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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

United States)
of America,) No.
Plaintiff,) **CR-15-1723-TUC-RCC-DTF**
vs.) Tucson, Arizona
Lonnie Ray Swartz,) April 12, 2018
Defendant.) 11:44 a.m.

**BEFORE: THE HONORABLE
RANER C. COLLINS, JUDGE**
**REPORTER'S EXCERPTED
TRANSCRIPT OF PROCEEDINGS**

**JURY TRIAL
DAY 15**

(TESTIMONY OF PETER HERMANSEN)

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[2] **APPEARANCES**

For the Government:
U.S. Attorney's Office Tucson
By: **Wallace Heath Kleindienst, Esq.**
Mary Sue Feldmeier, Esq.
405 West Congress Street, Suite 4800
Tucson, Arizona 85701

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For the Defendant:

Law Offices of Sean C. Chapman
By: **Sean Christopher Chapman**, Esq.
100 North Stone Avenue, Suite 701
Tucson, Arizona 85701

Law Office of Jim E. Calle
By: **Jamie Ernest Calle, III**, Esq.
2315 East Hawthorne Street
Tucson, Arizona 85719

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[4] (The following excerpt is the testimony of Peter Hermansen.)

THE COURT: You may call your next witness.

We're going to go into the lunch hour a little bit.

MR. CALLE: Your Honor, the screens?

THE COURT: Can you push them down? Or are you not tall enough?

(Discussion held off the record.)

THE CLERK: Raise your right hand, please.

(PETER HERMANSEN, DEFENSE WITNESS, SWORN.)

THE CLERK: Thank you. Please be seated.

Please speak directly into the microphone.

State your full name for the record and spell your last name.

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THE WITNESS: Peter Allen Hermansen, Jr.
H-E-R-M-A-N-S-E-N.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. CHAPMAN:

Q. Why don't you pull the mic up a little closer.

Good afternoon, sir.

Can you tell us what your occupation is?

A. Yes, sir. I am currently a CETA contractor under the Department of Defense for the Assistant Secretary of Defense for Special Operations Low Intensity Conflict with the [5] Combatting Terrorism Technical Support Office. I serve as a principal law enforcement advisor to that organization, and I also support our military troops, primarily the SOF community, with new equipment and kit. And I serve as a border -- subject matter expert for border security events --

Q. Slow down a little bit.

A. Yes, sir.

Q. Our court reporter has been --

THE COURT: She's been tested.

MR. CHAPMAN: She's been tested.

THE WITNESS: Understood.

BY MR. CHAPMAN:

Q. How long have you been in that position?

A. Coming up on a year, about 11 months.

Q. And before that were you -- what occupation were you?

A. I served as a United States Border Patrol Agent for a little over 21 years.

Q. All right. You've been retained as an expert by the defense in this case; is that right?

A. That's correct, sir.

Q. And how much are you charging the defense for your services?

A. \$250 an hour.

Q. Okay. Roughly how much time do you have in on the case at this point?

[6] A. I probably will at the end have about 24 hours into the case, sir.

Q. Okay. I want to walk through your career with the Border Patrol. Tell the jury when you started.

A. I started in 1996 in Douglas, Arizona as a Border Patrol Agent. I joined their special response team down there and started working across the sector. Most of the stations across the sector, it was a very busy time during that era.

Q. Can I ask you a question?

A. Yes, sir.

Q. What is a special response team?

A. A special response team is a tactical unit that you train for and become a part of once you gain some seniority in the organization. And we would support our anti-smuggling unit, and we would support other investigative entities by doing high-risk operations on the border, or by serving search warrants or things of that nature in relation to primarily drug smuggling and alien and narcotics investigations.

Q. All right. What did you do after that?

A. In 2002 I moved over to the United States Border Patrol Tactical Unit, which I joined in 1999. And became a team leader over there for BORTAC. BORTAC stands for the Border Patrol Tactical Unit. And we do operations throughout the United States, supporting all sectors. We serve as tactical advisors and tactical support to the chiefs in the field, and [7] to the chief patrol agent of the U.S. Border Patrol. And we would also go overseas into Central and South America primarily, and train host force nation forces in border security related matters. I primarily worked in Honduras, Columbia and Guatemala.

