

APPENDIX D
**Judge Wilson's Exchange With Los Angeles Chief Deputy
City Attorney Cory Brente During Pre-Trial Conference
Regarding Officer Maynard's Non-Announcement of His
Presence or Warning Prior to Shooting**

Reporter's Transcript of Proceedings Dated August 31, 2015: Pretrial Conference re
Defendants' In Limine Motions, Doc. 131, CFC_EOR_069-079 (Pages also Appear in
Appendix B)

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE STEPHEN V. WILSON, U.S. DISTRICT JUDGE

CASH JEROME FERGUSON-CASSIDY,)
)
 Plaintiff,)
)
 vs.) Case No.
) CV 14-6768 SVW (JPRx)
 CITY OF LOS ANGELES, et al.,)
)
 Defendants.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
PRETRIAL CONFERENCE
MONDAY, AUGUST 31, 2015
4:50 P.M.
LOS ANGELES, CALIFORNIA

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MONDAY, AUGUST 31, 2015; 4:50 P.M.

LOS ANGELES, CALIFORNIA

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THE COURTROOM DEPUTY: Item 11, CV 14-6768-SVW,
Cash Jerome Ferguson-Cassidy vs. City of Los Angeles, et al.
Counsel, please state your appearances.

MR. NEWMAN: Afternoon, Your Honor. Ray Newman on
behalf of Cash Jerome Ferguson with co-counsel Frank Duncan.

THE COURT: Okay. This is the time for pretrial
conference. Could you, Mr. Newman, start the hearing by
telling me how you intend to present your case?

MR. NEWMAN: Yes, Your Honor. We plan to call,
first, the witness who made the 911 call who reported that he
had heard fireworks going off next to his home. We then plan
to call --

THE COURT: Is that what he said, "fireworks"?

MR. NEWMAN: Yes. He mentioned later that he heard
a dry clicking that he thought was a gun, but he was unable to
distinguish whether or not the noise he heard was fireworks
or --

THE COURT: Well, what did he say in the 911 call?
What will he testify to?

MR. NEWMAN: He'll testify in a 911 call, will say
that it was fireworks.

THE COURT: I see. And nothing about a gun?

1 MR. NEWMAN: The only thing about a gun, he said he
2 heard them discussing a gun and a dry clicking.

3 THE COURT: I see.

4 And then I -- I remember the police respond, and it was
5 at night; correct?

6 MR. NEWMAN: Yes, it was about 2:30 a.m.

7 THE COURT: And the officer who was the shooter
8 walked toward the back of the -- or the side of the backyard
9 and the -- in other words, my image is of the neighbor -- there
10 was a driveway between the two homes; correct?

11 MR. NEWMAN: Yes. The pathway between the two
12 homes.

13 THE COURT: And the officer walked from the street
14 up that pathway, and he said that he reached the point of
15 the -- where he could look into the backyard and there was a
16 porch at the -- at the end of the house; correct?

17 MR. NEWMAN: Not quite correct. Several officers
18 responded. Two officers -- officers along with a sergeant went
19 down the side of the house. One of the officers who went down
20 with the sergeant was able to see through a window, the back
21 bedroom, where he saw three individuals. He also saw that they
22 had a handgun in the back bedroom and it had been disassembled.

23 Later, the sergeant in charge instructed that the
24 officers put on helmets and they put on their vests. The
25 officer who did the shooting went to the back. He was -- he

1 stationed himself or positioned himself across from this back
2 bedroom. There was a sliding glass door. The sliding glass
3 door, you can see a little bit inside, but they can't -- the
4 people inside cannot see outside.

5 The officers were very secretive in their movements.
6 They didn't want to alert the individuals inside that they were
7 outside.

8 THE COURT: I -- I lost you a bit already.

9 When the police first responded, you say that the -- that
10 the sergeant and some other officers walked up this pathway.

