

**United States District Court
For the Central District of California**

ANTONIO ORTIZ, LUIZ ORTIZ,

Plaintiff,

vs.

CITY OF FULLERTON, et al.,

Defendants.

Certified Copy

Case No. CV-16-01499 DOC (DFMx)

DEPOSITION OF
Michael J. Gennaco, Esq.

Location: 10377 Los Alamitos Boulevard, Los Alamitos, CA

Date: Friday, April 28, 2017; 10:02 a.m.

Reporter: Denise Paholski, Certified Court Reporter, Certificate No. 10742

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Laguna Beach, California 92651
1-800-498-0288

1 important for us to review in order to identify
2 specific issues.

3 Q And when you requested a random sample, how
4 did you identify what you were wanting?

5 A I don't recall specifically, but I can tell
6 you that we said we want X amount of cases in which
7 officers used force. I'm sure we asked for that.

8 Q So is force one of the primary issues you
9 were looking into in the systemic review?

10 A It is always an issue we look at in virtually
11 every project we've worked on.

12 Q I'm referring to your August 2012 public
13 report in which force issues are certainly discussed,
14 but there are many other issues there that came up
15 along the way, like hiring and training, vetting
16 officers who the Department eventually installed,
17 relationship between employees and supervisors, things
18 of that nature.

19 Did that just happen to come along?

20 A There are usually repeated items that we ask
21 about and focus on when we do these reviews.

22 Q Can you tell me that the department's
23 administrative investigation and/or use of force
24 investigation into the Ortiz matter, which we're here
25 about today, was ever the subject of your knowledge?

1 Was it one that you looked at?

2 A I have no reason to believe it was, but I
3 couldn't tell you 100 percent sure. I'm almost sure
4 that we did not look at that incident.

5 Q So would you then be asking for historical
6 use of force investigations --

7 A Yes.

8 Q -- in this request of a sample?

9 A Yes.

10 Q And the Department kept those and made them
11 available to you?

12 A Yes.

13 Q Did you get any pushback from anyone inside
14 the department trying to get to those records?

15 MR. HASSENBERG: Vague and ambiguous.

16 MR. TOUCHSTONE: Join.

17 THE WITNESS: The answer is no.

18 BY MR. BECK:

19 Q So you felt you had complete and full
20 cooperation of the agency?

21 A Yes.

22 Q Did you believe you had the full and complete
23 cooperation of the chief of police?

24 A Yes.

25 Q And what about subordinate commanders, you

1 employee that you found that was probationary,
2 violated probation and was not terminated?

3 Well, "violated probation" is probably a poor
4 term.

5 That engaged in unprofessional behavior that
6 violated the Department's rules that would have caused
7 him to be terminated but was not.

8 A The recommendation stems from at least one
9 instance, only one that I can recall at this point,
10 where an officer was found to have violated policy,
11 and instead of separating him from the department, he
12 was allowed to continued on.

13 Q A probationer?

14 A Yes.

15 Q I see. Did I give you the names of the
16 people involved in our case, the officers? Do you
17 know those names?

18 A I don't remember if you gave me the names.

19 Q Well, our principal defendant is someone
20 called Bryan Bybee. Do you know that name?

21 A No.

22 Q Emmanuel Pulido?

23 A No.

24 Q His true name is Vietnamese, and I can't
25 pronounce it. But the last name is Phu, and he's

1 known as Billy Phu, P-h-u.

2 Is that name known to you?

3 A The name does not mean anything to me.

4 Q Matthew Martinez is the last name of the
5 defendants.

6 A No.

7 Q None of these are familiar to you?

8 A As we sit here today, no.

9 Q Are you acquainted with a Sergeant Matthew
10 Rowe, R-o-w-e?

11 A No.

12 Q All right. Recommendation 57 on page 49 of
13 your report, you state, "FPD should develop protocols
14 that would extend the purging of internal affairs
15 investigations and disciplinary records to at least
16 five years beyond the employment end date of the
17 employee."

18 Please explain. What does that mean?

19 A State law requires retention of citizen
20 complaints for a certain period of time. Our view is
21 that citizen complaints that rise to the level of
22 internal investigations should be kept as long as the
23 employee remains an employee as a police officer, and
24 even beyond that.