Q. After that what did you do?

A. After that in approximately 2004 I went to Washington, D.C. where I served as both a deputy director and the director of use of force for the entire organization, Customs & Border Protection, which the three primary operational components are the Office of

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Field Operations, Air and Marine, and the United States Border Patrol.

Q. Okay. So in that position, that was in Washington, D.C.?

A. That's correct, sir.

Q. What was your job title at that time?

A. Job title was both deputy director and director.

Q. Okay. Were you involved in the development of use of force policies for the Border Patrol at that time?

A. Yes, sir. I served as the principal individual helped -- helping craft the policy and shepherd the policy through the process within CBP under the assistant commissioner in the Office of Training and Development.

Q. The Government has presented testimony regarding the 2010 Use of Force Policy Manual for the Border Patrol. Are you familiar with that?

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[10] agent in Nogales?

A. It's to enforce the laws that we are statutorily authorizes to do, which is Title 8, Title 18, Title 19 and Title 21, to effect arrests and to defend the homeland.

Q. What are the typical types of dangers that field agents face down there?

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A. We face -- different from police work we face aliens, undocumented subjects, or we face narcotics. Those are usually the two biggest threats that we face.

And in conjunction with those, you can face weapons or you can face assaults or things of that nature, which are pretty much a recurring theme on the border in some of those urban areas. I served primarily in Douglas, but have experience across the stations within the Tucson Sector. And rockings are a significant event that occur down in those areas, especially in the urban areas in Douglas and Nogales.

Q. Do you have any idea roughly how many rocking assaults on agents occurred let's say between the year 2010 and 2014?

A. Between 2010 and 2014, I couldn't venture to estimate a guess. I can tell you from Chief Fisher's memo, he references -- in the 2014 memo he references just under a couple thousand events.

But I can tell you from my experience in seeing it, being in Washington, D.C., being a part of the reporting process and seeing the reports that come in, rockings are a [11] daily occurrence in the Border Patrol.

Q. Is the Border Patrol a different -- different from typical law enforcement agencies? And if so, how?

A. So if you compare it to a police organization or a police department, the Border Patrol is different in that we do a lot of things in a very solo environment. We go out into the field, we make large arrests, we apprehend subjects that are transporting narcotics, often

times in very remote locations, with little or no backup a long way away.

So it's different also in that when we make traffic stops, most law enforcement officers approach vehicles very slowly with their safety in mind and the safety of the subjects in mind. We generally run to the vehicles in order to try and contain what's in the vehicle, because many times you'll see subjects attempting to abscond from the vehicle and run away, and that's our job is to arrest subjects that are in those vehicles.

Q. How many -- is it uncommon for one agent to arrest several subjects at the same time without -- at one time without any backup?

A. No, it's not uncommon at all. I personally have arrested groups between 50 and 200 on the east side of Douglas, Arizona back in the late '90s when we were seeing a huge influx. And that was not an uncommon theme. We go out as 15 to 20 agents on a shift and arrest a couple thousand people.

[12] Q. All right. I want to move forward and ask you some general questions about use of force.

Do agents have an obligation under the use of force policy to retreat when they're being rocked?

A. There's nothing to my knowledge in the policy that is written that forces agents to retreat. Agents have a multiplicity of things that they can do, or things that they can contemplate, or things that they can react to and use their skill sets and use the tools that

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they have and use their training to help them respond to events.

So when you look at a use of force continuum, the FLETC model is a staggered model, you really think of the individual or the person as a person right in the middle, and you have that ability to move into those different areas. Whether it be your officer presence, how you present yourself in your uniform, you polish your boots, how do you look, to uncooperative subjects, to actively resistant subjects, to assaultive subjects, and then to obviously the greatest threat that we face, which is deadly force, when means, opportunity and intent are present.

Q. So there's no policy that you're aware of that mandates that if an agent is getting rocks thrown at him he has to take cover?