11 MR. NEWMAN: Correct.

12 THE COURT: And were -- and were quiet about it,
13 didn't announce their presence.

14 MR. NEWMAN: Never -- at no time did they ever
15 announce their presence.

16 THE COURT: And they looked -- they were able to see
17 into this back bedroom from the path; correct?

18 MR. NEWMAN: Correct.

19 THE COURT: And in the back bedroom, they saw three
20 individuals -- I think it was two men and a woman; correct?

21 MR. NEWMAN: Correct.

22 THE COURT: And they saw a handgun which was
23 disassembled, you said.

24 MR. NEWMAN: At some point it was disassembled.
25 They had taken it apart.

1 THE COURT: So the officers watched the persons in
2 the house disassemble the gun?

3 MR. NEWMAN: They saw the gun, and they saw it
4 broken down and disassembled. That's --

5 THE COURT: And did they see the gun when it was
6 assembled?

7 MR. NEWMAN: I think they might have saw it at one
8 point when it was assembled, and then they saw it disassembled.

9 THE COURT: And how long were they observing --
10 secretly observing this bedroom?

11 MR. NEWMAN: I'm not quite sure of the time span.
12 It was a few minutes or so.

13 THE COURT: And then they went back to the street
14 and -- and developed a game plan?

15 MR. NEWMAN: Yes. Reinforcements arrived, and part
16 of the reinforcements was the -- the shooter in this incident.

17 THE COURT: And what does the record show about what
18 the shooter -- what was his name? We should address him by
19 name.

20 MR. NEWMAN: Officer Maynard.

21 THE COURT: Maynard.

22 What does the evidence show regarding the observations of
23 the first responders about the gun in the back bedroom?

24 MR. NEWMAN: That the first responders, their
25 observation was they saw these individuals with a gun in a back

1 room.

2 THE COURT: Is that what Maynard knew?

3 MR. NEWMAN: Um, I think it was communicated to all
4 officers.

5 THE COURT: All right.

6 MR. NEWMAN: I'm not sure.

7 THE COURT: And so they put on these vests; correct?

8 MR. NEWMAN: Maynard -- and I believe the other
9 officers put on their vests.

10 THE COURT: And so -- so I take it that Maynard
11 basically walked to the position that the first responders were
12 at when they looked into the bedroom.

13 MR. NEWMAN: He went past that position. He
14 positioned himself farther back in the backyard behind a wall
15 where he had a view of the back bedroom sliding glass door.

16 THE COURT: So there was a sliding glass door from
17 the bedroom onto the backyard?

18 MR. NEWMAN: Correct.

19 THE COURT: Or was it a porch? It was just a
20 sliding glass door.

21 MR. NEWMAN: Yes.

22 THE COURT: And you say he was behind the wall?

23 MR. NEWMAN: Yes.

24 THE COURT: And then what happened was that the
25 plaintiff -- well, you tell me because there's some dispute

1 about who came out of the bedroom; correct?

2 MR. NEWMAN: Yes. Mr. Ferguson-Cassidy never exited
3 the bedroom. He was shot inside the bedroom. He went to open
4 the sliding glass door, and the next thing he knew he was shot.
5 And he fell back into the bedroom.

6 THE COURT: And what did the officers say happened?

7 MR. NEWMAN: I think the officer -- he made three
8 different statements. I think the final statement was he said
9 he thought he saw a gun.

10 MR. DUNCAN: I -- may I --

11 THE COURT: Just one minute. Okay.

12 And -- and when the officers investigated, did they find
13 the gun?

14 MR. NEWMAN: The gun was inside the -- the back
15 bedroom, yes.

16 THE COURT: And was it assembled or unassembled?

17 MR. NEWMAN: I believe it was assembled at that
18 time. They had put it back together.

19 THE COURT: And how long did this whole event occur
20 in?

21 MR. NEWMAN: It was a matter of minutes. 10,
22 15 minutes. I'm not sure.

23 THE COURT: Let me hear from the defendant, then
24 I'll get back to you.

25 How do you view the case?

1 MR. BRENTE: The fact -- the facts, Your Honor, is
2 that --

3 THE COURT: Facts.

4 MR. BRENTE: Okay. So the Court covered this with
5 plaintiff's counsel. It is true the neighbor did call as
6 reported, said he either heard gunfire or fireworks and he
7 heard the sound of dry firing a pistol. He indicated he was a
8 sport shooter and knew what the sound of someone firing a gun
9 with no bullets in it sounded like.

