applies
13 there was the night before and now we're dealing
14 with it a day later (sic).

15 My concern at that point was the
16 statements were made that the Police Department
17 was made aware of those statements and that he --
18 when we go back to the involuntary part of it,
19 regardless of what Mr. Caniglia had said, after
20 we had learned -- corroborated the statement from
21 the night before, he was going to the hospital
22 for a medical evaluation.

23 When I go back and state that we would
24 rather -- the Police Department would rather not
25 put our hands on somebody and take physical

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1 but depending on what he asks you, I may have
2 some follow-ups.

3 MR. CUNNINGHAM: I promise to be short
4 and speak slowly because I have a tendency to
5 ramble.

6 EXAMINATION BY MR. CUNNINGHAM

7 Q. Could you look at Exhibit 9 again. Mr. Lyons
8 asked you to look at page Bates stamped number
9 000243.

10 A. Okay.

11 Q. And I believe your testimony, Sergeant, was that
12 you considered Bullet Point 1 and Bullet Point 2
13 as a warning sign of suicide in this particular
14 case; is that correct?

15 A. Correct.

16 Q. Okay. If you look at the bottom of the page, it
17 also lists agitation. Did you consider the fact
18 that Mr. Caniglia was agitated as a result of the
19 argument he had with his wife?

20 MR. LYONS: Objection.

21 A. His demeanor at the time did show agitation
22 and it was kind of added to the totality of the
23 circumstances.

24 Q. (By Mr. Cunningham) Thank you. If you could
25 take a look at Exhibit 6, which is, sorry,

Exhibit “O”

***Deposition Transcript of
Captain Russell C. Henry, JR.
June 13, 2018***

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA
Plaintiff

VS.

C.A. NO. 15-525

ROBERT F. STROM, as the Finance Director
of THE CITY OF CRANSTON, et al.
Defendants

DEPOSITION OF CPT. RUSSELL C. HENRY, JR., a
Defendant in the above-entitled case, taken on
behalf of the Plaintiff, before Linda L.
Guglielmo, RPR-RMR, a Notary Public in and for the
State of Rhode Island, at the offices of Strauss,
Factor, Laing & Lyons, One Davol Square,
Providence, Rhode Island, on June 13, 2018 at
10:00 A.M.

APPEARANCES:

FOR THE PLAINTIFF.....STRAUSS, FACTOR, LAING & LYONS
BY: THOMAS W. LYONS, ESQ.

FOR THE DEFENDANTS.....DeSISTO LAW
BY: PATRICK K. CUNNINGHAM, ESQ.

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1 A. Yes, sir.

2 Q. Don't get impatient with me.

3 A. I have all day.

4 Q. I mentioned the community caretaking function,
5 have you heard of that phrase before?

6 A. Yes.

7 Q. What is your understanding of it?

8 A. My understanding is that the courts recognize
9 that law enforcement needs to take certain actions
10 relative to the Fourth Amendment without a warrant
11 that pertain to public safety functions or
12 emergencies.

13 Q. Are public safety functions and emergencies
14 different categories or --

15 A. Or emergencies.

16 Q. So when you say a public safety function, what
17 public safety -- what kind of public safety
18 functions are you referring to?

19 A. Say, an intoxicated person stumbling down
20 Reservoir Avenue into traffic, I think the courts
21 recognize that it's reasonable for the police to
22 take custody of the person for their own
23 well-being, protect them from getting hurt, make
24 sure they receive whatever care that they need.

25 Hypothetically, a person jumping off the Pell

Cpt. Russell C. Henry, Jr. - June 13, 2018

25

1 Bridge, I think the courts recognize that the
2 police have to, you know, take reasonable action
3 to prevent the person from killing themselves.

4 A person has a firearm that's thinking of
5 harming themselves or others, I think the courts
6 recognize police have to take whatever action is
7 necessary to prevent that. Those type of
8 scenarios.

9 Q. Okay. Are those either a public safety function
10 or an emergency, or are there other examples that
11 you would put in the category of an emergency?

12 A. I think the circumstances around those type
13 of issues where they're unfolding as the police
14 are there. So I think the courts recognize
15 sometimes, whether it's a seizure of a person or
16 some type of property to maintain public safety, I
17 think as long as it's reasonable, the courts
18 recognize that it's okay to do it without a
19 warrant.

20 Q. My question was, as you had sort of made two broad
21 categories, public safety functions or
22 emergencies, I was asking, maybe unclearly, the
23 examples you gave were, those just public safety,
24 or were they emergencies, or were they a
25 combination of both?

