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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

FLORENTINA PELAYO,)
individually, and as successor)
in interest to decedent PETRICA)
MUNTEAN,)

Plaintiff,)

vs.)

No. 8:19-cv-02318
MCS (ADSx)

CITY OF ANAHEIM, KENNETH)
JOHNSON, ALEXANDRIA)
GONZALEZ, DARREN LEE, PETER)
WANN, MICHAEL FLEET, BRENDAN)
THOMAS, HEATHER SCAGLIONE,)
BARTMAN HORN, and DOES 1 through)
10, inclusive,)

Defendants.)

DEPOSITION BY ZOOM OF MICHAEL FLEET, taken on behalf of
the Plaintiff, commencing at 9:12 a.m., on
December 17th, 2020, before Michael G. McMorran, CSR
No. 13735.

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For PLAINTIFF:

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I N D E X

WITNESS: Michael Fleet

EXAMINATION	PAGE
By Mr. Steering	4

E X H I B I T S

EX.	DESCRIPTION	PAGE
202	Officer Safety Bulletin	15
203	E-mail dated 04/12/18	14
225	Officer Fleet's DA interview audio file	12
265	Anaheim Police Department Policy Manual	21
344	Officer Fleet's DA interview transcript	8
355	Officer Fleet's body-worn camera footage	26

I N F O R M A T I O N R E Q U E S T E D

None.

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DECEMBER 17TH, 2020; 9:12 A.M.

* * *

MICHAEL FLEET,

having been first duly sworn, was examined and testified as follows:

-oOo-

EXAMINATION

BY MR. STEERING:

Q Can you state your full name, please, sir?

A Yes. It's Larry Michael Fleet.

Q Is it Larry or Lawrence?

A Larry.

Q My name is Jerry, and people ask me if it's Gerald all the time or Jerome or something like that. Do you go by Mike? Is that your --

A I go by Michael.

Q Okay. What's your date of birth, please?

A 12/21/1979.

Q You were born on the winter solstice, huh? Do you know what's happening on your birthday this year? Saturn and Jupiter are going to be, basically, touching each other in the sky on December 21st; so maybe you can take an astronomical photo and make it a super duper birthday present or something. About once every 800 years. It hasn't happened in 800 years; so happy

1 birthday.

2 Okay. And you're a police officer with the
3 Anaheim Police Department, sir?

4 Can you hear me --

5 A Yes, sir.

6 Q -- no? You're an Anaheim Police Department
7 police officer, sir?

8 A Yes, sir.

9 Q Can you hear me?

10 Okay. And how long have you been an
11 Anaheim Police Department police officer, Mr. Fleet?

12 A A little over four years now.

13 Q Okay. And have you worked for any other law
14 enforcement agency, sir?

15 A Yes, sir.

16 Q And what other law enforcement agency have you
17 worked for?

18 A The Long Beach Police Department.

19 Q As a police officer?

20 A Yes, sir.

21 MR. STEERING: Is there some kind of delay
22 going on, Moses, with the answer? Like, is there a
23 delay in Officer Fleet hearing me or something?

24 MR. JOHNSON: I don't know because I'm in a
25 separate room, but there might be a slight delay.

1 MR. STEERING: Okay. Whatever.

2 BY MR. STEERING:

3 Q Long Beach PD -- were you a patrol officer
4 with Long Beach PD, sir?

5 A Yes, sir.

6 Q Why did you leave Long Beach PD?

7 A For career opportunities that I thought
8 Anaheim had for me.

9 Q Okay. And do you remember when you
10 actually -- well, did you lateral over from Long Beach
11 PD to Anaheim PD, sir?

12 A Yes.

13 Q Okay. And are you still a patrol officer,
14 sir?

15 A No, sir.

16 Q And what do you do now for Anaheim PD,
17 Officer Fleet?

18 A I'm in a detective unit.

19 Q Okay. And how long have you been -- is your
20 rank detective?

21 A Yes, sir.

22 Q Okay. Well, congratulations.

23 How long have you been a detective,
24 Detective Fleet?

25 A Approximately six months.

1 Q Well, congratulations anyway.

2 Did you have to take some kind of -- like a
3 written exam or an oral exam for that?

4 A An oral exam.

5 Q Okay. Do they have you detecting certain
6 types of crimes, like gangs or drugs or vice or that
7 kind of thing?

8 A Yes, sir. Family-related crimes.

9 Q You mean like domestic violence type of thing?

10 A Domestic violence, child abuse, child deaths,
11 older abuse and older deaths.

12 Q Okay. Okay. Probably a lot of your
13 deposition is just going to be identifying documents.
14 And I guess, thanks to in part Mr. Johnson, I'm
15 learning how to do this.

16 MR. JOHNSON: I've trained you, Jerry?

17 MR. STEERING: He's a very pedagogical fellow.

18 MR. JOHNSON: I'm going to send you a bill.

19 MR. STEERING: You can send me a bill. Just
20 make sure it's not too big.

21 BY MR. STEERING:

22 Q Okay. So do you remember giving an interview
23 to Anaheim PD and Orange County DA officers following
24 the April 13th, 2018, shooting of Petrica Muntean?

25 A Yes, sir.

1 Q Okay. What documents and recordings have you
2 reviewed in preparation for your testimony today?

3 A The printout of my interview, an audio file of
4 my interview, and a copy of my body worn camera footage
5 from that incident.