10 The officers responded. It's, first, a sergeant and two
11 officers. And the initial plan was to knock on the front door
12 of the residence and see if they could get a response. The
13 officers knocked on the door multiple times, and nobody came to
14 the front door.

15 The officers and the supervisor then decided to walk down
16 what is the east side of the residence. They walked down the
17 residence -- the side of the residence. And as you get to the
18 back of the residence, if you're walking along the wall, it
19 then cuts in and it goes like this (indicating).

20 THE COURT: What wall? There's a wall --

21 MR. BRENTE: The side of the house.

22 THE COURT: There's a wall?

23 MR. BRENTE: Right. So as you're walking just next
24 to the house, adjacent to the house, you're walking down a
25 pathway that's next to the house. And when you get to the

1 back, it cuts in, and then there's, like, a back patio there.
2 So there's a corner that's developed.

3 And the lead officer, when he gets down to the end where
4 this back patio is, he looks into the sliding glass door. He
5 sees three individuals, and they're manipulating, handling a
6 pistol. He tells the other officers and the supervisor that
7 they're there and they're handling a pistol.

8 The supervisor then decides that he wants to get
9 additional resources there because there's three officers right
10 then and there's three suspects. The supervisor goes out
11 front, and he requests additional resources and he tells the
12 two officers, "Stay here and just keep your eyes on the
13 individuals with the gun."

14 He requests additional resources and a police helicopter.
15 His plan is to get enough resources there around the house and
16 then have the LAPD helicopter, through its PA system, order the
17 people out so they come out orderly one at a time.

18 Other resources arrive, including Officer Maynard. He is
19 a designated officer to carry a police rifle. And he is
20 instructed to get his police rifle, which is an M16, and to put
21 on the tactical vest and the helmet. His partner officer has a
22 shotgun, department-issued shotgun and a tactical vest.

23 They go down the side of the house to relieve the two
24 original officers that were there, to tell them to go put on
25 their tactical helmets. And he's told that the individuals in

1 the back have the gun. His job -- their job at that time is
2 just to stay there and observe, not to do anything until
3 everyone's in place. And then the supervisor's going to have
4 the police helicopter order everyone out.

5 As Officer Maynard is standing there on the corner
6 watching into the back bedroom, the plaintiff, without being
7 asked, on his own, walks out into the backyard.

8 When the plaintiff was interviewed by the police
9 department at the hospital -- and it's all tape-recorded -- he
10 said that that night him and the other two were firing the gun
11 into the air. And the -- the other gentleman and the young
12 lady had already fired the gun. This is the weekend before the
13 4th of July holiday. And he was going out to take his turn to
14 fire the pistol.

15 In his recorded statement, he says he walks out with the
16 pistol in his right hand and he's shot.

17 Officer Maynard's -- a lot of what Officer Maynard says
18 is recorded because him and his partner had devices issued by
19 the police department to record what they say.

20 Officer Maynard is on the corner. He's got his police
21 rifle. He sees the plaintiff come out. He sees the plaintiff
22 holding the Ruger 9 millimeter pistol, which was recovered
23 later and loaded.

24 He yells at the plaintiff a phrase that includes a -- a
25 cuss word, for lack of a better phrase. And he says that the

1 plaintiff turns in his direction and points the handgun at him,
2 Officer Maynard. And Officer Maynard then fires six rounds,
3 one of which strikes the plaintiff in the right upper chest.

4 The plaintiff then scrambles back into that back bedroom.
5 And then the officers then commence getting everyone out of the
6 house, including the plaintiff and the male and the female.
7 Additional supervisors are called. Our crime lab is called.
8 The scene is processed. The plaintiff's pistol -- the pistol
9 he had was recovered, examined, found to be loaded. So --

10 THE COURT: But getting back to the actual shooting.
11 When the plaintiff -- when the -- yeah, when the plaintiff left
12 the sliding glass door and went into the bedroom -- into the
13 backyard or the patio, at that point the officers had not
14 announced their presence. In other words, as far as the -- as
15 the plaintiff is concerned, he may have been going out to shoot
16 the pistol, but he didn't know that the house was surrounded by
17 officers.