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 A. I think it's fair to say that they could be
2 one or the other or both.

3 Q. Okay. When did you first hear of the community
4 caretaking function?

5 A. I hear about it periodically. It's
6 something -- to me it's synonymous with public
7 safety. I think the Community Caretaking Doctrine
8 that's referred to if you -- depending on what you
9 read.

10 Q. Okay. Did you learn about it in any formal
11 education that you have had?

12 A. I may have. I don't recall where I learned
13 it specifically.

14 Q. All right. Did you read about it in any materials
15 you received?

16 A. May have. I try -- I take pride in
17 self-education, you know, sometimes with different
18 court decisions, whatnot, you know, I try to read
19 those, keep up on current events. Sometimes the
20 lack of formal training or in-service training on
21 those type of things, so I do a lot of reading.

22 Q. Has the Cranston Police Department had any
23 in-service -- let me back up. You referred to
24 in-service training, what do you mean by
25 in-service training?

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 Q. Would the community caretaking function ever come
2 up during a roll call training?

3 A. It may have, I don't recall specifically. We
4 do it on a regular basis, we do high-speed pursuit
5 training at roll call, we do review of the cell
6 block policy at roll call. We're mandated by
7 CALEA to do that, the accreditation. There are
8 certain policies within the Cranston police
9 general orders that mandate roll call training,
10 continuous training. That particular phrase,
11 community caretaking, may not be, but it may be
12 part of a different topic.

13 Q. Okay. So, in other words, the theory of the
14 community caretaking function may have been
15 discussed even if that particular phrase was not
16 used?

17 A. It may have been discussed under mental
18 health in roll call training.

19 Q. Do you believe, or is it your understanding that
20 the Cranston Police Department has the authority,
21 separate from a criminal investigation, of
22 requiring a person to submit to a psychiatric
23 evaluation?

24 THE WITNESS: Can you repeat that?

25 (QUESTION READ)

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 topic?

2 MR. LYONS: Yes.

3 A. I'm not aware of any.

4 Q. Other than what we've talked about so far, have
5 had any other training or education addressing the
6 community caretaking function, whether or not it
7 was called that?

8 A. I think it's fair to say that mental health,
9 the mental health training we received encompassed
10 the concept of the Community Caretaking Act or
11 Doctrine, whatever you want to call it.

12 Most recent mental health training really
13 that I can remember when it became more present is
14 veterans coming back overseas from Operation
15 Desert Storm and all those Middle East operations
16 where we were getting people in the community that
17 had post-traumatic stress disorder. It was very
18 prevalent. So different law enforcement agencies
19 started training officers on that.

20 Q. We'll actually talk a little more specifically
21 about that in a little bit. We have been provided
22 with some records of what I think are in-service
23 training. Let me see if I can locate them.
24 First, let me ask you a question, your son Russell
25 Henry, is he designated a different way in the

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1 surrendered firearms, how they're handled, how
2 they will be put into evidence, documented, how
3 they're secured, paperwork to be filed, to be
4 tested, test-fired, how they will be dispossessed
5 of and released.

6 It talks about, Page 11, firearms seized for
7 safekeeping, firearms seized as found property,
8 firearms surrendered to the police department,
9 forfeited and abandoned firearms. It talks about
10 several things that deal with firearms and seizure
11 of.

12 Q. Maybe I misunderstood, but it was my impression,
13 correct me if I'm wrong, that this general order
14 deals with what the police department does after
15 it comes into possession of the firearm, for
16 whatever reason, and how it handles the firearms
17 thereafter. Does this general order address the
18 circumstances under which the police department
19 may seize a firearm?

20 A. No, I don't believe so. That's not the
21 purpose of the policy.

22 Q. All right. Have you ever been involved in
23 returning firearms to a person?

24 THE WITNESS: How? Specifically,
25 what do you mean?

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 Q. Have you been involved in returning firearms to a
2 person from whom they were seized?

3 A. Involved? Not as a member of the Bureau of
4 Criminal Identification, no.

5 Q. Okay. Have you ever been involved in it in any
6 capacity whatsoever?

7 A. I served in the detective division for seven
8 years, from 2004 to 2010. In the narcotics unit
9 we made numerous seizure of firearms. So in that
10 aspect, whether they were going to be returned by
11 us or not, sometimes I was involved.

12 Q. All right. I'm going to then ask you some
13 questions about the general order. If you go to
14 Page 8, there's a topic called Disposal of
15 Evidence; do you see that?