6 Q Anything else, sir?

7 A The YouTube video that the district attorney's
8 office published.

9 MR. STEERING: Okay. So let me just -- I'm
10 going to bring those up and just have you identify
11 those for me, please. Okay. Okay. Let me show you
12 Exhibit 344.

13 (Exhibit 344 was marked.)

14 BY MR. STEERING:

15 Q And I'll scroll as much as you would like me
16 to scroll in order for you to be able to identify the
17 document.

18 But you can see -- can you see the document,
19 Detective Fleet?

20 A Yes, sir, I see approximately the first third
21 of the page.

22 Q Okay. And it shows that you're -- it says
23 "Interview of Michael Fleet, police officer, April 13,
24 2018."

25 And you just tell me if I'm going to fast or

1 too slow. I'm just trying to scroll through this
2 20-page document to have you identify as the document
3 that you reviewed as the transcript of your audio
4 recorded interview in preparation for your testimony.

5 Okay. Can you identify Exhibit 344, please,
6 sir?

7 A Yes, sir, that appears to be the transcript of
8 my interview.

9 Q Okay. And when you read the transcript of
10 your interview, did it appear to you as an accurate
11 transcript of that interview?

12 MR. JOHNSON: Objection. Overbroad.

13 THE WITNESS: I'm sorry. Someone was speaking
14 over you.

15 BY MR. STEERING:

16 Q When you reviewed the transcript of the
17 recording of your April 13th, 2018, interview, did the
18 transcript appear to be an accurate transcript of that
19 recording?

20 MR. JOHNSON: Objection. Overbroad.

21 And you can answer, Officer Fleet. I'm just
22 objecting for the record.

23 THE WITNESS: It's a fairly accurate
24 representation.

25 /////

1 BY MR. STEERING:

2 Q Okay. Now, when you gave this interview,
3 April 13th, 2018, did you -- in your answers to the
4 questions put to you, did you do your best to tell the
5 truth as you believed it to be?

6 MR. JOHNSON: Objection. Overbroad.

7 THE WITNESS: Yes, sir.

8 BY MR. STEERING:

9 Q Okay. And you realize this is a pretty
10 serious matter, somebody was shot, correct?

11 A Yes.

12 Q Okay. Okay. Did you give either the
13 Anaheim Police Department or the Orange County District
14 Attorney's Office any other statements, whether it be
15 written or verbal or otherwise, regarding the
16 April 13th, 2018, incident with Mr. Muntean?

17 MR. JOHNSON: Objection. Compound.

18 THE WITNESS: No, sir.

19 BY MR. STEERING:

20 Q Okay. Did you give some type of -- well, did
21 you author some type of report about the April 13th,
22 2018, incident involving yourself, some other officers,
23 and Mr. Muntean?

24 A Do you mind rephrasing the question by what
25 you mean by "authored;" just so I answer it clearly.

1 Q Well, I mean, I'm sure you have typed up
2 plenty of police reports in your police career; is that
3 fair?

4 A Yes, sir.

5 Q Okay. And what I mean by "author a report"
6 is, basically, just, like, create a report. You know,
7 it could be a supplemental report, it could be an
8 original report, but some kind of police report where
9 you put in the names, dates, and, you know, you
10 describe what happened during the incident.

11 Did you create any type of document like that
12 regarding the Petrica Muntean shooting incident?

13 A No, sir, I did not write a physical report.

14 Q Okay. Is that because it was an
15 officer-involved shooting investigation?

16 MR. JOHNSON: Objection. Lack of foundation.
17 Calls for speculation.

18 THE WITNESS: I'm sorry. You cut out again.
19 I'm sorry.

20 BY MR. STEERING:

21 Q Yeah, you're breaking up pretty bad on my end
22 with the audio. I'm not sure why. But I'm sure
23 there's a real explanation for it.

24 A Sir, it may be this connection over here
25 because I keep getting a message saying that there's a

1 poor internet connection on this computer; so it may be
2 me.

3 MR. JOHNSON: Do you want me to take a quick
4 break, Jerry, and have my paralegal check it out, or do
5 you want to plow ahead?

6 MR. STEERING: It's breaking up pretty good.
7 Would you mind just having your paralegal --

8 MR. JOHNSON: Yeah, let me quickly go check.

9 (Off the record from 9:26 a.m. to
10 9:30 a.m.)

11 MR. STEERING: Okay. So we got 344
12 identified. And then let's bring up -- I'll call
13 this -- I got to look at my numbers. Call this 354.
14 Oh, actually, I got it as 225. I'll get rid of 354.
15 Oh, I got to check that box, Moses?

16 MR. JOHNSON: Yeah, if you're playing an
17 audio.

18 MR. STEERING: Yeah.

19 (Exhibit 225 was marked.)

20 MR. STEERING: If I can find it. Let's try
21 this again. Okay. Here's Exhibit 225. And I'll just
22 play some of it so you can identify your voice on the
23 audio.

24 BY MR. STEERING:

25 Q Okay. I guess -- it's 27 minutes and eight

1 seconds; so I guess we can play the whole thing, but
2 does that sound -- I mean, does what you've heard so
3 far -- I stopped at one minute, 51 seconds -- does that
4 sound like the interview that you gave on April 13th,
5 2018, Detective Fleet?