18 MR. BRENT: That is correct, Your Honor.

19 THE COURT: And so, as I remember when the case was
20 initially described to me, the central issue is the --
21 essentially, the warning that the -- that the officers gave,
22 isn't it? In other words, isn't part of the plaintiff's
23 contention that there -- there was either no warning or that
24 the officer shot as they were announcing their presence, giving
25 the plaintiff no chance to respond?

1 MR. BRENTE: I think --

2 THE COURT: I thought that was sort of a big part of
3 the case.

4 MR. BRENTE: Well, it is and it isn't. And the
5 reason I say it isn't is because in the plaintiff's statement
6 and in the record, he says he never, A, heard anything said by
7 any officer. Now, Officer Maynard, his statement is going to
8 be he didn't have time to say police. What he yelled was,
9 "Don't F'ing move." It's recorded. The recording is very loud
10 because he yells it. It's not spoken softly.

11 THE COURT: So what is the position that -- that
12 after that quick response, he did move and then he was shot?

13 MR. BRENTE: But the -- the position is that whether
14 the officer said police or not, in our perspective, it's not
15 relevant in this case because the plaintiff said he didn't hear
16 anything or see anything. So it's not as if he said, A, I
17 didn't know it was the police or, B, I didn't understand what
18 they said. He says, A, I never saw anything; and B, I never
19 heard anything.

20 THE COURT: So as I remember the narrative -- my
21 recollection could be off -- is that the only person who heard
22 the warning was -- was Maynard.

23 MR. BRENTE: Well, no. That's not accurate because
24 it's recorded so you can hear that -- the volume and the tone.
25 Multiple officers heard it because it's yelled.

1 THE COURT: But -- but, I mean, the plaintiff could
2 still contend that there was no warning because he never heard
3 a warning.

4 MR. BRENTE: He could contend that. The Court's
5 correct. I believe the distance, the approximate distance
6 between Officer Maynard and the plaintiff at the time of the
7 shooting is 15 feet. That's a relatively close distance.

8 THE COURT: But couldn't the plaintiff contend that
9 even if the officer said what you just described, that by
10 saying "Don't F'ing move" in a very loud, commanding way, a
11 reasonable person at 2:30 in the morning wouldn't necessarily
12 think that that was the police? And by not announcing police,
13 the police created the -- the -- the -- the opportunity for the
14 shooting.

15 MR. BRENTE: I think that argument could be made but
16 not in this case based on the facts in this case because the
17 plaintiff says he heard nothing. So he couldn't have been
18 reacting or not reacting to anything Officer Maynard says
19 because the plaintiff's version is "I heard nothing at all, and
20 I saw nothing at all."

21 THE COURT: So then he's out in the backyard. He's
22 going to shoot the gun up in the air. Maynard is not saying
23 the gun was pointed at him, does he?

24 MR. BRENTE: Yes. Maynard says that, as he sees the
25 plaintiff -- so now the plaintiff comes out. He identifies the

1 plaintiff has the pistol. So he, in a sense of urgency, yells
2 to the plaintiff, "Don't F'ing move." And as I indicated in
3 the recorded statement, it's very loud. The plaintiff turns in
4 his direction with the pistol. The officer, fearing that the
5 plaintiff is going to shoot at him or the other officers that
6 are standing behind him, fires his weapon.

7 THE COURT: Why wouldn't the -- why wouldn't someone
8 in the plaintiff's position move as he did on being startled
9 with a voice out of nowhere? In other words, don't you
10 generally move toward the -- the place that you hear the sound?

11 MR. BRENT: I think that might be. That might be
12 that people might turn in the direction of what they hear.
13 Whether or not they point something in that direction is
14 another argument.

15 But I think more importantly is the plaintiff doesn't
16 say, "I heard someone yell something and, upon hearing somebody
17 yell something, I turned in that direction and got shot." He
18 says, "I never heard anybody yell anything."

