

No. 19-292

IN THE
Supreme Court of the United States

ROXANNE TORRES,

Petitioner,

v.

JANICE MADRID AND RICHARD WILLIAMSON,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE TENTH CIRCUIT

JOINT APPENDIX

E. Joshua Rosenkranz <i>Counsel of Record</i> Orrick, Herrington & Sutcliffe LLP 51 West 52nd Street New York, NY 10019 (212) 506-5000 jrosenkranz@orrick.com	Mark D. Standridge <i>Counsel of Record</i> JARMIE & ROGERS, P.C. P.O. Box 344 Las Cruces, NM 88004 (575) 288-1453 mstandridge@jarmielaw.com
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Counsel for Petitioner *Counsel for Respondents*

**PETITION FOR WRIT OF CERTIORARI FILED
AUGUST 30, 2019
CERTIORARI GRANTED DECEMBER 18, 2019**

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The following opinions, decisions, judgments, and orders are omitted because they appear on the following pages in the appendix to the Petition for Certiorari:

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Mexico

Torres v. Madrid

Case No. 1:16-cv-01163-LF-KK

Date	Dkt.	Description
10/21/2016	1	Complaint
11/14/2016	9	Answer
5/4/2017	32	Opposed Motion to Dismiss or, Motion for Judgment on the Pleadings
5/16/2017	34	Response in Opposition re Opposed Motion to Dismiss or Motion for Judgment on the Pleadings
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9/22/2017	42	Memorandum Opinion and Order denying Motion to Dismiss or Motion for Judgment on the Pleadings
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8/30/2018	88	Judgment
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Chronological List of Relevant Docket Entries

United States Court of Appeals for the Tenth Circuit

Torres v. Madrid

Case No. 18-2134

Date	Description
9/20/2018	Appellant / Petitioner's Brief
9/20/2018	Appellant's Appendix
11/5/2018	Appellee / Respondent's Brief
11/5/2018	Appellee's Appendix
11/16/2018	Appellant / Petitioner's Reply Brief
5/2/2019	Order and Judgment
5/24/2019	Mandate

JA-4

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROXANNE TORRES,

Plaintiff,

vs.

JANICE MADRID, a New Mexico
State Police Investigations Bureau
Officer and RICHARD WILLIAMSON, a
New Mexico State Police Investigations
Bureau Officer,

Defendants No. _____

**CIVIL COMPLAINT FOR VIOLATION OF
CIVIL RIGHTS**

COMES NOW, Plaintiff Roxanne Torres, by and through her attorney Eric D. Dixon, Attorney and Counselor at Law, P.A., Portales, New Mexico and for her Civil Complaint for Violation of Civil Rights, states:

I. INTRODUCTION

This is a civil rights action brought pursuant to 42 U.S.C. § 1983 for violation of the Plaintiff's Fourth Amendment rights as made applicable to the States through the Fourteenth Amendment.

II. PARTIES AND JURISDICTION

1. Plaintiff Roxanne Torres is a citizen of the State of New Mexico, who, at all times relevant to this complaint, resided in Bernalillo County, New Mexico.
2. Defendant Janice Madrid was at all times relevant to this complaint a sworn law enforcement officer operating under color of law, employed by the New Mexico State Police Investigations Bureau.
3. Defendant Richard Williamson was, at all times relevant to this complaint, a sworn law enforcement officer operating under color of law, employed by the New Mexico State Police Investigations Bureau.
4. The Court has jurisdiction of this matter pursuant to 28 U.S.C. § 1341, 1343, because this is an action to redress violations of the Constitutional rights of Plaintiff pursuant to 42 U.S.C. § 1983.

III. FACTS

5. On the morning of Tuesday, July 15th, 2014, New Mexico State Police Investigations Bureau agents were serving an arrest warrant for Kayenta Jackson, a resident of 6100 Harper Drive Northeast, Apartment 22, in Albuquerque, Bernalillo County, New Mexico.
6. Defendant Madrid and Smith of the New Mexico State Police Investigations Bureau approached the residence from the north and parked their unmarked patrol vehicle in front of a 2010 black and white Toyota FJ Cruiser. The F.J. Cruiser was parked with

its front-end facing north, away from the rear (north side), of Apartment 22.

7. The Defendants were in “tactical vests” and dark clothing making it impossible for Plaintiff to identify who these individuals were.

8. The Defendants attempted to enter the vehicle that Plaintiff had been sleeping in by attempting to open the locked door without Plaintiff’s consent or permission. Plaintiff through the attempted unlawful entry of her vehicle was an attempted car- jacking and attempted to exit the parking lot.

9. Plaintiff was not armed with a weapon of any kind, nor did Plaintiff gesture in any way to indicate that she was armed, nor did Plaintiff take hold of any objects resembling a weapon, nor did Plaintiff draw out any items concealed upon her person in such a way as to indicate the presence of a weapon. Both Defendants were beside the vehicle, not in the front of the vehicle.

10. Both Defendants fired their department issued duty weapons at the Plaintiff hitting Plaintiff twice in the back and striking her vehicle with multiple rounds of ammunition. Her injuries caused her pain and suffering and other, longer term damages including disfiguration, scaring, and future medical expenses.

11. Plaintiff managed to get to a hospital where she was treated for gun shot wounds to her back and other injuries sustained in the unprovoked, unlawful shooting.

IV. COUNT I: EXCESSIVE FORCE, DEFENDANT MADRID

12. Paragraphs 1 through 11 are incorporated herein.

13. The shooting of Plaintiff was unnecessary, unreasonable and excessively violent.

14. The intentional discharge of a fire arm by Defendant Madrid exceeded the degree of force which a reasonable, prudent law enforcement officer would have applied under these same circumstances.

15. The intentional shooting by Defendant Madrid was the cause in fact and proximate cause of Plaintiff's injuries.

V. COUNT II: CONSPIRACY TO USE EXCESSIVE FORCE, DEFENDANT MADRID

16. Paragraphs 1 through 15 are incorporated herein.

17. Defendant Madrid, formed a single plan through non-verbal communication with Defendant Williamson, to use excessive force against the Plaintiff.

18. This plan is evident from the circumstantial evidence and pictures of the shooting and its aftermath. This evidence includes the fact that Defendant Madrid was never in danger from Plaintiff; Plaintiff was not a suspect in any crime; and she panicked and attempted to cover up the unlawful shooting; all of which show that Defendant Madrid formed and executed the joint plan to use excessive force against the Plaintiff.

VI. COUNT III. EXCESSIVE FORCE, DEFENDANT WILLIAMSON

19. Paragraphs 1 through 18 are incorporated herein by reference as if set forth in full herein.

20. The shooting of Plaintiff was unnecessary, unreasonable and excessively violent.

21. The intentional discharge of a fire arm by Defendant Williamson exceeded the degree of force which a reasonable, prudent law enforcement officer would have applied under these same circumstances.

22. The intentional shooting by Defendant Williamson was the cause in fact and proximate cause of Plaintiff's injuries.

VII. COUNT II: CONSPIRACY TO USE EXCESSIVE FORCE, DEFENDANT WILLIAMSON

23. Paragraphs 1 through 15 are incorporated herein.

24. Defendant Williamson, formed a single plan through non-verbal communication with Defendant Madrid, to use excessive force against the Plaintiff.

25. This plan is evident from the circumstantial evidence and pictures of the shooting and its aftermath. This evidence includes the fact that Defendant Williamson was never in danger from Plaintiff; Plaintiff was not a suspect in any crime; and he panicked and attempted to cover up the unlawful shooting; all of which show that Defendant Williamson formed and executed the joint plan to use excessive force against the Plaintiff.

VIII. DAMAGES

26. Paragraphs 1 through 25 are incorporated herein by reference as if set forth in full herein.

27. Plaintiff sustained lasting physical injury and disfiguration justifying damages, and incurred medical expenses, pain and suffering and emotional distress.

28. The Defendants' intentionally violent and abusive conduct is sufficient to justify an award of punitive damages.

IX. JURY DEMAND

29. Plaintiff and makes demand for a trial before a jury on all such issues so determinable.

30. The Seventh Amendment (right to jury trial), applies to actions enforcing statutory rights, and requires a jury trial upon demand, if the statute creates legal rights and remedies, enforceable in an action for damages in the ordinary courts of law.

31. When Congress provides for enforcement of statutory rights in an ordinary civil action in the district courts, where there is obviously no functional justification for denying the jury trial right, a jury trial must be made available if the action involves rights and remedies of the sort typically enforced in an action at law. *Curtis v. Loether*, 415 U.S.189, 194-95, 94 S.Ct.1005, 1008, 39L. Ed. 2d 260 (1974).

X. PRAYER FOR RELIEF

Based on the foregoing facts, Plaintiff requests that the Court order compensatory and consequential damages, loss of earnings and earnings capacity; damages for pain and suffering, damages for emotional distress; damages for loss of enjoyment of life [sic]; punitive damages; attorney's fees and costs; pre-judgment and post-judgment interest; and such other relief as the Court deems appropriate.

Respectfully Submitted:

/s/ Eric D. Dixon

Eric D. Dixon

Attorney and Counselor at Law, P.A.

301 South Avenue A,

Portales, New Mexico, 88130

(575) 359-1233

Facsimile: (575) 356-4946

Attorney for Plaintiff

JA-11

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROXANNE TORRES,

Plaintiff,

vs.

Cause No. 16-cv-01163 LF/KK

JANICE MADRID, a New Mexico
State Police Investigations Bureau
Officer and RICHARD WILLIAMSON, a
New Mexico State Police Investigations
Bureau Officer,

Defendants

VIDEOTAPED
DEPOSITION OF ROXANNE TORRES

May 3, 2017

12:45 p.m.

500 4th Street, Northwest, Suite 105
Albuquerque, New Mexico 87103

PURSUANT TO THE NEW MEXICO RULES OF
CIVIL PROCEDURE this deposition was:

TAKEN BY: JAMES P. SULLIVAN, ESQ.
ATTORNEY FOR THE DEFEND-
ANTS

REPORTED
BY: KIM KAY SHOLLENBARGER, RPR
NEW MEXICO CCR #236
PAUL BACA PROFESSIONAL

JA-12

COURT REPORTING
500 4th Street, Northwest,
Suite 105
Albuquerque, New Mexico 87103

* * *

[32] learning disability and like a speech impediment so—like I can say them, but if you ask me to spell them I can't. If you ask me to read them, I probably can't.

Q. Have you had a driver's license before?

A. No.

Q. Never?

A. No.

Q. Do you drive at all? Can you drive?

A. I can, kind of, yeah. I never had a driver's license. I never taken a test or nothing.

Q. How long have you had migraines, since you were young?

A. Yes.

Q. And depression and anxiety since you were young?

A. Yes.

Q. And what about restless legs, since you were younger?

JA-13

A. That kicked in when I got to Grants.

Q. Got what?

A. Got to Grants. The doctor thought it was sciatica, but it's not. We don't know what it is. Dr. Martin, they wanted to do more tests, but right now he's just giving me that for now.

Q. So Dr. Martin is treating you for sciatica?

A. For now, yeah.

* * *

[52] Q. Other than this time where you were shot by the police officers, have you ever been shot before by anyone?

A. No.

Q. Never?

A. (Nonverbal Response)

Q. Let's talk about July 15, 2014, that's this incident you had with the police department, okay. And that happened early in the morning. Do you remember that?

A. Vaguely

Q. You say, "vaguely." You don't really remember it?

A. It's been awhile but, yeah.

JA-14

Q. You were over at some apartments on Harper Street. These are like projects?

A. Yes.

Q. What were you doing over at the projects early the morning of July 15, 2014?

A. I had dropped someone off over there.

Q. Who did you drop off?

A. A friend named Samantha.

Q. Samantha?

A. Yes.

Q. What is Samantha's last name?

A. I don't know her last name.

Q. So you were driving a car and dropped her off?

* * *

[61] A. Well, a lot of people thought I was dead. A lot of people thought I was dead. Even going to Grants, a lot of people thought I was dead, when I got there.