6 A Yes, sir.

7 MR. STEERING: Moses, can we deem that
8 recording identified?

9 MR. JOHNSON: Yes, sir.

10 MR. STEERING: Okay. Thank you.

11 BY MR. STEERING:

12 Q So we got that one identified. And let's see.
13 Okay. Do you remember what shift you worked on
14 April 13th, 2018, sir?

15 A Yes, sir.

16 Q And what shift was that, please?

17 A Day watch.

18 Q And do you remember the hours, from when to
19 when?

20 A Yes. We begin our shift at 0600 hours and
21 then we end at 1830 hours.

22 Q Okay.

23 (Reporter clarification.)

24 BY MR. STEERING:

25 Q Okay. And at the beginning of your shift, did

1 you get some kind of officer safety bulletin regarding
2 Petrica Muntean?

3 A I believe one was e-mailed through the night,
4 but I hadn't seen it at that point.

5 Q Okay.

6 MR. STEERING: Let me show you Exhibit 203.

7 (Exhibit 203 was marked.)

8 BY MR. STEERING:

9 Q And I know the type is a little small if you
10 were to read. I'll try to bump it. Now, I don't think
11 you can see the whole document.

12 Can you see the whole document, sir?

13 A I see from the "from" statement down to some
14 red confidential text over some e-mail text.

15 Q Can you read the text? I'm not saying read it
16 out loud, but, I mean, are you able to read the text?

17 A I can read a portion of it.

18 Q Okay. Does this look like the e-mail that was
19 sent to Anaheim Police Department officers regarding
20 the incident the night before with -- that is on
21 April 12, 2018, the night before with Mr. Muntean and
22 his mom?

23 A No, sir. This isn't familiar to me.

24 Q Okay.

25 MR. STEERING: I'll show you Exhibit 202.

1 (Exhibit 202 was marked.)

2 BY MR. STEERING:

3 Q And I'll ask you if this document is --
4 there's a photo at the bottom -- if this officer safety
5 document looks like something that you saw at the
6 beginning of your shift on April 13th, 2018?

7 A No, sir.

8 Q You didn't see that either?

9 A No, sir.

10 Q Okay. Did you receive any type of -- well,
11 did you see any type of document at any time during
12 your shift regarding the April 13th, 2018, incident?

13 MR. JOHNSON: Objection. Vague as to time.

14 THE WITNESS: Not that I recall.

15 BY MR. STEERING:

16 Q Were you told about the April 12th, 2018,
17 incident involving Petrica Muntean and his mom that
18 took place the night before the shooting incident by
19 any Anaheim Police Department personnel on April 13th,
20 2018?

21 A Yes, sir.

22 Q And do you remember who told you about the
23 incident with Mr. Muntean and his mom, sir?

24 A Yes, sir.

25 Q And who was that, please?

1 A Officer Johnson in the morning briefing.

2 Q Did Officer Johnson give the morning briefing?

3 A No, sir.

4 Q Do you know who did?

5 A Our patrol sergeants generally give the
6 briefing, but I don't specifically recall what their
7 individual roles were within the briefing.

8 Q Okay. And do you remember what you were told
9 by Officer Johnson that morning?

10 A Vaguely.

11 Q And what do you recall being told, sir?

12 A That there was an incident the prior night
13 with Mr. Muntean where he was in a neighborhood and
14 there was a firearm involved, that the officers that
15 were working that night had set up a perimeter to try
16 and locate the individual, and it was later broken down
17 for some unknown reason.

18 Q Was -- if I told you that the reason it broke
19 down was because Mr. Muntean escaped the perimeter,
20 does that sound like something you were told?

21 A No, sir.

22 Q Okay. Were you told anything on April 13th,
23 2018, about Petrica Muntean's mom and/or dad telling
24 Anaheim Police Department officers that the gun that he
25 had was a fake gun?

1 MR. JOHNSON: Objection. Lack of foundation.
2 Calls for speculation. Asked and answered.

3 THE WITNESS: No, sir.

4 BY MR. STEERING:

5 Q Do you think in light of what happened during
6 the incident of April 13th, 2018, that you would have
7 wanted to know that information?

8 MR. JOHNSON: Objection. Lack of foundation.
9 Calls for speculation. Incomplete hypothetical.
10 Overbroad.

11 THE WITNESS: Maybe.

12 BY MR. STEERING:

13 Q And why do you say "maybe"?

14 A I mean, in hindsight, it may or may not have
15 been relevant. I don't know if that -- I can't answer
16 something that didn't happen.

17 Q I mean, you're approaching a guy because you
18 think -- I mean, when you approached Mr. Muntean on
19 April 13th, 2018, did you think he had a real gun?

20 MR. JOHNSON: Objection. Vague as to time.

21 THE WITNESS: I don't know.

22 BY MR. STEERING:

23 Q Did you ever think that Petrica Muntean had a
24 real gun on April 13th, 2018?

25 MR. JOHNSON: Same objection.

1 THE WITNESS: Yes.

2 BY MR. STEERING:

3 Q And when did you believe that, sir?

4 A When I heard officers yelling "gun" in the
5 driveway near where the shooting occurred.

6 Q About -- I mean, can you estimate about how
7 long you heard the officers say "gun" prior to the
8 shooting actually happening, sir?