25 Q And has your review determined that FPD

1 below expectations with regard to tactical decision
2 making, that he or she could be held accountable under
3 that provision.

4 Q Did you in any of the samples that you did of
5 historical use of force reports determine that the
6 Department ever determined in its ultimate conclusion
7 that the reported force was not within policy?

8 A No, that was not my intent, with the
9 exception of the Kelly Thomas incident, which was a
10 different project.

11 Q I understand that. What I'm asking --
12 perhaps my question should have been phrased better --
13 is did you discover in the sampling that you did,
14 however broad it was, that the Department did in fact
15 use that system and determine that an officer's uses
16 of force were out of policy?

17 A I don't remember.

18 Q Can you cite me any example from a
19 recollection -- I don't have the documents, obviously,
20 to show it to you -- that any officer was counseled or
21 disciplined or reprimanded in any way for a reported
22 use of force?

23 A I don't recall.

24 Q When you mentioned as one of the criteria to
25 be looking into the use of force investigations, you

1 MR. BECK: Okay. Any questions?

2 MR. HAAS: No.

3 MR. BECK: No?

4 MR. HAAS: Less is more.

5 MR. BECK: What about you, Barry? I'm done.

6 MR. HASSENBERG: Yeah, I have a couple
7 questions, a couple things in this report that I
8 wanted to ask you about that Beck probably forgot to
9 ask you.

10

11 EXAMINATION

12 BY MR. HASSENBERG:

13 Q Page 22 of your report, under "Leadership
14 Issues at FPD," I'm going to read you something that
15 you wrote. It's at the bottom of the page. It says,
16 "While there have been incidents in which FPD
17 employees have had serious integrity failures, our
18 review found no evidence that supervisors and leaders
19 actively condoned such conduct. In fact, in the more
20 egregious cases, FPD moved purposely to separate these
21 employees from their jobs. We also saw no examples
22 where officers and supervisors conspired to
23 purposefully protect officers and prevent misconduct
24 from coming to light."

25 Can you expound on that, please?

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1 A Of course. One of the things that we're
2 always looking at is to see whether or not there was a
3 culture of corruption. In fact, if I recall
4 correctly, there were advocates at the time in
5 Fullerton who continued to allege that in fact there
6 was a culture of corruption, and that passage that you
7 read to me is intended to speak to those allegations.

8 Q And it was your finding that what?

9 A That based on our audit, there was no such
10 culture of corruption.

11 Q Okay. The last thing I want to talk to you
12 about is on page 26. Mr. Beck started reading this to
13 you but I think we stopped in the middle, so let me
14 just finish it.

15 It says, "During our review, we examined
16 FPD's basic use of force policies and related policies
17 and found them to be consistent with case law and
18 current police practices and similar to most other law
19 enforcement agencies in the State."

20 Is that true, a true statement?

21 A Yes.

22 MR. HASSENBERG: All right. Thank you.
23 That's all I have.

24 MR. TOUCHSTONE: Nothing here.

25 MR. BECK: I didn't think so.

1
2 STATE OF CALIFORNIA)
3) SS.
4 COUNTY OF ORANGE)

5 I, DENISE PAHOLSKI, Certified Shorthand Reporter,
6 Certificate No. 10742 in the State of California, duly
7 empowered to administer oaths, do hereby certify:

8 I am the deposition officer that stenographically
9 recorded the testimony in the foregoing deposition;

10 Prior to being examined, the deponent was by me
11 first duly placed under oath;

12 The foregoing transcript is a true record of the
13 testimony given;

14 I was relieved of my duty pursuant to Rules 30(e)
15 and (f) of the Federal Rules of Civil Procedure.

16 Pursuant to Rule 30(e) of the Federal Rules of
17 Civil Procedure, it was requested that the deponent
18 shall have 30 days to review the transcript;
19 therefore, any changes made by the deponent or whether
20 or not the deponent signed the transcript cannot at
21 this time be set forth.

22 Dated May 1st, 2017.

23 Denise Paholski
24 DENISE PAHOLSKI, RPR, CSR #10742
25 in and for the State of California

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