16 A. Yes.

17 Q. It says, "When no longer needed for evidentiary
18 purposes, all evidence with the exception of
19 firearms and contraband, shall be returned to its
20 lawful owner." Do you see that?

21 A. Yes.

22 Q. And then Number 2 or ii, it says, "Firearms and
23 non-drug contraband shall be destroyed unless a
24 court order authorizes use of this item by this
25 agency or the firearm is required by state law,

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 Q. Was that a temporary state of mind?

2 A. I can't say. I don't know.

3 Q. Okay. Did anyone make a determination that it was
4 not a temporary state of mind?

5 A. I don't know.

6 Q. Okay. Do you know on what basis Mr. Caniglia's
7 firearms were not returned to him after the date
8 of the incident?

9 A. I have no knowledge of anything to do with
10 the return of the firearms.

11 Q. Okay. Who would have been involved in determining
12 whether to return Mr. Caniglia's firearms to him?

13 A. Depends -- so if there was a request,
14 assuming there was a request made, I imagine that
15 the chief would have been notified at one point,
16 the majors, usually -- based on my experience,
17 when there are requests made, whoever they make it
18 to goes up to the chain of command, and then
19 there's a approval.

20 Q. All right. Well, who is it that usually has the
21 final approval on determining whether to return
22 firearms to someone?

23 A. I don't want to say it's the same person in
24 every instance. I guess it would depend on -- it
25 could be different in each instance.

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 Q. Right. When we looked at the prior record of an
2 in-service training, and I'm not sure where it
3 went, it listed several specific topics.

4 A. Right. Domestic violence, mental health,
5 intro to safety net, 2011.

6 Q. Correct. Just so we're clear, that's Exhibit 14
7 you're looking at right now?

8 A. Yes.

9 Q. So what I'm getting at is whenever there is record
10 of in-service training similar to Exhibit 14,
11 would it list the topics that were presented?

12 A. I would assume that the training lieutenant
13 keeps the curriculum of what's presented when, to
14 who.

15 Q. Okay. In other words, I should ask the training
16 lieutenant for whatever records there are of any
17 presentations of in-service training dealing with
18 search and seizure law?

19 A. Yes.

20 Q. Okay. If you look at, going back to Exhibit 8, if
21 you go to Page 10, please. There's a slide
22 entitled Exceptions to the Search Warrant
23 Requirement; do you see that?

24 A. Yes.

25 Q. There are ten items listed; do you see those?

Cpt. Russell C. Henry, Jr. - June 13, 2018

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1 A. Yes.

2 Q. Number 10 says Community Care; do you see that?

3 A. Yes.

4 Q. Is that the community caretaking function we've
5 been discussing?

6 A. Yes.

7 Q. So that would be an exception to the search
8 warrant requirement?

9 A. Yes.

10 Q. Then if you will go to Page 32, there's one slide
11 which is entitled Community Caretaking Function;
12 do you see that?

13 A. Yes.

14 Q. Okay. Do you recall seeing this slide in any
15 presentation at the Cranston Police Department?

16 A. I don't recall it specifically, no.

17 Q. Okay. It refers to one case, if you see, State
18 versus Roussell; do you see that?

19 A. Yes.

20 Q. It says, Trooper investigates erratic operation of
21 motor vehicle by opening passenger side door of
22 motor vehicle. Makes impaired operator
23 observations. Not a search because officer
24 engaged in community caretaking; do you see that?

25 A. Yes.

Exhibit “P”

Deposition Transcript of

Edward A. Caniglia

June 29, 2018

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

v.

C.A. NO. 15-525-M-LDA

ROBERT F. STROM, as the
Finance Director of the
CITY OF CRANSTON, et al.
Defendants

DEPOSITION OF EDWARD A. CANIGLIA, taken on
behalf of the Defendants, Friday, June 29, 2018 at
10:00 a.m., pursuant to Rule 30 and Rule 45 of the
Federal Rules of Civil Procedure at the offices of
DeSisto Law LLC, 60 Ship Street, Providence,
Rhode Island, before Linda F. Oakley, RPR,
Notary Public.

APPEARANCES:

STRAUSS, FACTOR, LAING & LYONS
BY: THOMAS W. LYONS, III, ESQ.
Counsel for the Plaintiff

DESISTO LAW LLC
BY: CAROLINE MURPHY, ESQ.
Counsel for the Defendants

Edward A. Caniglia - June 29, 2018

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1 PT -- patient -- at a gun and told his wife to shoot
2 him, police recovered gun, PT -- meaning patient --
3 stated he was not looking to hurt himself. This
4 happened last night. Wife called today. Wife
5 leaving him, stated for her to shoot him again. PT
6 -- indicating patient -- calm, did not deny
7 altercation, psych
8 eval. I'm going to focus on the last sentence that
9 I've read. It says: Patient calm, did not deny
10 altercation, psych eval.