9 A Other than quickly, I don't know how to
10 provide a time estimate on that. It was quick.

11 Q Like a matter of seconds?

12 A Matter of seconds between the words "gun" and
13 then the shooting? Is that your -- I don't understand.
14 Is that your --

15 Q Yes, that's the question, yes.

16 A It was fairly quick.

17 Q Okay. Let's see what else I got here.

18 Have you ever had any training by the
19 Anaheim Police Department about when it's appropriate
20 for Anaheim Police Department police officers to use
21 beanbag shotgun devices on civilians?

22 A Yes.

23 Q And what did that training entail?

24 A Reviewing our department policy on the
25 deployment of the less lethal shotgun. Its uses,

1 potential target areas or ideal target areas to hit an
2 individual, and areas that if all possible to stay away
3 from, and a general effective range of the less lethal
4 ammunitions.

5 Q Have you ever shot somebody with a beanbag
6 shotgun?

7 A No, sir.

8 Q Have you ever fired a beanbag shotgun?

9 A Yes, sir.

10 Q Was that at the police firing range?

11 A Yes, sir.

12 Q And did somebody train you in the use of that
13 device, sir?

14 A Yes, sir.

15 MR. JOHNSON: Objection. Vague.

16 BY MR. STEERING:

17 Q Okay. Were you trained by the
18 Anaheim Police Department about some type of standard
19 that the Anaheim Police Department had set for when an
20 Anaheim Police Department police officer could shoot a
21 civilian with a beanbag gun?

22 MR. JOHNSON: Objection. Vague. Overbroad.
23 Incomplete hypothetical.

24 THE WITNESS: Yes.

25 /////

1 BY MR. STEERING:

2 Q And what were you taught?

3 A It's a portion of our department policy manual
4 in the use of force policy.

5 Q Okay. And what I'm wondering is were you
6 taught any particular standard for when it's
7 permissible for an Anaheim Police Department police
8 officer to shoot a civilian with a beanbag gun?

9 MR. JOHNSON: Objection. Overbroad.

10 THE WITNESS: Yes, sir.

11 BY MR. STEERING:

12 Q And what were you taught?

13 A When a subject is displaying active signs of
14 resistance, an example would be the threatened use or
15 the use of physical violence against myself or public,
16 in terms of whether it's fighting stance or taking a
17 belated stance as to actively resist an officer or to
18 threaten another subject.

19 Q So are you trained at Anaheim PD that if a
20 person takes a stance indicative of an intent to resist
21 an arrest by an officer, you can shoot them with a
22 beanbag shotgun?

23 MR. JOHNSON: Objection. Vague. Misstates
24 his testimony.

25 THE WITNESS: It possibly could be an option.

1 BY MR. STEERING:

2 Q When you say "it possibly could be an option,"
3 you mean under the standards that you've been taught by
4 Anaheim Police Department about when you can use a
5 beanbag shotgun on somebody, the hypothetical I just
6 gave you would under that policy give the officer the
7 option of shooting a person with a beanbag gun for
8 taking a stance indicative of an attempt to resist
9 arrest; is that correct?

10 MR. JOHNSON: Objection. Misstates his
11 testimony. Vague. Incomplete hypo.

12 THE WITNESS: Yes, it would be a possible
13 option.

14 BY MR. STEERING:

15 Q Okay. Have you ever been with other
16 Anaheim Police Department police officers during
17 incidents when they used beanbag shotguns other than
18 the incident with Mr. Petrica Muntean, Detective Fleet?

19 A Not that I immediately recall.

20 MR. STEERING: Okay. Let me bring up -- okay.
21 Let me show you Exhibit 265.

22 (Exhibit 265 was marked.)

23 BY MR. STEERING:

24 Q Now, 265 is the entire
25 Anaheim Police Department manual. Okay. 265 is the

1 entire Anaheim PD manual. And in particular, I'm
2 looking at Section 304.10. It says "Kinetic Energy
3 Projectile Guidelines."

4 Is that the projectile guidelines that you
5 know of for the use of a beanbag shotgun?

6 A I believe so.

7 Q Okay. And it says "Deployment and Use." And
8 at the bottom it says "Copyright Lexipol August 27,
9 2020."

10 Let me have you look at this policy. And in
11 particular, where it says (As read:) Circumstances
12 appropriate for deployment, I guess of kinetic energy
13 projectile, like a beanbag shotgun.

14 (As read:) In situations which, A, the
15 suspect is armed with a weapon and the tactical
16 circumstances allow for the safe application of
17 approved munitions.

18 What does that mean to you, sir?

19 MR. JOHNSON: Objection. Overbroad.

20 THE WITNESS: That if a subject is armed with
21 a weapon and whether the environment, the background,
22 the type of, you know, specifics about the subject, his
23 clothing, his size relative to the space that he's in,
24 that the safe application of the less lethal munitions
25 is a circumstance where that would be appropriate in

1 deployment.

2 BY MR. STEERING:

3 Q So if you're, say, detaining a suspect of a
4 crime, and a person is armed with a weapon, is it
5 Anaheim PD policy, as far as you know, that an Anaheim
6 PD officer can shoot the person with a beanbag shotgun
7 under those conditions?