Q. So you were gambling all night at the Sandia Casino, Yes?

A. Yes.

Q. And what was her name again, your friend you were with?

JA-15

A. Samantha.

Q. Last name?

A. I don't know her last name.

Q. Do you know any of your friends last names?

A. I don't really ask.

Q. That's not something you're interested in?

A. No, not really.

Q. So the guy with the FJ Cruiser, you don't know his first name or last name, right?

A. No.

Q. And Samantha, who you were out gambling with all night, you don't know her last name?

A. (Nonverbal response)

Q. Where is Samantha nowadays?

A. I don't know.

Q. When was the last time you saw Samantha?

A. I haven't seen her.

[62] Q. Were you pretty close to Samantha before this incident with the police?

A. Not really.

JA-16

Q. Is she a good friend of yours?

A. She was just someone who was helping me out. To wash clothes at and stuff.

Q. To wash clothes at the apartments, or the projects?

A. Yes.

Q. Did you have a romantic relationship with Samantha?

A. No. I did not.

Q. What time did you leave the casino that morning? Or night.

A. I don't remember.

Q. What time did you leave the casino that morning? Or night.

A. I don't remember.

Q. What time did you arrive at the Harper Drive projects?

A. I don't remember.

Q. No idea?

A. No.

Q. It could have been five in the morning, or it could have been noon, you just don't know?

JA-17

A. It was still dark out.

Q. It was still dark out?

A. (Nonverbal response)

Q. And you were going to drop her off?

A. Yes

[63] Q. Did you drop her off?

A. Yes

Q. What happened then?

A. I dropped her off. I think I was cleaning up in my vehicle.

Q. Pardon me, what?

A. Cleaning up in my vehicle a little bit.

Q. What were you doing to clean up in your vehicle?

A. Just like straightening up what was on the floor. I have some tendencies of OCD. So just cleaning up. I think I was looking for a pair of clothes to change into.

Q. You have OCD?

A. Yes.

Q. What's that?

A. Like I want things a certain way. Like I'm very typical of how I want stuff.

Q. You're a neat freak?

A. Kind of. Yeah, there you go, a neat freak, I guess.

Q. And what were you cleaning up or doing house-keeping in the vehicle? What were you cleaning?

A. Like people tend to drop stuff. Like cords. My big thing about cords is, the phone cords on the floor. They don't tend to pick them up or they step on them and they puncture holes in them, and I don't like that. So I pick up stuff like that from the floor.

[64] Q. Well, what were you picking up that morning after you dropped off your friend Samantha?

A. I don't really remember. I just know that I was probably either picking up trash. Because I know when we come back from the casino there's those cups that—the hot chocolate cups. We usually always get hot chocolate when we leave there. So I was either picking up that or I was dusting stuff off, whatever.

Q. You were dusting stuff off in your FJ Cruiser?

A. Maybe, yeah. I don't remember.

Q. Were you using like Pledge or something like that to dust off with? You know, spray stuff.

A. I don't think so.

Q. Were you cleaning the windows, or anything, as well?

A. I don't remember.

Q. You might have been?

A. I don't remember.

Q. Well, how long were you there cleaning up the FJ Cruiser?

A. I don't remember.

Q. Can you give me an idea?

A. Maybe five, ten minutes.

Q. So you're cleaning up stuff on the floor for five or ten minutes maybe.

A. Maybe. I'm not sure if I was looking for another [65] pair of clothes to change into. Because normally I do that just so—I have the clothes ready so wherever I go next, I have a place where I could go to see if I could shower. But I'm not sure if I did that or not.

Q. Did you go into Samantha's house?

A. No.

Q. You were in the car the whole time?

A. Yes.

Q. So after you spend ten minutes, or so, cleaning up the car, what happens?

A. I know I sat back in it. I think it started to sprinkle. I started it up. I don't know if I was thinking of where I was going to go next. I know I was looking for my lighter. I think I was going to smoke a cigarette.

And then that's when I heard the flicker of the car door. Because I always lock my doors. I heard the flicker of the door and that's when I got startled. I looked back, I see a face. And I freaked out, because I don't know this face. I stuck it in drive. I looked back up again and I see a gun, and that's when I look forward because I'm about to press on the gas, and then I seen another gun, and that's when I just—I'm like ready for impact. Guns coming at me. I shy away. I barely step on the gas, and then boom. And that's when I hear the—I see the glass go forward and that's when I

* * *

[74] Lots of times?

A. I recently started. I recently started then too. Just trying it and it wasn't...

Q. Do you have any marks on your arms?

A. Yeah. This one is from plasma. I started doing it here. And those there too.

Q. That's from doing meth?

A. Yeah, right here. This one is from donating plasma.

Q. Donating blood?

A. Yeah. I used to donate plasma back in the time.

Q. When was the last time you shot meth in your arm? Last month or something?

JA-21

A. On the 1st I tried.

Q. April 1st you were shooting meth?

A. I tried it again, yeah.

Q. Let's go back to the night of the thing. The person is jiggling the door handle, you see that person, you described him to me. And then you said you saw another person?

A. Yes.

Q. Where did you see the other person?

A. By the wheel of the FJ Cruiser.

Q. In the front of you, right over the steering wheel?

A. Like catty-corner. By the wheel.

Q. To the left? Where was that person standing with

* * *

[79] A. Long sleeve black shirt.

Q. You said sunglasses.

A. Sunglasses. They both had like sunglasses. I don't know what that was about, but...

Q. Did person B have a hat on?

A. I don't remember.

Q. Anything else you can tell me about person B?

A. I don't remember.

Q. Did person B say—

A. They stopped right there by the tire when this one was trying to yank open the door. What else? I don't remember...

Q. Did person B say anything to you?

A. Uh-uh.

Q. No?

A. I couldn't hear neither of them.

Q. Why not?

A. Because my windows were rolled up.

Q. It's in the summertime, right?

A. It's early in the morning. It had started sprinkling. And it had rained that morning, so...

Q. Was it raining when this event took place?

A. After it had took place it was raining. I want to say right before it happened it started sprinkling, that's why I hopped in my truck.

* * *

[83] Q. And then what happens?

A. What do you mean?

Q. You're there. A and B showed up. You say Mr. A tried to jiggle the door, right?

A. It flickered, yeah.

Q. Flickered the door. And then you see B. You see B has a gun.

A. I didn't see B right away. I heard the flicker of the car door. I look up. I see A, and then that's when I freak out. I put the car into drive. I look back up. A has a gun. I turn forward to step on the gas, because I'm going to step on the gas. And I see B and B has a gun, and then I slowly step on the gas. And I put my hands up, and then I go... because I'm waiting for impact of either one of these to go off. And I'm looking to shield from glass from which way, and then I step on gas. And that's when I hear this one go through first, boom. And that's I shy down.

Q. So you thought these guys were carjackers, right?

A. Uh-huh.

Q. Yes?

A. Yes. Because I've been in—I've been in a scenario where a carjacking could have took place. But just like my friend, they took off.

Q. And you thought these—

* * *

[89] Q. I'm going to show you—just so you can get an idea of where things are. I'll represent to you that

here's the street in front of these apartments, we know that, right? And you drove into the apartments. And you said you backed up, correct? And were you like toward the middle of the apartments or more toward one side?

Mr. Dixon: Is that to scale?

Mr. Sullivan: This is not to scale. I'm just going to get a general idea.

Q. (By Mr. Sullivan) You backed into the apartments to drop off your friend, correct? Right?

A. Yeah, I want to say like maybe the middle.

Q. Let's say, generally, in the middle, okay. And we're going to put your car like that, with the front, with the point, okay. The FJ Cruiser. Do you know if there were any cars parked next to you when you backed in?

A. Yes.

Q. Were there cars next to you?

A. I think so.

Q. On both sides?

A. Yes.

Q. So I'm going to put in two blocks. This is the FJ, okay. Two blocks. And we talked about where the police came up to you. Or not the police, you thought just

[90] people at the time, right? Carjackers, I think you said, right? Right?

A. Yes.

Q. So when you drove in from the street you drove in like this, with the arrow, and you drove over and you backed in, correct? Right?

A. Yes.

Q. Now, after the police started shooting at you, which way did you go?

A. I came forward.

Q. You drove right out into the street this way?

A. Yeah, I came straight and started turning.

Q. And I'll put the arrow to the street. Why didn't you go down the driveway?

A. Because I couldn't see.

Q. What do you mean you couldn't see?

A. Well, they shot through the window.

Q. So that blocked your vision?

A. Yeah. Not only that, my arm. I lost—like my arm literally lost—like it went paralyzed. I had no control over this arm after being shot, or whatever happened to my arm. It just went like paralyzed, so I had one arm. I literally had one arm to try and do what I could do with what I could do.

Q. No you drove—instead of going down the driveway [91] you drove up over the curb, where there are plants, right? You drove through those, correct?

A. Correct.

Q. Which way did you go down that street? Did you turn left or right?

A. I think I turned right. Wait. Left. Left.

Q. You turned left down the street in front of the apartments?

A. I turned left.

Q. Where did you drive to?

A. I don't know. I know I went down—I went down—I don't know. I got startled. I don't remember.

Q. You drove—where did you drive to?

A. I know I was shaking. Let me think. I was freaking out. I was shaking. I was on a frontage road, and then from the frontage road I went over the bypass. I went over the freeway thing.

Q. Right. What street was that? What Bypass?

A. I don't even know. I was so shaky.

Q. So you went over a bridge?

A. I went on the frontage road. I went down, got on the frontage road, and I went over. And then I got back on the frontage road again. And then I got out of

control, spun. And then my—let's see, my tires popped. I drove. I stopped—this maroon car was [92] following me, that's when I got out. I seen some guy. I asked if he would call the cops or something, someone was following me. I got up. He's like, well—I got up—because I think that car finally took off. I got up and then I took off. I took off. I went down this—like on arroyo, and that's when it started raining hard. Finally I went down this little arroyo. I went on—I went across—I went down this ditch into like another place. And I seen—I seen another car sitting, open, running. And from there I was like—I jumped in that and I took off. I don't know. My adrenaline was going and I just—I freaked. And then from there I just kind of—I don't know. I was in and out from there.

Q. Let's back up a little bit, okay. So you drive across over the curb and you go left down the street from the apartments.

A. Make a turn, yeah.

Q. Then you got—you turn right onto the frontage road?

A. I think it kind of curved, but I don't know. I don't know how—I don't know how—

Q. Then you—

A. I just know that somehow I was on the frontage road. I know I hit a cone. I think. And somehow I went over the bypass.

[93] Q. And you said down the other frontage road. Left down the other frontage road?

A. I think. I remember spinning out of control, because it was raining. My tire popped and then—yeah.

Q. When you say frontage road, are you talking about the frontage road along I-25, correct?

A. Yes. I'm not sure if they're all called the same thing or not.

Q. So we'll call this diagram Exhibit 4, and we know it's not written to scale, but it just gives us an idea of the layout, correct? Yes?

A. Sure.

Q. So you go over the pass, you say, then you go down the other frontage road on I-25. You say your tire blows out?

A. Yes.

Q. Which tire?

A. I don't even know.

Q. Then what happens?

A. And then the car—the car is not driving, it's—I don't know, like—I don't remember. I just remember it stopped and it wouldn't go. It just kept...

Q. Did you pull over to the side or go into a parking lot? What did you do?

A. It was in a parking lot.

[106] A. I don't know.

Q. Do you have friends in Grants?

A. I have an uncle who lives out there. I know that.

Q. What's your uncle's name?

A. Phillip.

Q. Were you hoping to maybe reach him and he could take care of you?

A. I think.

Q. Instead of going to the hospital?

A. Yeah.

Q. Did you try and get to your uncle's house in Grants?

A. I don't even knew where he lives, that's the thing. I remember—like I know now where he lives, but that day I don't even think—I don't even think I was there enough to remember where he lives. Like I know where he lives now, because I'm sober. Like I know where he lives. But I don't think that day I remember where he lives.

Q. Did you try and call him on your cell phone when you were going to Grants?

A. Nope.

Q. Why not?

A. I don't...

Q. Don't know? Did you know his number?

A. At the time I don't think he had a cell phone. But [107] I knew where he lived, I just don't think that day I remember. Or I don't even think I was there really that day.