A. No, sir.

Q. And to your knowledge was that ever a policy at the Nogales

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[Certificate Omitted]

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FOR THE DISTRICT OF ARIZONA**

United States)
of America,) No.
Plaintiff,) **CR-15-1723-TUC-RCC-DTF**
vs.) Tucson, Arizona
Lonnie Ray Swartz,) March 29, 2018
Defendant.) 10:30 a.m.
)

**BEFORE: THE HONORABLE
RANER C. COLLINS, JUDGE**
**REPORTER'S EXCERPTED
TRANSCRIPT OF PROCEEDINGS**

JURY TRIAL
DAY 7

(TESTIMONY OF JAMES TAVERNETTI)
Volume II
(Pages 61 through 215)

* * *

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For the Government:
U.S. Attorney's Office Tucson
By: **Wallace Heath Kleindienst, Esq.**
Mary Sue Feldmeier, Esq.
405 West Congress Street, Suite 4800
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* * *

[160] A. Yes.

Q. And that was 2500 feet away?

A. Yes.

Q. And then there was the Camera Pole camera, which for all intents and purposes was essentially on top of the scene, about 50, 80 feet away?

A. Yes.

Q. And each of them is a thermal camera, each of them have a visible light camera. And although they can operate separately, ultimately it's just one feed?

A. Correct.

Q. So it's just producing the two videos; correct?

A. Correct.

Well, that's how it was explained to me by Border Patrol, that it came through two cameras into one.

Q. Okay. Fair enough.

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Now you produced lot of work in this case. And you've worked with a number of experts; is that correct?

A. Yes.

Q. And in terms of the demonstratives in which you relied on the videos, the videos alone in terms of the motion of the people, for instance, the rock throwers in Mexico, in that case there was no expert to go verify, you are the expert in this case; is that correct?

A. The expert filtering the media through the software, which [161] I'm an expert in.

Q. Right. And essentially there's no one else for you to go verify that, you're it.

A. I'm sure there's somebody else that could verify it, but in this case, yes.

Q. You're the only one here testifying in this case; correct?

A. Yes.

Q. And you would agree that in terms of what took place in Mexico, the only eyewitness available to any of us, besides the defendant in this case, is the video?

A. Yes.

Q. So for purposes of what we are displaying to the jury, what we have is the video and your work derived from the video, for the Mexico side?

A. From the video and the 3D environment.

Q. Right.

And essentially what you put together, you stitched together in terms of the 3D environment and the video; is that correct?

A. I imported in the video into the 3D environment.

Q. Correct.

Now in terms of tracking people, isn't it true that you end up -- as I believe you said in your reports, you're tracking the bulk of their body.

A. The bulk of the body. I'm not tracking arm movements or

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[168] A. Yes.

Q. And in terms of the two different demonstratives, which are 337 and 336, I believe, the rock throwers from the east, the rock throwers from the west, that various movement, the techniques you employed were the same for both?

A. Yes.

Q. Now as we -- let me play this.

As I'm playing this, it's fair to say that you're depicting the deceased, Mr. Rodriguez, in red?

A. Yes.

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Q. And in this particular case it shows separation between the various objects; is that correct?

A. Yes.

Q. And he comes running from the west across the street, then ends up in this roadway. Fair to say?

A. Yes.

Q. Now in this animation it doesn't actually show them rocks -- throwing rocks; is that correct?

A. Correct.

Q. But are you in any way disputing that he was throwing rocks?

A. No.

Q. So he was throwing rocks?

A. He was doing throwing motions. I can't forensically match the rocks with that individual.

[169] Q. Okay. And that's fair.

What you're saying is that what you are able to see was the fact that this person in red was raring back and in some manner indicating that he was, in fact, throwing rocks in the direction of agents?

A. Correct.

Q. Not once?

A. Well, I can't tell the direction, but I can tell it's a throwing motion.

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Q. Are you saying you can't tell the direction?

A. The direction in which he's throwing, because it's just a -- it's a silhouette.

Q. It's a silhouette, but you can tell that -- I mean, you can tell that it is a throwing motion in the direction of the international border fence?

A. Yes.

Q. Okay. And he throws it one time, at least; correct?

A. Yes.

Q. He throws it another time that you watch?

A. Yes.

Q. And see.

He throws it a third time?

A. Yes.

Q. Okay. In terms of constructing this animation, fair to say that you relied on the 3D data; is that correct?

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[Certificate Omitted]