8 MR. JOHNSON: Objection. Policy speaks for
9 itself. Incomplete hypothetical. Calls for
10 speculation.

11 BY MR. STEERING:

12 Q Go ahead.

13 A Do you mind repeating the question? Sorry.

14 MR. STEERING: Can I have the reporter read
15 the question back, please?

16 (Record read.)

17 MR. JOHNSON: Same objections.

18 You can answer, Officer.

19 THE WITNESS: I can't answer that because I
20 don't -- just because a person has a weapon doesn't
21 mean that he automatically gets shot with a less lethal
22 ammunition.

23 BY MR. STEERING:

24 Q Okay. (As read:) B, the suspect has made
25 credible threats of harm to him/herself or others.

1 I mean, do you take that as meaning that an
2 Anaheim Police Department officer can shoot a suspect
3 with a beanbag shotgun if the person being detained or
4 arrested -- well, I mean, let me just read the words.

5 (As read:) The suspect has made credible
6 threats to harm him/herself or others.

7 What does that mean to you?

8 MR. JOHNSON: Objection. Overbroad. Policy
9 speaks for itself.

10 THE WITNESS: It means what the text says.
11 I'm not --

12 BY MR. STEERING:

13 Q Okay. That's fine. And then C is, basically
14 (As read:) Riotous behavior, rock and bottle throwing.

15 And then D is (As read:) There's probable
16 cause to believe the suspect has already committed a
17 crime of violence and is refusing to comply with lawful
18 orders.

19 Okay. Anyway, do you recognize that -- this
20 policy that I've just shown you regarding kinetic
21 energy projectile guidelines?

22 A Yes, sir.

23 Q Is that policy -- was that policy in effect on
24 April 13th, 2018?

25 MR. JOHNSON: Objection. Document speaks for

1 itself.

2 MR. STEERING: I don't know that it does.
3 Just because it was printed on that date doesn't mean
4 that it's changed.

5 THE WITNESS: This version or another version
6 would have likely been in existence on this date and
7 time.

8 BY MR. STEERING:

9 Q Do you know how many versions that -- do you
10 know any version of the beanbag shotgun policy of
11 Anaheim PD other than what we just went through?

12 MR. JOHNSON: Objection. Lack of foundation.
13 Calls for speculation. Asked and answered.

14 THE WITNESS: Do you mind repeating the
15 question, please?

16 BY MR. STEERING:

17 Q Do you know of any beanbag shotgun policy of
18 the Anaheim Police Department other than the policy I
19 just showed you, 304.10?

20 MR. JOHNSON: Same objections.

21 THE WITNESS: No, sir.

22 BY MR. STEERING:

23 Q Do you know of any other policy that was in
24 existence on April 13th, 2018, other than what I just
25 showed you?

1 MR. JOHNSON: Same objections.

2 THE WITNESS: I don't know.

3 MR. STEERING: Okay. Okay. And let's look at
4 this.

5 We'll call this 355.

6 (Exhibit 355 was marked.)

7 BY MR. STEERING:

8 Q Okay. Here's a -- okay. I'll just play it a
9 little bit to see if you can identify this recording
10 for me.

11 Now, I stopped it at 26 seconds. Let me back
12 this up. Now, do you recognize -- well, I guess we
13 can -- I mean, I can play this forward if you want, but
14 I'm just asking, I mean, do you recognize this as your
15 body-worn camera video of April 13th, 2018?

16 A Yes, sir.

17 Q Okay. And do you remember holding a beanbag
18 shotgun outside your driver-side window when you were
19 driving down the alley in pursuit of Mr. Muntean during
20 that incident?

21 A Yes, sir.

22 Q Okay. And you were doing that because if you
23 had to use it, you didn't want to have to reach over
24 and stick it through the window; you wanted it
25 available to use quickly; is that fair?

1 MR. JOHNSON: Objection. Overbroad.

2 THE WITNESS: Yes.

3 BY MR. STEERING:

4 Q Okay. And there was some talk -- I mean, we
5 won't -- well, let me ask you this: Did you have like
6 a -- you know on body-worn cameras, there's a delay --
7 a delay function on the audio.

8 Do you know what I'm talking about?

9 A Yes, sir.

10 Q Okay. So when you hit the button to start
11 recording, it saves a certain amount of seconds of
12 video recording that preceded your activation of the
13 recording device; is that correct?

14 A Yes, sir.

15 Q Okay. And did -- what did you have yours set
16 for in terms of how many seconds preceding the
17 activation of the videorecorder your body-worn camera
18 device would record?

19 A I don't have the authority to set that time.

20 Q Who sets it?

21 MR. JOHNSON: Objection. Lack of foundation.
22 Calls for speculation.

23 BY MR. STEERING:

24 Q Who sets that?

25 A We are issued the body-worn camera. I have no

1 idea.

2 Q Okay. So you never adjusted the capture time
3 on the video?

4 In other words, when I say "capture time," I
5 mean that -- the body-worn camera is always recording,
6 right? It's always recording, right?

7 MR. JOHNSON: Objection. Lack of foundation.
8 Calls for speculation.

9 THE WITNESS: I don't know the intricate
10 details of the body-worn camera.

11 BY MR. STEERING:

12 Q Okay. But you know that when you hit the
13 record button on your body-worn camera, that it saves a
14 certain amount of seconds, certain number of seconds of
15 video that preceded your activation of the device; is
16 that correct?