Q. When you were driving to Grants did you try and call anybody else on your cell phone for help?

A. No.

Q. Why not?

A. I don't remember that day. Like once I hit the freeway, I don't remember. Once I hit the freeway, I don't think I was really there.

Q. Had you been to the Cibola County Hospital before?

A. Never. Not that one.

Q. How did you know to get to that hospital?

A. Once I hit up to the—once I hit the camping grounds, I think I like sat there for a minute. And like I smoked a cigarette. And I was like thinking, like I'm going to fucking—sorry for cussing. I was like, I think I'm going to die. I'm going to die. And I was like—because I had finally like sat up and I was like, all this from an arm wound. And then once I sat up I could feel how sticky my back was and that's when I like actually turned around. And there was this big old

like jelly thing, and there were two of them. There was one by where my arm was and one by my back. And that's when I snapped and like, oh, my God, I got shot by my back.

[108] Q. Is that the first time you realized you had been shot?

A. Yeah. By my back.

Q. That was the first time—

A. That was the first time I realized I was shot. Not on my arm, but my back as well. That was the first time I noticed, hey, not just my arm. I got shot twice, you know. That's when I realized that.

Q. And that's when you were pulled over in Grants somewhere by a park?

A. I was up in the camping ground area. Because for some reason I was up—I don't know. I drove over there for some reason. I don't remember, because I don't—like I said, I don't recall what the hell I was doing. I don't know.

Q. At that point you decided to go to the hospital?

A. Yes. At that time I was like I—but then I didn't know where it was. So once I kind of like snapped out of it, I got back down—as soon as I got back down into town I started asking people where the hospital was. Where the hospital was.

Q. Did you get out of the car and ask people?

A. No, I sat in it. And I started asking people, "Where's the hospital?" I found myself in Milan again. I found myself back down in Grants again. And I found [109] myself by some other little hospital. And eventually I found myself crossing the street to where the main hospital was and that's where...

Q. So you drove into the hospital parking lot?

A. Yes.

Q. And tell me about that then. You went into the hospital?

A. Yes.

Q. Tell me about what happened.

A. I said, "I think I'm going to die. I've been shot. I've been bleeding a lot."

Q. Did you tell the people at the hospital who shot you?

A. No, not at first. I just said, "I need to be seen, I've been shot."

Q. Who did you tell that to?

A. One of the nurses.

Q. What happened next?

A. Then they took me in. They had me take my shirts...

Q. Then what happened?

JA-33

A. Then they had me lay down, and then I think they gave me medicine and...

Q. How did you leave the hospital?

A. They airlifted me.

Q. In a helicopter?

[110] A. Yeah.

Q. Did you tell the doctors or the nurses or anybody at the hospital about how you got shot, or who may have shot you, or where you were shot?

A. I think so, yeah.

Q. What did you say?

A. I don't remember. The cops and all that have all that stuff. Or the information over there.

Q. I know, but this is my chance to talk to you.

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

Q. Did you speak to any police officers at the—

A. Yeah.

Q. Excuse me. At the hospital.

A. Yes.

Q. What did you tell them?

A. I don't remember.

Q. Did you tell the police officers that you were shot at a casino?

A. I don't remember.

Q. Did you tell the police officers you had been—

A. I know I was crying a lot.

Q. Did you tell the police officers you were at Sky City Casino?

A. I don't remember.

Q. Did you tell the officers that you left Sky City [111] Casino and went to a guy's house to buy drugs?

A. I don't remember.

Q. None of that happened though, right?

A. I don't...

Q. Did you give the hospital people your real name?

A. I don't remember.

Q. Did you give the police officers in Grants at Cibola jail—or Cibola Hospital, when they talked to you, did you give them your real name?

A. I don't know. I know I had two IDs inside my wallet. I had one that was a driver's license and one that was me. Because I had the one for the driver's license, or one that was close to my date of birth, and then one that was actually me.

Q. Who was on this driver's license?

A. I don't know. I just know that our birthdays were very close.

Q. How did you have somebody else's driver's license?

A. I found it when I was walking around inside—San Mateo/Central area, where I was. Because once again, I was homeless. Just scavenging around. Because we have a habit of just looking on the floor, and I seen the ID and I picked it up.

Q. You saw somebody's driver's license? And that driver's license had a similar birth date to yours?

[112] A. Close.

Q. Close?

A. Pretty close, yeah.

Q. You just happen to find it lying on the ground?

A. Yep.

Q. How long before this incident did you find the driver's license lying on the ground?

A. I don't remember.

Q. Was it a month or two months?

A. Two months maybe. No, maybe like four months.

Q. Was it about the same time you got the FJ Cruiser?

A. Like four months before that.

Q. What was the name on that driver's license?

A. I don't even remember.

Q. You have no idea?

A. No.

Q. Have you ever gone by the name of Joanna Ray Olguin?

A. No.

Q. Have you ever heard of the name Joanna Ray Olguin? It doesn't ring a bell?

A. Is that the ID one?

Q. I don't know. I'm just wondering if you've ever heard the name Joanna Ray Olguin. No?

A. No.

Q. Have you ever used that name?

[113] A. No.

Q. Have you ever used any other name, other than your name?

A. No, just my name.

JA-37

Q. Just your name. Do you have—

A. Or Loretta, my middle name.

Q. So it's Roxanne Loretta Torres?

A. Torres.

Q. Did you ever go by any nicknames?

A. Box.

Q. What?

A. Box.

Q. Box. You ever go by Rox or Roxy?

A. My grandpa calls me Roxy.

Q. But those are the only names you've ever used?

A. Yes.

Q. Have you ever heard of the name Kienta Jackson?

A. No

Q. Ever heard of a Kienta Jackson?

A. No.

Q. Do you know a Kienta Jackson?

A. No.

JA-38

Q. So at the hospital were you honest to the nurses and the police when they talked to you?

A. I don't know. I was pretty out of it.

* * *

JA-39



JA-40

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROXANNE TORRES,

Plaintiff,

vs. Cause No. 16-cv-01163 LF/KK

JANICE MADRID, a New Mexico
State Police Investigations Bureau
Officer and RICHARD WILLIAMSON, a
New Mexico State Police Investigations
Bureau Officer,

Defendants

VIDEOTAPED
DEPOSITION OF JANICE MADRID

March 29, 2017

11:01 a.m.

500 4th St. NW, Suite 105
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF
CIVIL PROCEDURE this deposition was:

TAKEN BY: Mr. Eric D. Dixon
ATTORNEY FOR PLAINTIFF

REPORTED
BY: Jeannine K. Sims, NM CR #12
Paul Baca Professional
Court Reporters

JA-41

500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102

* * *

[30] Department of Public Safety that officers use only the force necessary to effectively bring an incident under control, while protecting the lives of the officers [sic] and others and while accomplishing lawful objectives.” Do you see that? Did I read that correctly?

A. Yes, sir.

Q. And the next sentence states, “It must be stressed that use of force is not left to the unfettered discretion of the involved officer [sic].” Did I read that correctly?

A. Yes, sir.

Q. “This is not a subjective determination. The use of force must be objectively reasonable.” Did I read that correctly?

A. Yes, sir.

Q. That was the policy of the state police as of July 15th of 2014?

A. I believe so.

Q. You were aware of that policy and were to abide by that policy?

A. Yes, sir.

Q. Turning to the next page. I'm sorry. Turning to—to the 154. And this is page 3 of 13 of the policy. 2c “Decisions to discharge a firearm at or from a moving vehicle shall be governed by the Use of [31] Force policy and are prohibited if they present an unreasonable risk to the officer or others.” Did I read that correctly?

A. Yes, sir.

Q. That was the policy as of July 15th of 2014?

A. Yes, sir.

Q. Now, the crime involving Mrs. Jackson we can agree that as of July 14th you hadn't—I'm sorry. July 15th you had no reason to believe that Mrs. Jackson had used any firearms or other weapons in those alleged crimes, true?

A. True.

Q. The crimes that Ms. Jackson had been alleged to have committed were what is commonly referred to as white collar crime?

A. Yes, sir.

Q. It wasn't a crime of violence, true?

A. True.

Q. You had no reason to believe that Ms. Jackson had engaged in any acts of violence as of July 15th, true?

A. Not true. She was associated with several individuals with violent histories, so—

Q. Okay.

A. —I don't know if she had or she hadn't.

[32] Q. So to answer my question, you had no knowledge of Ms. Jackson, not people associated with her, but Ms. Jackson herself had engaged in any acts of violence; isn't that true?

A. True.

Q. And we've agreed already that Ms. Jackson is a African American female; is that right?

A. Yes, sir.

Q. I want to turn your attention to—

A. Are we done with this?

Q. We are.

A. I can put it back.

Q. You can put it back. Go ahead. You may want to clip that.

A. Thank you.

Q. Yeah. Turning your attention to Exhibit 2.

A. Okay.

Q. Which is a diagram.

A. Got it.

Q. Did you prepare that diagram?

A. No, sir.

Q. Who prepared that diagram?

A. I have no clue.

Q. Excuse me?

A. I have no clue.

[33] Q. Okay. Exhibit 3. Did you prepare that document?

A. No, sir.

Q. Was that Mr. Smith?

A. I have no idea.

Q. Well, has number 1 – me; number 2 – Rich; and number 3 – Janice.

A. Okay.

Q. Do you see that?

A. Uh-huh.

Q. Yes?

A. Yes. Sorry.

Q. That's okay. The only other person or the person beside the vehicle would have been Sergeant Smith—or behind the vehicle would have been Sergeant Smith?

A. Well, Agent White's not on here either. I don't know who prepared this one, who drew this one.

Q. Well—

A. What you're saying is all correct; "me, Rich and Janice" but—

Q. Okay.

A. —I don't know who. You asked if I knew who prepared this.

Q. Who "me" is.

* * *

[38] Q. Okay.

A. I could tell you that is the relative position. That is not to scale of the vehicles where I was standing and where Rich was standing. But I'm not sure what these other lines are so I'm not sure what part of the questioning IA investigator was asking me at this time that I drew this what he was trying to get at. Sorry.

Q. That's all right. Well, let's go back a little bit.

A. Okay.

Q. You drove to the 6100 Harper from—from the office; is that right?

A. I didn't drive. I was a passenger.

Q. With Mr.—with Mr. Smith?

A. Sergeant Smith, sir.

Q. And you drove by the apartment complex?

A. Yes, sir. Briefly.

Q. And what did you see?

A. Well, I was in the passenger seat so we were driving east on Harper. I look over. I recognized Apartment 22. I saw a black in color SUV in the parking. The driver door was open to the parking. And it looked like a female because of the hair; hair was up, tied back, was doing something inside [39] the vehicle. It was very brief so we drove by. Wasn't able to identify if that was my target or not.

Q. So the person was inside the black Cruiser vehicle?

A. Not full body, not inside, but standing up. So like the vehicle's parked facing Harper and the driver door was open. And there was a person standing there. The window was rolled up and they were standing facing the interior of the vehicle. That make sense? And they were doing something but I wasn't able to see what they were doing.

Q. Okay. And so you drove down the street and turned around?

A. So Sergeant Smith proceeded past it, past the apartment complex. And we pulled into I believe it's like the next intersection I think or street over. I'm not sure what street that is. So he pulled around and I said I couldn't tell if that was my target. I said, "I don't want them to go mobile. Should we make contact?" And that was discussed if we should make contact. That was agreed upon. So—

Q. Okay. So you went back?

A. So Sergeant Williamson and Sergeant Smith put on their tactical vests. I was already wearing mine. And then we engaged our audio recording devices and [40] proceeded to the location of the apartment.

Q. Okay. You didn't carry a video recording device with you?

A. There—I did have a video, a lapel video. At that point I was fairly new to investigations so I didn't have it provided to time for a long duration of time so I didn't—I thought I turned it on but it wasn't on.

Q. Okay. Were you supposed to turn it on and you just forgot to turn it on?

A. No, sir. We had to engage a recording device, an audio recording device. So that was my digital recorder. So that's what was turned on. I had to ensure that that digital recorder was turned on.