19 THE COURT: But the plaintiff, from your
20 description, was startled when he got shot because he never saw
21 or heard an officer. He got shot like a bolt out of the blue.

22 MR. BRENT: Well, according to the plaintiff's
23 version now, he's not even outside. He's standing inside the
24 sliding glass door, standing there, holding no gun, just
25 standing there, and he just gets shot.

1 THE COURT: Well, I mean, he can say that. To me,
2 it would be a more credible case if he said it the way I said
3 it, but --

4 MR. BRENTE: I appreciate the Court's --

5 THE COURT: -- but he's locked into his position.

6 Now, what about this wall? In other words, if Maynard is
7 behind the wall -- is it a brick wall or a cement wall?

8 MR. BRENTE: It's just the side of the house.

9 THE COURT: How high was it?

10 MR. BRENTE: Well, it's the height of the house.

11 THE COURT: So why -- why did Maynard think it
12 necessary to shoot if he could have taken cover behind the
13 wall?

14 MR. BRENTE: Well, because officers are told when
15 you -- when you see a threat, you have to -- Maynard's
16 right-handed. So to shoulder the weapon, if anything, he has
17 to kind of slice the pie, as they say, to get out to
18 confront -- I can't think of a better word -- the threat.

19 So we don't teach officers to hide. I mean, when you see
20 something like they did, you -- you address the threat and you
21 give appropriate commands to the threat. We don't teach
22 officers to -- to duck down and hide behind walls.

23 THE COURT: Well, it seems like the warning was
24 awfully quick.

25 MR. BRENTE: Well, it was. And -- but, again, the

1 officers are going to respond to what happens after -- as the
2 Court knows, the warning is -- is feasible. There are
3 certainly cases where no warning is given because the officer
4 has to react immediately. In this case --

5 THE COURT: So you're saying that if no warning had
6 been given and Maynard knew what he did and he saw a man
7 holding a gun in his hand, he had the -- he had license to
8 shoot?

9 MR. BRENTE: If he reasonably believed -- not just
10 holding a gun. That wouldn't be enough, Your Honor. If he
11 reasonably believed that the manner in which the plaintiff was
12 holding and pointing the weapon, if you reasonably believe that
13 that presented an imminent threat of death or serious bodily
14 injury to himself or others, he's entitled under the
15 Fourth Amendment to use deadly force.

16 THE COURT: But, of course, the context here is that
17 the officers knew for several minutes that there was a man in
18 the house with a gun. And they had reason to think that
19 whoever was in there had shot the gun.

20 MR. BRENTE: Correct.

21 THE COURT: And so what is so imminent?

22 MR. BRENTE: Well, what's imminent is -- as I
23 indicated, the plan was for no one to come out until everyone
24 was ready to call people out in an orderly fashion. But the
25 plaintiff on his own -- because according to his statement to

1 the department, he was coming out to take his turn to fire the
2 weapon.

3 So nobody ordered the plaintiff --

4 THE COURT: He -- he didn't know that the police
5 were there.

6 MR. BRENTE: That's true. But once, then, he steps
7 out with the weapon, the officers have to address that and give
8 him a command because now he's come out with the gun. They're
9 not going to stand behind the wall and -- I'm not being
10 sarcastic with the Court in saying, "He's out. He's got the
11 gun." That's just not what's going to happen. They're going
12 to address the threat.

13 THE COURT: It sounds to me like they're around
14 there for several minutes, accepting that Maynard sees the
15 plaintiff with the gun. And in the middle of the night he
16 says, you know, "F'ing stop," boom, shoots.

17 MR. BRENTE: Well, but --

18 THE COURT: I mean, how did the guy have any time to
19 respond to that?

20 MR. BRENTE: Well, from Officer Maynard's
21 perspective -- and this is a factual issue in the case -- is,
22 as -- when he yells, "Don't F'ing move," the shots are very
23 quickly thereafter. The plaintiff turns in his direction with
24 the pistol, and Officer Maynard believed that the plaintiff
25 presented an immediate threat of death or bodily injury to him.