17 MR. JOHNSON: Objection. Asked and answered.

18 THE WITNESS: Yes.

19 BY MR. STEERING:

20 Q Okay. Now, the audio video you've seen is 30
21 seconds. What I'm wondering is, I mean, this thing
22 starts -- I don't know why -- it starts at seven
23 seconds. But anyway, as we play the video -- oh, it
24 starts at one -- one second. Sorry.

25 So as we play the video, it looks like you

1 reached over and tapped the body-worn camera and it
2 immediately started recording sound.

3 Did you see that?

4 A Yes, sir.

5 Q Can you explain that?

6 MR. JOHNSON: Objection. Lack of foundation.
7 Calls for speculation.

8 THE WITNESS: With my experience with the
9 body-worn cameras, I can venture guesses, but they're
10 only guesses.

11 MR. JOHNSON: Don't guess, Officer.

12 BY MR. STEERING:

13 Q I mean, it's your camera, you use it all the
14 time. Do you have a -- okay.

15 Do you have any idea why the sound went out in
16 your body-worn camera video as soon as you hit the
17 record button?

18 MR. JOHNSON: Objection. Lack of foundation.
19 Calls for speculation.

20 THE WITNESS: No, sir.

21 BY MR. STEERING:

22 Q Okay. Anyway, let's play it.

23 Do you hear that talk about if we can get him
24 to the church parking lot, we can cut him off? Was
25 that you, or was that someone else?

1 A That's someone else.

2 Q Who was it?

3 A I believe that was Officer Johnson.

4 Q Was he in your car?

5 A No, sir.

6 Q Was he walking next to you when you were
7 driving down the alley?

8 MR. JOHNSON: Objection. Lack of foundation.
9 Calls for speculation.

10 THE WITNESS: He was somewhere on the driver
11 side of my vehicle.

12 BY MR. STEERING:

13 Q Okay. This -- in other words, his voice
14 wasn't on the radio, it was a live voice, but he wasn't
15 in your car; is that fair?

16 A No. I believe he aired that over the radio.

17 Q Okay. I'll pick it up at 12 seconds.

18 Okay. The voice we heard a few seconds ago --
19 I stopped it at 43 seconds of the recording -- but the
20 voice we heard a few seconds ago about he's got
21 something in his hand and he's pointing it towards his
22 chin, he may be armed -- was that also Ken Johnson's
23 voice?

24 A Yes, sir.

25 Q Okay. We'll pick it up at 43 seconds.

1 All right. And I stopped it at 55 seconds.
2 When you hear it said "We're westbound in the alley," I
3 guess something about a church, was that your voice?

4 A No, sir.

5 Q Do you know whose voice that was, sir?

6 A I would have to hear it again.

7 Q Okay. Now -- I stopped it at a minute and 19
8 seconds, but just a couple seconds before that, we
9 heard a couple of -- it sounded like some kind of
10 gunshot or beanbag gunshot or something.

11 Do you recognize what those noises were, sir?

12 A They sound similar to the discharge of a less
13 lethal shotgun round.

14 Q You mean the beanbag shotgun, sir?

15 A Yes, sir.

16 Q Okay. And did you -- did you see anyone shoot
17 those shots?

18 A Yes, sir.

19 Q Who did you see shoot those shots?

20 A Officer Scaglione.

21 Q And do you remember where Officer Scaglione
22 was when she shot those shots at -- at -- well, let me
23 back up.

24 She shot the shots at Mr. Muntean; is that
25 correct?

1 A I don't know. I could only see her.

2 Q You couldn't see the person she was shooting
3 at?

4 A No, sir.

5 Q Okay. Okay. Let's -- we'll pick it up at a
6 minute and 19 seconds.

7 Now, at about a minute and 30 seconds, we hear
8 another -- it sounded like a shot. Does that sound
9 like a beanbag shotgun shot to you?

10 A Yes, sir.

11 Q Okay. And did you see anyone fire that
12 beanbag shotgun shot?

13 A Yes, sir.

14 Q And who did you see fire that beanbag shotgun
15 shot?

16 A Officer Scaglione.

17 Q Okay. Did you see the person who she shot?

18 A Yes, sir.

19 Q And was this inside of that condominium
20 complex or in the alley between, I guess, Citrus Circle
21 and Broadway?

22 I mean, where was it? Do you remember?

23 MR. JOHNSON: Objection. Overbroad. Lack of
24 foundation. Calls for speculation.

25 THE WITNESS: It was just east of

1 Citron Street into I believe it was a townhome
2 driveway.

3 BY MR. STEERING:

4 Q And what was Mr. Muntean doing when
5 Officer Scaglione shot him?

6 MR. JOHNSON: Objection. Calls for
7 speculation.

8 THE WITNESS: He was running.

9 BY MR. STEERING:

10 Q Do you remember where he was running to, like
11 which direction or toward a building or, you know,
12 where was he running to?

13 MR. JOHNSON: Objection. Calls for
14 speculation.

15 THE WITNESS: He was running in an easterly
16 direction.

17 BY MR. STEERING:

18 Q The opposite direction that you were traveling
19 in your car?

20 MR. JOHNSON: Objection. Misstates his
21 testimony.

22 THE WITNESS: Are you -- are you asking with
23 regards to where the video is paused now, that
24 direction of the vehicle?