Q. And you tried to turn on the video recorder too.

A. Right. I tried but I didn't—

Q. Didn't—

A. —I didn't push the right side.

Q. Okay. So it wasn't videotaped?

A. Correct.

Q. And you would agree a videotape would be very important in a situation like this.

A. Yes, sir.

Q. And it would be important that you understand how to use a video recorder, true?

[41] A. Well, yeah. Sure.

Q. And you weren't able to turn the recorder on.

A. Right.

Q. And just a matter of touching a button, right?

A. Well, there was two buttons I think on the side of them. I think the position I had it on I engaged the wrong side.

Q. Okay. But you had been shown how to use it?

A. Technically, no, sir. It was pretty much given to us. It was—it's just an extra tool. It wasn't something that was mandated that we use. I didn't use it frequently.

Q. Okay. And so you parked your vehicle or Mr. Smith, excuse me, parked his vehicle to the side of this PT Cruiser or not—PJ Cruiser. The black—

A. SUV.

Q. —Toyota SUV. Yeah.

A. When we drove back in, it was a one way in, one way out. So he didn't park directly inside. He didn't try to block it in. He didn't try to prohibit any—he didn't try to prohibit the vehicle from leaving, no. He just—I had him stop when I saw that Agent Williamson and Agent White were already out of the [42] vehicle.

Q. Okay. And then what did you see?

A. So whets he pulled up I saw Agent White and Sergeant Williamson exit the vehicle. And as I saw Sergeant—well, so he's a sergeant now but Ray White proceeded forward. I don't know what he saw.

And I saw the person whoever was the—whoever was standing at the driver door immediately get into the vehicle as I was making my way towards the vehicle. And I said, "We need to stop this chick" to make sure she wasn't my target.

Q. Right. And you never yelled out "Police" though, did you?

A. No, sir. I didn't.

Q. And Mr. Williamson never yelled out "Police," did he?

JA-50

A. I don't believe so.

Q. Nobody identified themselves as police, did they?

A. Later I believe.

Q. But not at the time the vehicle was pulling out?

A. No, sir.

Q. All that was yelled was "Stop."

A. Right.

[43] Q. Okay. And you were dressed in black BDUs, right?

A. BDU pants. Yes, sir.

Q. It's early in the morning?

A. Yes, sir.

Q. The light, it's still not fully light out.

A. Correct. I'm wearing a tactical vest with my badge of office in bright yellow.

Q. Right.

A. State police patch.

Q. Right.

A. I think two patches.

Q. Right.

JA-51

A. Yellow, gold “State Police” down the sides of my arms.

Q. And you approach the vehicle yelling, “Stop.”

A. In specific I don’t remember what I said.

Q. But we can agree you never identify yourself as being a police officer.

A. Correct.

Q. And you would agree that you were trained to identify yourself as a police officer, weren’t you?

A. Yes, sir.

Q. And we can agree it’s important that you [44] identify yourself as a police officer, wasn’t it?

A. Yes, sir.

Q. Because we can agree people—a person would have no idea who you were coming up to their vehicle early in the morning while it’s dark out dressed in black, true?

A. No, sir.

MR. SULLIVAN: Object to the form.

Q. (BY MR. DIXON) And—

A. I wouldn’t agree with that.

Q. Okay. Now, the vehicle pulled out; is that right?

A. The vehicle didn't pull out, sir. The vehicle drove at me.

Q. Okay. And what did you do?

A. I tried to stop the driver from running me over.

Q. Okay. You shot at the vehicle?

A. I shot at the driver through the windshield, sir.

Q. Okay. To the side?

A. No, sir.

Q. Directly in front—

A. Directly in front of me.

Q. Okay. You've seen the trajectory analysis?

[45] A. I just saw what you provided Sergeant Williamson.

Q. And the trajectory analysis shows that the trajectory is all from the side?

A. I don't know what the trajectory analysis shows. You will have to ask whoever did the trajectory analysis.

Q. And we will.

A. Yes, sir.

Q. But you're saying you discharged your weapon, your 9 millimeter Smith & Wesson directly in front of the windshield?

A. Yes, sir.

Q. Not from an angle?

A. Not from an angle, sir.

Q. And then the vehicle passed you; is that right?

A. I continued to fire forward in a forward fashion.

Q. Uh-huh.

A. The vehicle—I don't know. Some call it training, I call it divine intervention. But I ended up on the—I ended up on the side—

Q. Uh-huh.

A. —as the vehicle went past me. Thank God [46] but it went past me. And yeah.

Q. And you continued to shoot?

A. I shot in a forward fashion at the driver until there was no more threat.

Q. You continued to shoot at the vehicle as it was leaving?

A. I continued to shoot in a forward fashion at the driver of the vehicle. That's what my perception was.

Q. And the vehicle you shot into the back of—the rear of the vehicle?

A. No, sir.

Q. You're sure of that?

A. I don't believe I shot in the back.

Q. You could have, you just don't know?

A. I don't know.

Q. Do you know how many shots you fired?

A. After the fact I believe seven. But on that day, no, sir. I don't.

Q. And you don't know where the seven rounds hit?

A. No, sir. I don't.

Q. Okay. Do you know whether you hit the driver of the vehicle?

A. I don't know.

[47] Q. Did you ever see the driver of the vehicle?

A. No, sir.

Q. Did you ever—

A. Well, I saw the driver of the vehicle but I never saw per se her—her—for lack of a better word her identifying features. I never saw that. It was drizzling a little bit and I couldn't see into the vehicle because

of how dark it was. And at that point the affirmative actions she was making inside the vehicle I didn't know whether she had a gun or not or what she was doing. Because she wasn't complying with any verbal directives.

Q. Well, if the vehicle was dark inside I'm confused. You said you couldn't see what she was doing because it was dark inside. Is that—but you—now you're saying you don't know whether she had a gun?

A. I don't know if she had a gun or not. She was making a lot of affirmative—aggressive movements inside the vehicle.

Q. How do you know that if you couldn't see into the vehicle?

A. Because she was wearing like a white in color shirt and I could see the shirt. I was looking at her, I was trying to find her hands is what I was trying to do. I was in front of the vehicle trying to find her [48] hands. The vehicle started. The vehicle came at me.

Q. Uh-huh. And did you ever see a gun pointed at you?

A. No, sir.

Q. Did you ever see a knife pointed at you?

A. No, sir.

Q. Did you ever crowbar pointed at you?

A. No, sir.

Q. Did you ever see a fist pointed at you?

A. No, sir.

Q. And you would agree that you had no reason to believe that the driver of the vehicle was Ms. Jackson, did you?

A. I'm sorry?

Q. You had no reason to believe the driver of the vehicle was Mrs. Jackson.

A. I didn't know who the driver of the vehicle was. I was trying to confirm or deny whether that was my target or not.

Q. Well, you would agree that the driver of the vehicle had light skin?

A. I didn't see the—the ethnicity of the driver.

Q. You had no idea whether the driver was a man or a woman?

[49] A. I didn't. We were trying—the reason for stopping that vehicle was to see if that was my target or not.

Q. Or whether the driver of the vehicle was African American or Hispanic?

A. No, sir. I didn't know that.

Q. Or what her—whether her hair was long or short?

A. The hair, as I said before, was tied back.

Q. So you didn't see any facial features but you were able to see that she was—

A. The person—

Q.—agitated?

A. —was moving aggressively inside the vehicle.

Q. And so you saw the person moving aggressively in the vehicle. But you never determined whether the person was male or female?

A. No, sir. I was trying—I was looking for hands at that time.

Q. And were the hands on the steering column or where were the hands?

A. I never saw her hands.

Q. Okay.

A. I saw the vehicle lunge at me.

* * *

[54] Q. —public address?

A. Some do.

Q. Okay. And have you sometimes used public address systems to address people outside your vehicle or outside the vehicle?

A. Yes. In the uniform capacity.

Q. All right. And why do you do that?

A. It just depended on the situation.

Q. Is it for the safety of the officer and the individual that you're speaking to?

A. Again, just depends on the situation.

Q. But in some situations it's used for the safety of the officer, true?

A. Yes, sir. In some situations, yes, sir.

Q. Okay. Because on line 6—page 6, line 3. I'm sorry.

A. Which line, sir?

Q. Line 3, 4.

A. Okay.

Q. "Don't you have a loud speaker on that, on the car by chance, Rich?" And you respond, "AGENT MADRID: Unknown. Although, APD just went 97." Do you see that?

A. Uh-huh.

Q. Yes?

[55] A. I see it. Yes, sir. Is there a question for that?

Q. Yeah. Did I read that correctly?

A. Sure.

Q. And do you recall stating that you didn't know whether the vehicle had a loud speaker on it?

A. I don't know who was saying that.

Q. Well, did you say that you didn't know whether the vehicle that you were driving had a loud speaker in it?

A. I didn't know if it had a loud speaker, no.

Q. And did you say that on the day in question, you don't know?

A. I don't remember.

Q. Okay. I'd like you—and we will label this as Exhibit 21.

(Marked Plaintiff's Exhibit No. 21.)

Q. (BY MR. DIXON) Draw me a diagram of where you were when the black Cruiser pulled into gear, where Mr. Williamson was, and where Mr. Smith was, all when the vehicle pulled into gear. Please. It's got to be to scale.

A. What was that?

Q. Nothing. Never mind. Go ahead.

A. I could do that but I'm going to need—

[56] Q. I'm kidding.

A. —a T square and ...

JA-60

Q. It's a joke.

A. Put an "S" for suspect vehicle?

Q. Yes, ma'am.

A. Okay. It was moving in this direction.

Q. Okay. And which way was the—could you put an arrow to which way the vehicle was moving?

A. I did. It's right here.

Q. Okay. Was it moving straight or was it turning to the right?

A. It was coming right at me.

Q. Okay.

A. What's today's date, sir? The 29th, right?

MR. SULLIVAN: 29th.

THE WITNESS: March.

Q. (BY MR. DIXON) March 29, 2017. Would you sign that, please.

A. (Witness complies.)

Q. How far from the curb was the rear bumper of the black SUV Cruiser?

A. I don't know.

JA-61

Q. How far were you from the front bumper of the Cruiser?

A. Maybe a few feet. I don't know in specific. [57] Very close.

Q. And how many steps did you have to take to get out of the way?

A. I don't know.

Q. Okay. Do you know whether you hit the individual driving the vehicle?

A. I don't know.

Q. Did you ever become aware of whether the individual was hit?

A. After the fact I was made aware that there was blood in the vehicle, that there was a vehicle crash. Another vehicle hijacking. And that somebody showed up to the hospital I think in Grants or Gallup injured saying that they—I think that something had happened at the Route 66 Casino.

Q. Uh-huh. Were you aware that Mrs. Madrid—excuse me. Mrs. Torres had been shot in the back?

A. I was not aware of that.

Q. Are you aware of that today?

A. Yes, sir.

Q. Do you know how she got shot in the back?

A. I don't.

Q. When was the internal affairs investigation started regarding the shooting?

A. I don't know.

[58] Q. And did you ever read the internal affairs report?

A. Just the clearance letter that they provided me.

Q. Okay. You would agree that the vehicle never backed up towards Richard Williams, true?

A. I'm sorry?

Q. The black SUV Cruiser never backed up towards Mr. Williamson.

A. I don't know if it did or didn't.

Q. Well, did you see it back up?

A. All I saw it lunge at me.

Q. So you never saw it back up at Mr. Williamson?

A. No, sir.

Q. You never saw—Mr. Williamson was always on the driver's side of the vehicle, true?

A. Right next to the driver door, yes, sir.

Q. He was never in the way, true?

A. I don't know what his perception of it was.

Q. Well, I'm asking what your perception was.

A. My perception was the vehicle was lunging at me. I didn't have time to see what—I knew Rich was on the side of the vehicle but I don't know.

Q. Stated differently, you didn't think that—[59] you didn't shoot at the vehicle to protect Mr. Williamson, true?

A. I shot at the driver of the vehicle in fear for my life.

Q. Not Mr. Williamson's?

A. No. In fear for my life.

Q. Okay. And you—we can agree that any discharge of your weapon should stop once the fear for your life ends, true?

A. It should stop when your perception of the—of the threat is concluded.

Q. Stated differently, you—your training and experience and policy doesn't allow you to shoot at the back of cars—automobiles to stop the vehicle, true?