11 Today as I read this out loud, does it
12 refresh your recollection as to the statement that
13 I just read, did not deny altercation? Do you recall
14 having any kind of conversation with the rescue?

15 A. I had no conversation with the fire rescue
16 people, other than he spoke to one of the officers.
17 He got into the back of the wagon. I was sitting on
18 the rescue cart. He said, "How are you feeling?"
19 I said, "Fine." He said, "Okay. We're going to go
20 to Kent County Hospital." I said, "Fine." And that
21 was it.

22 Q. Okay.

23 A. He said -- he may have said, "Do you have any
24 obvious health problems?" And I said, "Just high
25 blood pressure," or something like that.

Exhibit “Q”

***Officer Wayne Russell’s Response to
Plaintiff’s Interrogatory No. 7***

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

EDWARD A. CANIGLIA,
Plaintiff

v.

C.A. No. 15-525-M-LDA

ROBERT F. STROM, as the Finance
Director of the CITY OF CRANSTON, the
CITY OF CRANSTON, and COL.
MICHAEL J. WINQUIST, in his official
capacity as Chief of the CRANSTON
POLICE DEPARTMENT
Defendants

DEFENDANT, WAYNE RUSSELL'S
RESPONSE TO PLAINTIFF'S INTERROGATORIES

1. Set forth your complete legal name and address at which you may be served with a subpoena to testify at trial, if necessary.

RESPONSE: Wayne Russell, Patrolman, Cranston Police Department, 5 Garfield Ave., Cranston, R.I. 02920.

2. Set forth your educational background, including the names and addresses of all postsecondary schools you have attended and all degrees or educational honors you have received.

RESPONSE: Community College of Rhode Island, 400 East Ave. Warwick, R.I. 02886-1807, Associates in Criminal Justice.

3. Set forth all positions you have held in law enforcement, including the name and address of your employers, the inclusive dates during which you were employed and the name and last known address of your immediate supervisor.

RESPONSE: 1. Patrolman, Cranston Police Department, Immediate Supervisor: Lieutenant Justin Dutra.

4. Describe all formal training you have received in law enforcement with respect to the seizure of firearms.

RESPONSE: I received various trainings with respect to the seizure of firearms at the

7. State whether your actions in seizing Edward Caniglia's firearms and refusing to return them without a court order were pursuant to a custom, policy or practice in effect at the Cranston Police Department in 2015.

RESPONSE: Objection. Defendant objects to the extent that this request seeks some responsive information that was not compiled and/or kept in the ordinary course of business. I have no direct knowledge of the alleged refusal to return Edward Caniglia's firearms without a court order because I was not involved in the retaining, evidence storage, or return of firearms, including the firearms of Edward Caniglia. Notwithstanding and without waiving the objection, to the extent that I was involved in the seizure of Edward Caniglia's firearms, the actions in seizing Mr. Caniglia's firearms as a result of several factors in which plaintiff made suicidal statements and took action in furtherance of those statements, were pursuant to Cranston Police Departments custom and practice in effect in 2015. The several factors include, but are not limited to the following:

1. Plaintiff and his wife were involved in divorce proceedings;
2. Plaintiff was "sick" of the arguments between him and his wife and he wanted to "work things out";
3. Plaintiff and his wife were involved in an argument about a mug which precipitated the contact with Cranston Police;
4. During the argument Plaintiff grabbed a firearm with one hand and a magazine with the other and directed his wife to end his life because he could not "take it anymore";
5. Plaintiff was upset; and
6. Before Cranston Police spoke to Plaintiff, Plaintiff's wife expressed her concern to Cranston Police that Plaintiff may have committed suicide.

Please refer to *Exhibit A*, Cranston Police Department's Incident Report #15-43394-OF and *Exhibit B*, Seizure Report for Incident # 15-43395-OF.

8. Set forth the Cranston Police Department's current policy with respect to seizing and retaining a person's weapons without a warrant, for safekeeping or otherwise, including all facts, data, studies or reports, that support this policy.

RESPONSE: Please see *City of Cranston's Response to Request for Production, Response No. 2*, herein incorporated, which provides Cranston Police Department's practice procedure and/or guidelines and provides the CD containing Cranston Police Department's policies.