25 /////

1 BY MR. STEERING:

2 Q Well, this is what I'm -- yeah, what I'm
3 trying to figure out is I know that you were driving
4 westbound on the alley between, I guess, Citron Circle
5 and Broadway.

6 So I'm just wondering if that's -- if we're
7 still on this -- at this point on this video, a minute
8 and 32 seconds -- are we still in the alley or are we
9 in the condominium complex?

10 MR. JOHNSON: Objection. Vague.

11 THE WITNESS: I believe I had just pulled off
12 of Citron Street into the townhome driveway.

13 BY MR. STEERING:

14 Q Okay. We'll pick it up at a minute and 32
15 seconds on your body-worn camera.

16 So I stopped it at a minute 54 seconds. I'll
17 just back it up to when you get out of your vehicle.

18 Okay. Now I stopped it at a minute 50
19 seconds. Why did you get out of your vehicle at a
20 minute and 50 seconds?

21 A To go and help.

22 Q And what was going on that you were going to
23 go help with?

24 A Officer Lee had just aired that there was a
25 gun; so there's a lethal encounter. And then it's my

1 duty to intercede.

2 Q Okay. When Officer Lee said -- is that
3 Sergeant Lee; is that correct?

4 A Yes, sir, Sergeant Lee.

5 Q Yeah. When Sergeant Lee said there's a gun,
6 you heard that on your radio?

7 MR. JOHNSON: Objection. Vague.

8 THE WITNESS: Yes, sir.

9 BY MR. STEERING:

10 Q Okay. And then why do you say it's a lethal
11 encounter just because Sergeant Lee said there was a
12 gun?

13 MR. JOHNSON: Objection. Argumentative.
14 Asked and answered.

15 THE WITNESS: A gun is a lethal weapon.

16 BY MR. STEERING:

17 Q I mean, people can walk around with guns all
18 the time and not -- well, okay. That's fine.

19 Anyway, we'll pick it up at a minute and 50
20 seconds. Let me back it up a little bit.

21 Now, at a minute 53 seconds, we see kind of
22 the left top center of the image -- we see two -- looks
23 like two Anaheim Police Department officers. One is to
24 the right, one is to the left. They're still bright
25 and center in the video.

1 Do you know who those officers are?

2 A I can't tell from this still photo.

3 Q Okay. We'll pick it up at one minute, 53
4 seconds. Okay. I mean, we just heard a bunch of
5 gunshots. I stopped it at one minute and 58 seconds of
6 your video, Exhibit 355.

7 Do you know who was shooting at that time?

8 MR. JOHNSON: Objection. Lack of foundation.
9 Calls for speculation.

10 THE WITNESS: No, sir.

11 BY MR. STEERING:

12 Q Okay. We'll pick it up at a minute and 58
13 seconds.

14 Okay. Now, at a minute -- or two minutes,
15 seven seconds, there's three Anaheim PD officers
16 standing next to a gray Honda, and then there's
17 Mr. Muntean on the ground.

18 Do you know who the officers are, sir?

19 A Yes, sir.

20 Q Who are they, please?

21 A Officer Thomas is standing on the passenger's
22 side of the vehicle.

23 Officer Horn and Sergeant Lee are on the
24 driver side of the vehicle.

25 Q After you got out of your patrol car, did you

1 see Petrica Muntean in any position other than the
2 position showed on your body-worn camera video at two
3 minutes, seven seconds?

4 THE WITNESS: Yes, sir --

5 MR. JOHNSON: Objection.

6 BY MR. STEERING:

7 Q What was the answer?

8 A Yes, sir.

9 Q And did you see -- was that after he was
10 pulled from one side of the car to the other?

11 A No, sir.

12 Q Did you ever see Petrica Muntean -- or excuse
13 me, did you ever see Petrica Muntean point what looked
14 like a pistol at anyone?

15 MR. JOHNSON: Objection. Vague as to time.

16 THE WITNESS: No, sir.

17 BY MR. STEERING:

18 Q When you say you saw Petrica Muntean in some
19 position other than what's shown at -- on Exhibit 355
20 at two minutes, seven seconds, where did you see him,
21 sir?

22 A Falling to the ground.

23 Q Was he -- did he fall from a standing
24 position?

25 MR. JOHNSON: Objection. Vague.

1 THE WITNESS: I don't know.

2 BY MR. STEERING:

3 Q At the -- was he crouched down behind the car
4 and then just kind of keeled over on his side?

5 MR. JOHNSON: Objection. Lack of foundation.
6 Calls for speculation. Asked and answered.

7 THE WITNESS: I don't know.

8 BY MR. STEERING:

9 Q Did you ever see Petrica Muntean point a gun
10 at anybody?

11 MR. JOHNSON: Objection. Vague as to time.

12 THE WITNESS: No, sir.

13 BY MR. STEERING:

14 Q Okay. Pick it up at two minutes, seven
15 seconds.

16 Okay. All right. I'm going to back it up to
17 when this -- the shooting started. Now, when the --
18 when you got out of your vehicle, were you -- did you
19 take a position where you stood between Officer Thomas,
20 that white car we see in the image at three minutes,
21 and the garage to the right of the white car?