A. I mean, that's kind of a broad question. If somebody's in front of the vehicle you would do what you needed to do in order to protect the life of yourself or the life of others. So if somebody was in front of that vehicle you may discharge your firearm.

JA-64

Q. But—but after—or nobody's in front of the vehicle you shouldn't be shooting, true?

A. Well, it depends on the circumstance. I mean—

Q. Sure.

A. —I mean if you're walking down the road [60] and a car's driving away from you and there's no threat of anything, of course you're not going to just shoot at the back of a vehicle.

Q. Even if you want to talk to them?

A. Excuse me?

Q. If you want to stop and talk to somebody that's driving down the road do you shoot at the back of the vehicle in order to get them to stop?

A. No, sir.

Q. Why not?

A. Because normally if we're trying to stop a vehicle that's in motion as you explained, we would engage our lights and a reasonable person would see the lights and would pull their vehicle over to the right-hand side of the road as—

Q. Okay.

A. And would make contact to find out why they are being stopped.

JA-65

Q. All right. And if the vehicle drives off you would agree it's not appropriate to discharge your firearm to make it stop?

MR. SULLIVAN: Object as to form.

Q. (BY MR. DIXON) Go ahead and answer.

A. In what circumstance are you talking about? In the traffic stop situation?

[61] Q. The situation I just gave you.

A. In the traffic stop situation, no, sir. You wouldn't fire your—your weapon.

Q. The only time you're supposed to fire your weapon as I understand policy is when you're in immediate threat of danger of great bodily harm, true?

A. Yes, sir.

MR. SULLIVAN: Object as to form.

Q. (BY MR. DIXON) And once the threat of great bodily harm ends you're to end using lethal force, true?

A. Yes, sir.

Q. Okay. I want to show you Exhibit 17, which I think is—

A. Are we done with this one, 20?

Q. Yes.

JA-66

MR. SULLIVAN: You just had it.

THE WITNESS: I did?

MR. SULLIVAN: 17. There you go.

Q. (BY MR. DIXON) Have you seen this before today's date?

A. Yes, sir.

Q. When did you see it?

A. Back in 2—let's see. I don't know if it was late 2014 or early 2015. I'm not sure when the criminal investigation was taking place.

* * *

JA-67

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROXANNE TORRES,

Plaintiff,

vs.

Cause No. 16-cv-01163 LF/KK

JANICE MADRID, a New Mexico
State Police Investigations Bureau
Officer and RICHARD WILLIAMSON, a
New Mexico State Police Investigations
Bureau Officer,

Defendants

DEPOSITION OF JEFF SMITH

December 6, 2017
500 4th Street, Suite 105
Albuquerque, New Mexico 87102

PURSUANT TO THE NEW MEXICO RULES OF
CIVIL PROCEDURE this deposition was:

TAKEN BY: MR. ERIC D. DIXON
ATTORNEY FOR PLAINTIFF

REPORTED
BY: PAUL BACA, CCR #112
PAUL BACA PROFESSIONAL
COURT REPORTERS
500 Fourth Street, Suite 105
Albuquerque, New Mexico 87102

[50] Q. But you would agree that the mere act of opening the door and getting into the vehicle is not enough to give you reasonable suspicion to stop that person?

MS. BRENNAN: I will object to the form.

A. Well, I wish I had the case law, but I know it exists. That is enough to detain someone, yeah, the mere fact that they see you are law enforcement and then flight, they call, they run upon seeing law enforcement. Again it is a short detention the case law says to dispel you're [sic] alarm that they're up to no good. Once you detain them, you prove everything is good, you got to let them go. You can't hold them any longer unless you have some other crime or something.

Q (By Mr. Dixon) Sure. Did you—but as I understand your testimony, both you and Officer Madrid and Officer Williamson believed that the driver of that vehicle was, in fact, Kayenta Jackson?

A. Yeah, that was our assumption, correct.

Q. And that is why she should be stopped, that she was the actual suspect with the felony warrant?

A. With an active warrant, yeah, I believe [51] that is the reason.

Q. So that was the basis of why you wanted to stop and talk to the person in that vehicle, right?

JA-69

A. Yeah, that plus, like I said, back to it if someone runs upon seeing law enforcement, that is reasonable suspicion even if it may not be kind to detain them temporarily and see what they are up to, so...

Q. You are taught in the academy that you should always identify yourself orally as police?

A. Yeah, if you have a chance to. Sometimes you don't have a chance to, you know.

Q. Why is that important?

A. Well, so they clearly know that you are a law enforcement officer.

Q. Okay. All right. Have you understood all my questions?

A. I believe so, yes.

Q. Have I been fair to you?

A. Yes, sir.

Q. Polite?

A. Yes, sir.

MR. DIXON: Okay. Those are all the questions I have. Thank you, sir.

MS. BRENNAN: I have a quick question for [52] you and then we will be done.

CROSS-EXAMINATION

BY MS. BRENNAN:

Q. You had testified in the beginning about Ms. Jackson being part of a crime ring; is that right?

A. Yes, she was. I was—it was organized crime basically is what turned to be the investigation.

Q. What were the other types of crimes that were involved in this crime ring?

A. We identified and was able to indict, I'm not sure where it is in the process, but the ring leader, if you will; it was a male and female. The male Bernalillo County Sheriff's Office arrested for homicide out in the East Mountains and then also he was arrested by Wyoming authority for domestic violence and also trafficking in methamphetamine, quite a bit of it. So he also has a robbery history but if you look him up African American male, pretty tall, pretty built. Robinson is his last name, Charles. He has a long criminal history, very violent, too. And he was the ring leader along with his—I forget the girlfriend's name but now his ex-girlfriend that hatched the plan to create [53] fraudulent tax return checks.

So another thing, too, I am not a white collar expert, but sort of and I try to keep up with the trends nationwide. A lot of your violent drug dealers now aren't dealing drugs or selling drugs, they are doing white collar crime because you can make so much more money in white collar and you won't go to prison but for a very short period of time. So violence and

JA-71

white collar now and methamphetamine and white collar are hand in hand. There has been studies that show that. So just because a person has a white collar warrant does not mean that they won't attack you, who knows. People get desperate when they know they are going to jail, so...

MS. BRENNAN: Okay. Those are all the question I have.

FURTHER EXAMINATION

BY MR. DIXON:

Q. But Charles Robinson wasn't the target of the investigation at the time?

A. Not at the time, no. We determined that he was the ring leader later on.

Q. You didn't know about Charles Robinson until well after the shooting, true?

* * *

[18] Q. Is that your signature?

A. Yes.

Q. And it is dated 7-15-14?

A. Yes.

Q. Do you know why this was prepared?

A. I was being interviewed by Agent Nick Levine and it's standard practice when you interview somebody

about shooting, civilian or otherwise, you have them, to their recollection, do a sketch of the scene. So I am pretty sure he asked me to do that as part of his interview.

Q. And you have the Apartment 22 which is where the Toyota was parked; is that right?

A. Yes. Yeah, it was backed in.

Q. And why is that suspicious that the vehicle was backed in or was it?

MS. BRENNAN: Object to the form.

A. It is not suspicious necessarily, but it is common, though, for people that have a stolen vehicle and/or stolen plate they don't want you as cops to plainly be able to drive by on control and run a plate, so they back it in. It makes it a little more difficult.

Q. (By Mr. Dixon) But in and of itself you wouldn't stop somebody just because they backed [19] their vehicle into an apartment space?

A. You can't stop somebody unless you have reasonable suspicion and I don't think that is a reasonable suspicion just the fact they backed it in.

Q. Fair enough. So there were vehicles parked on both sides of the Toyota; is that right?

A. Pretty sure. But if the—my diagram, I don't know what that one means. Oh, that is where I was at, I'm sorry. It looks like there was a vehicle then to the west of it because I put a little design like a vehicle.

Q. And then, you have got “my unit” with the front facing—

A. Uh-huh.

Q. —the vehicle in question. Do you know how far away you parked your vehicle from the Toyota?

A. It would be a total guess, 70 feet, 60 feet, somewhere around there.

Q. All right. And was the parking lot full or was it empty, or do you remember?

A. I don't know. I am sure he got scene photographs you can review those, but I don't want to speculate on those right now.

[20] Q. Now the—you circled with a one and then in the bottom left-hand corner you have written me?

A. Uh-huh.

Q. That is indicative that is where you were standing—

A. Yeah, correct.

Q. —at the time the discharge of the firearms?

A. That is approximately right, yeah, that area.

Q. And then you have No. 2, that is where Rich was standing?

A. Yeah.

Q. And so he was standing beside the vehicle?

A. From my recollection, yeah.

Q. And then three is where Janice was standing?

A. Yeah. Again, if you listen to the audio this happened within three seconds. I mean, the shooting happened within probably two seconds. That's how quick it happened. So like I told my interviewer Nick Levine, I am not 100 percent positive who was next and who was in front of who. I just know both of them were in the front quarter panel of the suspect vehicle. It happened too fast [21] for me to tell which one, yeah.

Q. I appreciate all of that information, but my question was actually rather simple and narrow. The question was you circled 3 for Janice Madrid?

A. Yes.

Q. And Janice Madrid you drew a diagram with her beside the vehicle?

A. Uh-huh.

Q. And you understood that it was important that you remember as best you could where everybody was standing, true?

A. True.

Q. And at the time you drew this diagram this was your best recollection; is that right?

A. Yes.

Q. You're trying to be as honest and straightforward as you could, true?

A. Yes.

Q. And you put both Mrs. Madrid and Mr. Williamson standing next to the vehicle, true?

A. Driver's side, yes.

Q. Not in front of the vehicle, true?

A. Well, two, which is Rich, is where the front meets the left driver's quarter panel, so it is basically where they come.

[22] Q. We can agree Janice Madrid was never in front of that vehicle, was she?

A. If they ask her to look and everything else per my diagram, I have her where I thought she was, but it happened within two seconds. It's hard to be perfect.

Q. Well, I am asking you, and I am asking you to your recollection Mrs. Madrid was never in front of that vehicle, was she?

A. From what I remember being on the opposite side looking through a tinted—I can't look through a tinted vehicle. This is my recollection is why I wrote it that way.

Q. So to answer my question, Mrs. Madrid was never in front of that vehicle, true?

JA-76

A. According to my recollection, I guess you're right, yeah.

Q. Yeah. And you—did you actually see Mrs. Madrid shooting her firemen [sic]?

A. No, I can't. I am on the opposite side.

Q. But you heard shots being fired?

A. Yes.

Q. And did you see either—do you know who started firing first?

A. No, I can't answer that.

[23] Q. And do you know how many shots were fired?

A. No. If it is called—there is a term for it, but an officer could shoot, you know, 11, 12 times in an officer-involved shooting, I've interviewed many of them, they thought they shot twice because of the stress level. I initially thought maybe two, three times. I think it is probably more like seven times, somewhere in that area each, approximately.

Q. Would it surprise you to know that they found 13 casings?

A. Seven and six. That is probably about right, yeah.

Q. Have you looked at the State Police trajectory analysis of the bullets?

JA-77

A. No, but I did look at the vehicle. Clearly based upon the trajectory, someone was in front of that vehicle because the first two shots, science is science, trajectory you can't lie about it indicates the person was in front of the vehicle otherwise they wouldn't have hit where they hit.

Q. How do you know it wasn't an exit?

A. Because of the fact that the only person that I saw shooting as the vehicle was already by them was Rich shot I think the last one round [24] because I was like eight feet away and that I believe blew out the back window.

Q. So you saw Rich—

A. That is the only one I visually saw because I remember because it was right next to me.

Q. —shooting into the back window?

A. His last shot was, I think, towards the back.

Q. Where was Rich standing when he fired into the back of the vehicle?

A. Next to the vehicle the driver's side of the vehicle.

Q. Okay. You understand that the back of the back window of the vehicle was shattered?

A. There was glass so something was shattered after the vehicle jumped over the curb like a maniac going through all the shrubbery and whatnot and then went westbound towards the interstate.