22 MR. JOHNSON: Objection. Vague as to time.

23 THE WITNESS: I don't believe so.

24 BY MR. STEERING:

25 Q Let me -- maybe this will clear this up.

1 Okay. This is Exhibit 344. It's a transcript of your
2 interview.

3 And -- starting at page 11, you say -- you
4 were asked -- you heard "gun," and since it was wasn't
5 loaded, meaning less than lethal shotgun, you say
6 "uh-huh." Then you say you dropped your shotgun, yeah,
7 you dropped it.

8 And then you say "yeah, because at this point,
9 like" -- can you see what I'm showing here? Can you
10 see this?

11 MR. JOHNSON: I see body-worn camera. I don't
12 see his DA interview.

13 BY MR. STEERING:

14 Q All right. Sorry.

15 Okay. Do you see the DA interview now?

16 A It's small, but yes.

17 Q I can make it a little bit bigger. Okay. You
18 say (As read:) Cause at this point, I went out to get
19 out of the car, and I'm starting to take a position to
20 where my partner is.

21 (As read:) And I'm close to the path of
22 exiting the driver. Then I exited the driver door to
23 go around the back of our vehicle to the passenger's
24 side because Officer Thomas was probably about, I don't
25 know, maybe 5 feet in front of my car, but offset to

1 the right because that's where it's not a hard -- it's
2 not hard 90 of the building, but it's kind of like
3 where the small corner is where there's a place of
4 cover.

5 (As read:) So I'm kind of walking up from
6 behind him. I already heard the word "gun".

7 When you say I'm walking up from behind him,
8 you're talking about Officer Thomas?

9 A Yes. Initially I thought it was
10 Officer Thomas, but in reviewing of the footage, it was
11 Officer Gonzalez.

12 Q Okay. And then you say that you were between
13 the wall and the vehicle. And you say (As read:)
14 Approximately about three -- two to three feet there's
15 distance between the car and the wall; so I'm kind of
16 right between walking up to my partner.

17 When you say your partner, you thought it was
18 Thomas, but it was really Gonzalez; is that correct?

19 A Yes, sir.

20 Q Okay. Did any officer say to you prior to
21 Petrica Muntean being shot that Mr. Muntean had his
22 hands in his waistband area?

23 MR. JOHNSON: Objection. Vague. Vague as to
24 time.

25 THE WITNESS: You're referring to prior to

1 this -- can you repeat the question, please?

2 BY MR. STEERING:

3 Q Yeah. Prior to the actual shooting of
4 Mr. Muntean on April 13th, 2018, by Anaheim PD
5 officers, did you hear any officer say that Mr. Muntean
6 had been putting his hands in his waistband area?

7 MR. JOHNSON: Same objections.

8 THE WITNESS: Yes, sir.

9 BY MR. STEERING:

10 Q Do you remember who said that, sir?

11 A I believe it was Officer Johnson.

12 Q Did he say that on the radio or say it to you
13 personally or just kind of say it -- say it where you
14 were in the vicinity and heard it?

15 MR. JOHNSON: Objection. Compound. Vague.

16 THE WITNESS: I don't specifically recall.

17 MR. STEERING: Okay. All right. Let's take a
18 break. Let me look. I think I'm done with
19 Detective Fleet; so let's just take five.

20 MR. JOHNSON: Five is good. Thank you.

21 MR. STEERING: Okay.

22 (Off the record from 10:22 a.m. to
23 10:28 a.m.)

24 MR. STEERING: Okay. I'm done.

25 MR. JOHNSON: Okay. Per the federal rules

1 again, and I'll need a certified copy.

2 (Proceedings concluded at 10:29 a.m.)

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STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, the undersigned, say that I have read the foregoing deposition, and I declare, under penalty of perjury, that the foregoing is a true and correct transcript of my testimony contained therein.

EXECUTED this _____ day of _____,
20__ at _____, California.

MICHAEL FLEET

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DEPOSITION OFFICER'S CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF ORANGE)

I, Michael McMorran, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in the state of California, holder of Certificate Number CSR 13735 issued by the Court Reporters Board of California and which is in full force and effect. (Fed. R. Civ. P. 28(a)).

I am authorized to administer oaths or affirmations pursuant to California Code of Civil Procedure, Section 2093(b) and prior to being examined, the witness was first duly sworn by me. (Fed. R. Civ. P. 28(a), 30(f)(1)).

I am not a relative or employee or attorney or counsel of any of the parties, nor am I a relative or employee of such attorney or counsel, nor am I financially interested in this action. (Fed. R. Civ. P. 28).

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition and the foregoing transcript is a

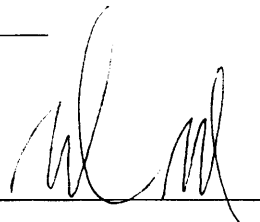
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true record of the testimony given by the witness.
(Fed. R. Civ. P. 30(f)(1)).

Before completion of the deposition, review of
the transcript [X] was [] was not requested. If
requested, any changes made by the deponent (and
provided to the reporter) during the period allowed,
are appended hereto. (Fed. R. Civ. P. 30(e)).

Dated: 12/29/2020



MICHAEL G. MCMORRAN, CSR No. 13735