JA-78

Q. Have you ever heard of the Blue Code of Silence?

A. I don't wear blue I wear black and gray, my uniform.

Q. That wasn't my question.

A. You're asking me do I lie for cops, is that what you're asking me? No, I don't. I tell [25] the truth.

Q. You didn't hear my question. I guess you didn't hear it. Have you ever heard the term Blue Code of Silence?

A. Yes.

Q. Okay. So what is that term?

A. I guess I never saw it, but I guess officers will back each other and lie or whatever they have to do.

Q. Is it important for officers to tell the truth?

A. Of course.

Q. Especially on their applications?

A. Uh-huh.

Q. Yes?

A. Yeah.

Q. And—

A. Applications, what do you mean by that?

Q. Applications to be a State Policeman?

A. Okay, yeah, yeah.

Q. And why is it important for you to be truthful on your applications for—to be a State Policeman?

A. Well, hopefully that is one of the standards to have some integrity before they hire [26] you.

Q. Because it is important for a police officer to have integrity, isn't it?

A. Of course. I think this is—usually you will be one of the witnesses against the defendant, hopefully you will tell the truth.

Q. And you probably heard the case of Brady versus Maryland?

A. No, refresh my memory.

Q. You never heard of Brady versus Maryland?

A. No, I have heard a lot of them, I don't remember that one. What is that one?

Q. That is from 1963 where the U.S. Supreme Court said that the prosecution is required to provide the defendant with exculpatory evidence including whether or not a police officer's lied in the past?

A. Okay.

Q. Once it is known that a police officer has lied in the past, their ability to be a police officer is severely compromised. Would you agree with that?

A. Yeah, yes, sir.

Q. I am just trying to find out what you remember happening. I am not trying to accuse you [27] of anything. I am just trying to understand what your involvement was and what went on, so please forgive me if you think that that is my intention here.

So you gave a statement after the shooting; is that right?

A. Yes, sir. I was interviewed by Nick Levine. He is the Santa Fe Office of State Police.

Q. And I am going to attach this as Exhibit 2—(Exhibit marked, 2.)

Q. (By Mr. Dixon)—to your deposition.

MS. BRENNAN: I'm sorry, this is Jessie Smith.

MR. DIXON: We had a very, very good court reporter prepare a transcript of your statement and it was put Jessie instead of Jeff, so...

MS. BRENNAN: There is, in fact, a Jessie Smith, a Sergeant Jessie Smith, isn't there?

THE WITNESS: No, he is a—not Smith, it is Jessie Williams. He is a captain. There is 600-something, I don't know all the guys.

Q (By Mr. Dixon) Well, I believe this is—we have had your statement transcribed and I believe this to be your—I am not trying to trick you. I believe this is the statement you gave.

[28] A. Okay.

Q. And in paragraph—I'm sorry, Page 6, and this is Lines 9 through 12, do you recall telling the investigator, Agent Levine, "Then I turned to my right real quick and what makes me turn to my right is Rich Williamson, Agent Williamson and Agent Janice Madrid are on the passenger side of the black Toyota."

A. Uh-huh.

Q. Do you recall making that statement?

A. Yeah, it is in here.

Q. And that is—and then Line 16 through 17 do you recall making the statement, "From my recollection it, I recall Rich Williamson being in the front left, the driver's side. The front left quarter panel, the front bumper area and Janice being slightly behind him both on the passenger side. I hear them yelling verbal commands, something like, 'get out of the car, show me your hands, get out of the car, get out of the car,' multiple times. And from my angle I don't know if the car drove towards Rich. I know Rich was in the area where the car—I remember it's backed up so it is driving forward, took off rapidly in a forward position."

[29] And then on to Page 7, Lines 1, "It appears to be from my vantage point that Rich was in a position of danger. The vehicle appeared to be driving at least

slightly towards him. At that point I hear Janice and Rich. I also see their firearms out, drawn out. I hear them shoot and see them shoot I think three to five times each towards the vehicle.”

Do you recall—

A. Yes.

Q. —making that statement?

A. Yes.

Q. So you actually saw them shoot?

A. Some of the shooting, yes.

Q. Okay.

A. Yes.

Q. And then you—this is Line 8, “I hear the back window being busted, I believe by the round striking the vehicle.”

Do you recall stating that?

A. Yes.

Q. Okay. I want to turn your attention to Page 12 of your statement. And this is, again, Lines 8 through 12, do you recall stating, “I know both of them are definitely on the passenger side of [30] the black SUV. I think Rich was more in the front quarter panel, and I want to say Janice was behind him but they both were on the passenger side.”

Do you recall making that statement?

A. Yes.

Q. And that is your recollection as of today. I mean, is there anything you want to change in that statement?

A. No.

Q. Because again, I am just trying to find out what you remember.

A. Yeah.

Q. And then, I want to turn your attention to Page 15 and this is Lines 11 through 12. Actually it starts on ten. Well, we will start with nine, actually. "When the movement of the car or the SUV went forward, remember Rich is in the front quarter panel, I believe he was. That is when shots were fired and shots ended after she was already past them."

Do you recall making that statement?

A. Correct.

Q. So shots were being fired after the vehicle had passed Madrid and Williamson, true?

A. Yes, some of them were.

[31] Q. Okay. You would agree, then, that after the vehicle would pass Madrid and Williamson neither of them were in danger of being hit, true?

A. That is correct.

Q. All right. And you knew when you gave this statement that you had to be as accurate as you possibly could?

A. Correct.

Q. On Page 27, and this is to refresh your memory on Lines 4 and 5, you indicate that you are “15, 20 feet away from the shooting so, you know, that is about it.”

Does that refresh your memory as to how far away you were?

A. Yeah. The diagram is accurate. I am on the total opposite side of where the people of the shooting were.

Q. Okay.

(Exhibit marked, 3.)

Q. (By Mr. Dixon) I will show you what we will label as Exhibit 3. This, again, is the transcript of the audiotape transmissions.

A. Uh-huh.

Q. I understand you have a—explain to me how you—when you go to—is it standard [32] operating procedure to turn on an audio recorder or how does that work?

A. Yeah, it is a policy. If you are interacting with the public you have to have your audio recorder on.

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Q. Do you recall either Officer Williamson or Officer Madrid ever saying orally by mouth stating they were police?

A. I don't know. I am not sure, you would have to listen to the audio recording. I don't remember. It went extremely fast.

Q. Okay. Well, the only thing on the audio is "open the door, open the door, open the door."

A. You have the audio, I guess that is what it is.

Q. Well, do you dispute that?

A. You can't dispute an audio recording.

Q. Did they say, "Police, open up"?

A. I don't recall. I just know that you could hear the stress in the voice, especially Rich's voice, because I know Rich pretty well and what caused me initially to turn after the guy slammed the door in their face was he was stressed. You could tell, scared or something in his voice. You could feel it in his voice. But I am not sure [33] what they said. I guess that is what they said according to the audio.

Q. Was he panicked?

A. I don't know about panicked but when you are under stress you can kind of tell his voice was a little bit higher, I guess than his normal tone.

Q. And would you consider yourself a good friend of Rich Williamson?

A. I've worked with him for—now he is doing something else with the State Police, probably three, four years. I don't hang out with any of the people I work with. As a supervisor it is best not to.

Q. Fair enough. You haven't visited in his home or he haven't visited in your home?

A. No, no.

Q. But you have known him by that point for three or four years?

A. Yes, just working with him on cases and stuff.

Q. How about Janice Madrid, did you know her at all?

A. No. I knew her a little bit. I was—when I first got promoted to Sergeant coming up on five years, usually got to go back to uniform. So I

* * *

[45] A. I never heard that. I don't remember hearing that.

Q. Or is there anything—was this person doing anything unlawful?

MS. BRENNAN: Object to the form.

A. When—there is case law, you are probably already aware of it, not unlawful but all you need is reasonable suspicion to make contact with a person and there is case law to show that the mere fact that

someone sees that you are a cop and runs from you, that is reasonable suspicion to detain them long enough to dispel the alarm that they are or are not doing criminal activity. You can't arrest them, you can detain them. So based upon that, someone running from you, hop in the vehicle, that is not probable cause but that is reasonable suspicion to make a contact with that person to see what is going on that is established case law.

Q. (By Mr. Dixon) Were the—did Mister—did Mrs. Madrid have her firearm unholstered when she approached the vehicle?

A. That, I don't remember. I remember, too, this is an important fact, you have the diagram, the fact that she was with me and she is on the east [46] side of the target vehicle and Rich who she partnered up on the west side, she had to run across the danger zone which is in front of that vehicle, you try never to do that but she saw that I was going to back up Ray, with the jersey, the guy with the jersey on who slammed the door. So I imagine she wanted to partner up with him, so she had to cross the danger zone which you never want to do that if you can help it, get in front of a vehicle that someone is in and potentially maybe want to drive towards you. But she had to just based upon the positioning of where our vehicle was.

Q. How far did this person run before she got in her vehicle?

A. Mere feet, maybe, 10 feet, 15 feet, that is all the guy—because she was near the guy with the jersey that slammed the door on me. Right there, right next

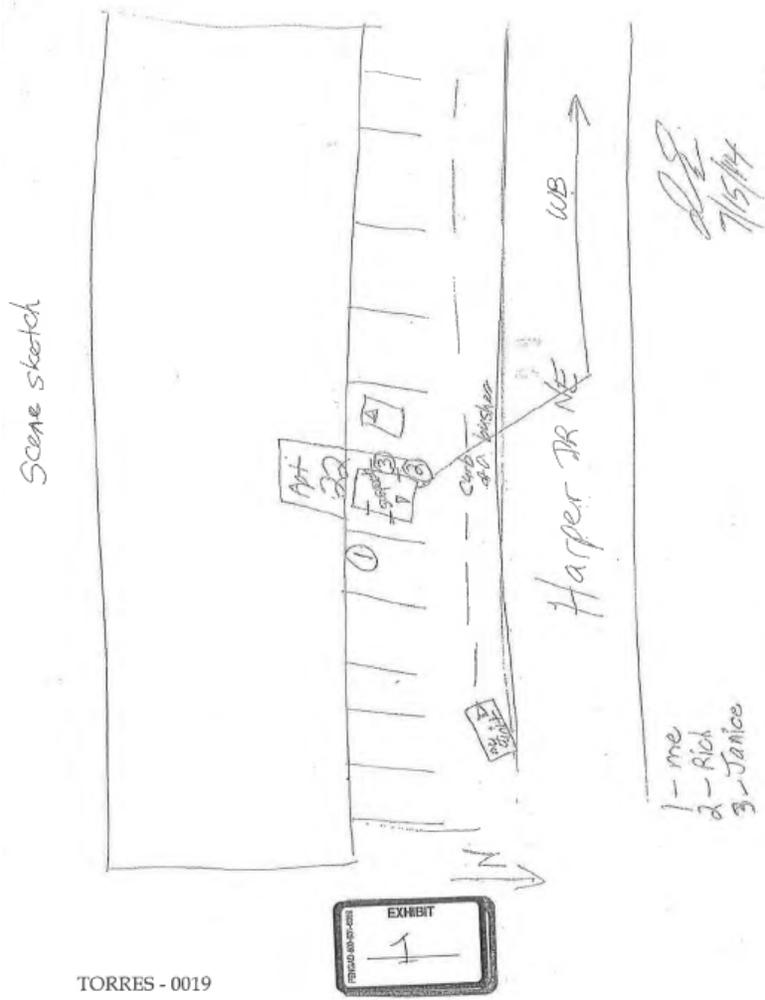
JA-88

to each other as we initially drove by with the door open, that's what caught our attention [sic]. I would say ten, 15 feet maybe to get into the vehicle.

Q. And probably less, she was standing right in front of the vehicle, wasn't she? She was standing right beside the driver's door of the vehicle, wasn't she?

* * *

JA-89



TORRES - 0019

JA-90

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

ROXANNE TORRES,

Plaintiff,

vs.

Cause No. 16-cv-01163 LF/KK

JANICE MADRID, a New Mexico
State Police Investigations Bureau
Officer and RICHARD WILLIAMSON, a
New Mexico State Police Investigations
Bureau Officer,

Defendants.

DEPOSITION OF RICHARD WILLIAMSON

March 29, 2017

9:04 a.m.

500 4th St. NW, Suite 105
Albuquerque, New Mexico 87102

PURSUANT TO THE FEDERAL RULES OF
CIVIL PROCEDURE this deposition was:

TAKEN BY: Mr. Eric D. Dixon
ATTORNEY FOR PLAINTIFF

REPORTED

BY: Jeannine K. Sims, NM CR #12
PAUL BACA PROFESSIONAL
COURT REPORTERS
500 Fourth Street NW, Suite 105
Albuquerque, New Mexico 87102

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* * *

[30] A. They were at the side of the PT Cruiser at the driver's side in front of the apartment.

Q. And so you turned back and went back to the apartment?

A. Yes, sir.

Q. How long did that take?

A. Maybe a minute, minute and a half. All I had to do was turn around and drive back half a block.

Q. Okay.

A. We put on our tactical vests and our police markings and engaged our digital recorders and got in our cars and—so maybe two minutes.

Q. The digital recorders, are they audio or video or both?

A. Audio.

Q. And is that required under policy?

A. Yes, sir.

Q. Are you required to carry a video recorder?

A. No, sir.

Q. And then did you get out of your vehicle at some point or where did you park your vehicle in front of—in relation to Apartment 22?

JA-92

A. Just past it, just to the west of it. Just past the FJ Cruiser.

Q. All right. So that would be—so your [31] bumper was past the—the PT Cruiser?

A. My rear bumper?

Q. Yeah.

A. Yes, sir.

Q. And the PT Cruiser, what color was it?

A. It was an FJ Cruiser.

Q. FJ?

A. Black and white.

Q. Were the windows tinted or untinted?

A. Tinted.

Q. Was there anybody in the vehicle when you got out?

A. Not that I observed.

Q. Was there anybody around the vehicle when you got out of your vehicle?

A. Yes. The two—the two individuals that we had seen when we initially drove past. They were standing next to the—next to the driver's side window.

Q. And did you get a better look at these two individuals?

A. Yes.

Q. Were either of them African American?

A. I don't believe so.

Q. In fact, you're sure that neither of the individuals were African American.

[32] A. Yes.

Q. And so it—we can agree that the two individuals by the parked car were not Mrs. Jackson, true?

A. True.

Q. And there was no reason to believe that these two individuals by the Cruiser were wanted for any—wanted for anything, true?

A. No, sir.

Q. What did you believe they were wanted for?

A. No idea.

Q. Okay. But if you weren't—they weren't committing a crime in your presence?

A. No, sir.

Q. They weren't doing anything unlawful?

A. Not that I'm aware of or not that I was aware of at that time.

Q. All right. And did you approach the vehicle at some point?

A. Yes, sir.

Q. And what did you say?

A. Well, at that point both those individuals ran from the location they were standing at. One individual ran into the apartment, slammed the gate—the door.

[33] And then one of the individuals got in the vehicle and started the vehicle. So at that point we approached them because we—because of their behavior. And all I said to the individual that I was making contact with at the driver's window was, "Show me your hands. Show me your hands."

Because she was making what I felt were furtive movements with her hands that I couldn't really see because of the tinting. Then I think at the end I said, "Show me your hands now." That's about all she gave me the opportunity to say.

Q. Okay. And so you were beside the vehicle?

A. Yes.

Q. All right. You weren't in front of the vehicle?

A. No.

Q. Now, the individual that got into the vehicle, how far was she from the vehicle when she got into it?

A. She was standing right next to the driver's door.

Q. So she didn't have to run.

A. No.

Q. And the driver's door was open?

A. Not at that time. I don't believe so.

* * *

[42] A PT. I bet.

Q. Well, we're both doing it. But the black cruiser—

A. Uh-huh.

Q. —pulls out, turns to the right. We can agree to that?

A. Yes.

Q. And we can agree that at this point you had determined that the driver of the vehicle certainly wasn't Ms. Jackson, true?

A. That was my belief, yes.

Q. The driver of the vehicle was a light-skinned woman, true?

A. No. Dark hair, dark skin, I wouldn't say light skinned, no. sir.

Q. It's clear she wasn't an African American individual.

A. Relatively clear. Relatively clear. Yes, sir.

Q. It was clear that the driver of the cruiser wasn't Mrs. Jackson.

A. Correct.

Q. Now, you were—you knew and understood that Mrs. Jackson hadn't been accused of any crime of violence, true?

[43] A. I guess that's probably true. Yes.

Q. Okay. I mean, as I understand it she had two counts of forgery and two counts of fraud. That's—that's what the charges were. And they were what we refer to or what I refer to as paper crimes. Is that a fair assessment?

A. Yes, sir.

Q. And you didn't have any belief or reason to suspect that Ms. Jackson was a violent person?

A. Actually, I did.

Q. And what basis was that?

A. Just in discussions with Agent Madrid on the progression of her investigation. I knew that there were some violent criminals that were involved in the group that she was investigating and that Ms. Jackson was part of that group. And so I couldn't say that

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I absolutely knew she was not a violent person. No, sir.

Q. Well, she may have been associated with persons that may or may not be engaged in violence. But you had no reason to believe that Mrs. Jackson was engaged in any acts of violence.

A. Again, I can't answer to that. I knew she was associated with violent people so I wouldn't rule out the fact that she might also be—that's just how my mind works I guess.

[44] Q. Okay.

A. If you are associated with violent people you might also be prone to violent activity. So just because she was only up to that point accused of white collar crimes, that doesn't mean that I believe she might not be capable of violent behavior.

Q. All right. Now, you didn't at any time believe that you were in danger of being injured by the driver of the vehicle, did you?

A. I absolutely did.

Q. Okay. And how was she—you're at all times standing at the side of the vehicle, right?

A. Correct.

Q. And she never drove the vehicle in your direction, true?

A. True.

Q. All right. And so how did you come to the belief that you were somehow in danger of being bit by this vehicle?

A. At one point as she was leaving the parking space my impression was that she paused momentarily. And at that point I believe that she was looking for a route of escape. The location where I was standing was in between, of course, another parked car. And at that point I thought she might turn towards that car or back [45] up towards me crushing me between that car.

Q. But she didn't do that?

A. She did not.

Q. As she continued to drive away?

A. Yes, sir.

Q. And you continued to discharge your weapon.

A. Until she had left my vicinity, yes, sir.

Q. Okay. And how far away was the vehicle from you and Mrs. Madrid when you discharged your last round?

A. My last round? I couldn't say. Not more than a foot or so. The distance from—the distance from where the car was parked until it went up over the curb, taking into consideration the length of the vehicle, it was probably—because I was standing right next to the vehicle. Maybe—I'm not sure. Just a few feet.

JA-99

Q. Okay. And you were trying to—trying to stop the vehicle with your—with shooting at it?

A. I was trying to stop the action of it going towards Ms. Madrid or coming back towards me.

Q. You would agree that you were shooting the back of the vehicle at some point?

A. I was shooting at the driver. At the—my very last round I believe did enter the back of the vehicle. That's when I stopped.

* * *

[70] from you, moving away from you is not a risk to your safety, true?

MS. BRENNAN: I'll object to the form.

Q. (BY MR. DIXON) As a general proposition.

A. Again, it's all subjective. It depends on distance and the situation.

Q. Well, you've never been trained to shoot at a vehicle trying to flee the scene.

A. No, sir. That's why I stopped firing as soon as I perceived the vehicle had—had left any area that was a threat to myself or Agent Madrid.

Q. And you had no reason to believe that the driver of the vehicle had any firearms.

A. No.

Q. Or any weapons inside the vehicle.

A. Other than the furtive actions that she was making when she got in the vehicle. It's just you just don't know.

Q. But not knowing—you never saw a weapon.

A. Correct. Other than the vehicle.

Q. You never formed a belief that Ms.—that the driver of the vehicle had a weapon?

A. No.

Q. Or that there was anybody else in the vehicle?

[71] A. No.

Q. And your intention in discharging your firearm was to hit the driver of the vehicle?

A. Yes.

Q. Okay. And to either kill or incapacitate the driver?

A. No. The intent of shooting at the driver was to stop her action of moving towards Agent Madrid.

Q. But you would agree that somebody getting shot with a firearm it's a likelihood or a probability that they're going to be seriously wounded.

A. Yes, sir.

Q. It's not something that you would want to do without very, very serious consideration.

A. Absolutely not.

Q. Had you ever had any training to deal with panic reflex?

A. I'm aware of it just because of our—of the training that we've had. That's—we practice trigger safety and control.

Q. You would agree that your—at the time that you're trying to get the door open your adrenaline is running pretty heavily?

A. I imagine so.

Q. Your heart was beating rapidly?

[72] A. Probably.

Q. You're breathing heavily?

A. Probably. I don't know.

Q. And this is a very, very stressful situation for you, true?

A. Yes.

Q. A situation that you had never encountered before, true?

A. I've been in similar situations that were as stressful.

Q. And you panicked, didn't you?

A. No, sir.

Q. You were frightened?

A. I was afraid for Agent Madrid's safety and then at one point my safety.

Q. When did you become—okay. We've already talked about your safety; is that right?

A. Yes.

Q. And you've already talked about Mrs. Madrid's; is that right?

A. Uh-huh.

Q. Yes? You need to answer "yes" or "no," not "uh-huh."

A. Yes.

Q. Okay. Sorry. Have you ever been [73] reprimanded or disciplined while you've been at the state police?

MS. BRENNAN: You can answer if you know.

A. Yes, I have.

Q. (BY MR. DIXON) And for what and when?

A. 2003 maybe 2004. For arresting a woman without the court document in my possession.

Q. What sort of reprimand did you receive?

A. Just a verbal reprimand from my sergeant.

Q. Okay. Was it the policy or is it the policy of the state police to have a copy or the arrest warrant to present to the arrestee?

A. Yes, sir.

Q. All right. And do you remember who the individual it was that was arrested?

MS. BRENNAN: I'm actually going to—you don't know anyway.

A. I don't know.

Q. (BY MR. DIXON) It was a woman?

A. Yes.

Q. Was it for a metropolitan warrant? District court warrant?

A. Magistrate warrant out of Santa Fe.

Q. Okay. And was the warrant served here in Albuquerque or in Santa Fe?

* * *

[46] It registered in my mind I had been shooting through a window towards the driver. And it registered in my mind that last round I—I visualized it going through the back window.

And then at that point it—I realized it's away from me; it's not going to crush me. And that's when I stopped firing.

Q. Okay. So you shot through the driver's side window twice?

A. I don't recall how many times. I shot through the driver's side window and then the driver's side passenger window is where my shots—that's where I was aiming my shots. I don't recall how many shots; not aware.

Q. Okay. But at least one shot was discharged, went through the back window.

A. That was my belief, yes. The very last round.

Q. And how many rounds did Mrs. Madrid shoot?

A. I couldn't say.

Q. And where did—where did those rounds go?

A. I also could not say.

Q. But you would agree that between you and Mrs. Madrid can we agree that at least 13 rounds were discharged?

[47] A. 15.

Q. You think 15 discharged?

A. Yes, sir.

Q. Okay. Well, 13 cartridges, if that's the right term, were I think picked up at the scene. Is that—

A. I don't recall.

Q. Or jackets I guess. But—

A. The empty casings?

Q. Casings. Yeah. That's the word I'm looking for. You don't know?

A. I don't recall.

Q. Okay. Of the 15 how many do you think you discharged?

A. Eight.

Q. Okay. And so Mrs. Madrid would have discharged seven; is that fair?

A. I believe so.

Q. Okay.

A. But I can't say for sure how many she fired.

Q. I want to show you what we will label—if I could have that 13 back.

(Marked Plaintiff's Exhibit No. 1.)

Q. (BY MR. DIXON) Is that your signature on Exhibit 1?

[48] A. Yes, sir.

JA-106

Q. And is that your writing on Exhibit 1?

A. Yes, sir.

Q. When was this document prepared?

A. I believe this was during my interview with the investigating agent and detectives on July 17th.

Q. Okay. So it was it was pretty fresh in your mind then?

A. Yes.

Q. Two days after the event?

A. Yes, sir.

Q. And we have both your printed name at the top and your signature kind of going to the side?

A. Yes, sir.

Q. And then you've got an "S" with a— with a triangle going to the north; is that right?

A. Yes.

Q. What does that— what does the S stand for?

A. On the vehicle there?

Q. Yeah.

A. That's the suspect vehicle.

Q. Okay. And then there's a number 1 and number 2 beside—on the my left-hand side, your right. What does that signify?

A. Oh I'm not sure actually.

[49] Q. And then there's a next to the S vehicle there's a "J."

A. Yes.

Q. What does that stand for?

A. Janice.

Q. Okay. And that signifies where Janice was standing?

A. Actually, that signifies where I believe Janice was standing at that time.

Q. At the time that the vehicle moved out?

A. Yes.

Q. And you would agree where you put the J is beside the vehicle, not in front of the vehicle?

A. Yes.

Q. Okay. So we can agree then that your recollection as of July 17th of 2014 was that Janice Madrid was standing to the side of the Cruiser rather than in the front of the vehicle.

A. Yes, sir.

JA-108

Q. And that's your testimony today?

A. Yes, sir.

Q. Now, we have a vehicle, or I guess that's a vehicle, with a "J." Is that "JS," the initials?

A. Yes.

Q. What does that stand for?

* * *

[66] A. Yes, sir.

Q. Do you know who fired that shot?

A. Which particular one? Looks like there's three.

Q. Right. I'm talking about the one on the front; the red line on my left, your right.

A. No, sir. I couldn't say.

Q. All right. But you would agree that your training and experience that shot was fired from the side, true?

A. Yes.

Q. Okay.

A. That looks like the trajectory.

Q. If one were standing in front of the vehicle you would think that the trajectory of the bullet would go straight through the vehicle, true?

A. True.

Q. And we can agree that the trajectory analysis as far as you understand shows that all the shots were fired either from the left side of the vehicle or the rear of the vehicle?

A. Yes, sir.

Q. All right. Have you been involved here in Albuquerque with the investigation of any carjackings?

A. In Albuquerque? No, sir. I don't believe [67] so.

Q. Are you aware of carjackings occurring in Albuquerque?

A. Oh, yes, sir.

Q. Is that a fairly frequent crime or problem here in Albuquerque?

A. I couldn't say but I don't think it's—I don't believe it's frequent but it occurs.

Q. It happens?

A. Yes.

Q. All right. And you would—you would agree that you had never seen Mrs.—Mrs. Torres—I'm sorry. Mrs.—yeah, Mrs. Roxanne Torres, the driver of the vehicle, you had never seen her before July 15th of 2014. We can agree on that?

A. Yes, sir.

JA-110

Q. We can agree that at the time you approached you had no reason to believe that she had committed any crime; is that right?

A. Well, it became subjective very quickly. So you said at the time I approached, it changed.

Q. At the time you approached you didn't have any objective reason to believe that the driver of the vehicle had committed any crime, true?

A. No, sir. Not really.

[68] Q. And you would agree that it was early morning?

A. Yes.

Q. It was dawn?

A. Well, the sun was up.

Q. It wasn't—it had just risen. The light was still dim you would agree?

A. I believe so.

Q. And three individuals approached the vehicle that are dressed in black tactical gear; is that right?

A. Black and tan.

Q. And none of the individuals ever identify themselves as police; is that right?

A. Verbally?

Q. Orally.

A. No.

Q. And the driver in the vehicle pulls out of the parking stall and leaves; is that right?

A. Yes.

Q. And as the driver is leaving, you're shooting and Mrs. Madrid is shooting; is that right?

A. Yes.

Q. And you're shooting to hit the driver of the vehicle; is that right?

A. Yes.

[69] Q. You don't—were you aware that she was hit in the back?

A. Yes.

Q. When did you become aware she was hit in the back?

A. Shortly after. I was advised, it was quite a while later, that she had appeared at the hospital in Grants with an injury. So that was quite a while later.

Q. Were you made aware that she—how many wounds that she had?

A. Just the one. One entry, one exit.

JA-112

Q. And do you know whose round went into her back?

A. I don't believe we do specifically.

Q. Okay. You would agree in your training you're not trained to shoot people in the back, are you?

A. Well, depends on the situation.

Q. All right.

A. You're shooting to stop the action. So people can get shot in the back.

Q. But you're not trained to shoot people in the back.

A. Not generally. The target is addressing you. The risk is addressing you.

Q. And you would agree that somebody going away...

* * *

[36] on your chest saying Police?

A. Yes.

Q. Okay.

A. On my back—on the front and on the back.

Q. Okay. So that on the front there was a—was it a badge or a word saying Police?

A. It's a word. It's a white badge with black letters that say Police.

JA-113

Q. Okay. And the jacket is black?

A. No jacket. It was just a vest.

Q. Vest. I see.

A. It's black.

Q. And your pants were black?

A. No. The pants were tan.

Q. And your shoes are black?

A. Shoes are black. Actually, no. My shoes were tan.

Q. Okay. And then the vehicle pulled out; is that right?

A. Yes.

Q. Where was Mrs. Madrid when the vehicle pulled out?

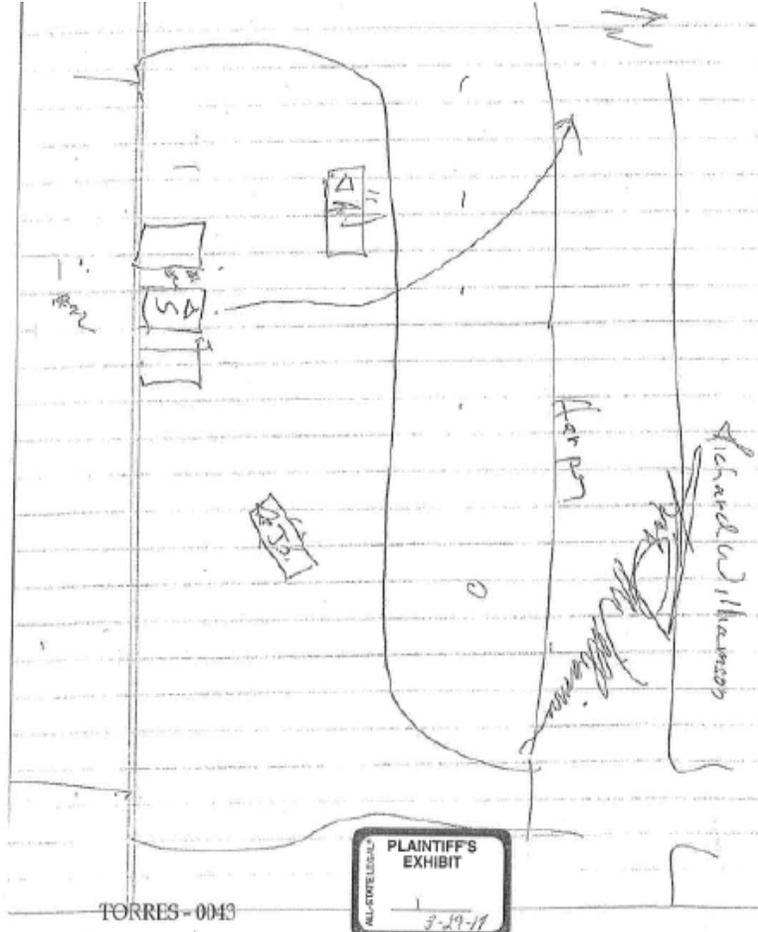
A. The left front bumper.

Q. Okay. And where was Mr. Smith?

A. I didn't see Mr. Smith but at that point I

* * *

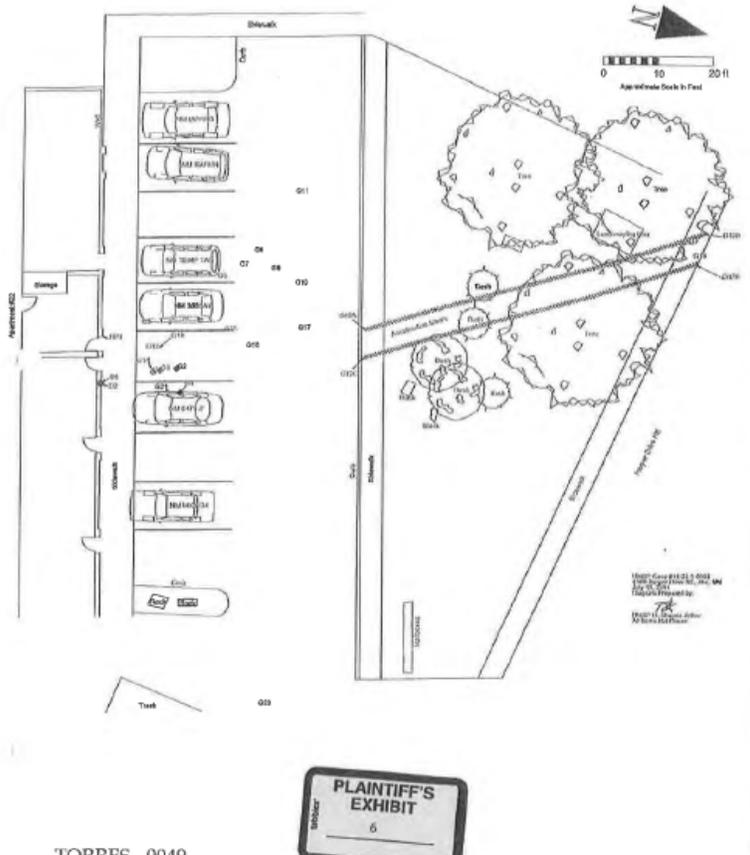
JA-114



TORRES-0043

PLAINTIFF'S
EXHIBIT
3-19-17

JA-115



TORRES - 0049

Larger version available in the Tenth Circuit JA 220

JA-116

New Mexico State Police

Case #14-23-1-0063

Measurements Obtained on July 15, 2014 by Lieutenant Shayne Arthur with a Leica C10

LaserScanner

Location: 6200 Harper Drive NE, Albuquerque NM

Item #	Description	N/S	E/W	Ht. Above Ground
G1	9mm Casing	14'5"N	10'8"E	
G2	9mm Casing	13'5"N	5'7"E	
G3	9mm Casing	10'6"N	6'0"E	
G4	9mm Casing	9'8"N	6'2"E	
G5	9mm Casing	7'0"N	2'6"W	
G6	9mm Casing	21'2"N	10'8"W	
G7	9mm Casing	24'10"N	13'0"W	
G8	9mm Casing	27'7"N	16'0"W	
G9	9mm Casing	31'2"N	12'5"W	
G10	9mm Casing	35'1"N	9'9"W	
G11	9mm Casing	35'2"N	26'6"W	
G12A	Beginning of the driver	49'5"N	0'8"W	

JA-117

Item #	Description	N/S	E/W	Ht. Above Ground
	side acceleration mark			
G12B	End of the driver side acceleration mark	111'5"N	18'4"W	
G12C	Beginning of the passenger side acceleration mark	48'1"N	4'6"E	
G12D	End of the passenger side acceleration mark	110'0"N	12'8"W	
G13	Broken glass	7'11"N	2'2"E	
G14	Broken glass	7'8"N	6'4"E	
G15	Broken glass	22'5"N	0'11"W	
G16	Broken glass	26'7"N	2'0"E	

JA-118

Item #	Description	N/S	E/W	Ht. Above Ground
G17	Broken glass	36'3"N	1'5"W	
G18	Broken glass	108'5"N	14'0"W	
G19	9mm Casing	9'4"N	2'1"E	
G20	Bullet fragment	30'6"N	67'11"E	
G21	9mm Casing	9'9"N	9'7"E	
D1	Defect from a fired bullet	0'3"S	8'4"E	3'8" Up
D2	Defect from a fired bullet	0'3"S	8'8"E	4'5" Up
Refer to the diagram for the location of the Reference Point (RP1)				