

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

THE ESTATE OF MIGUEL ANTONIO RICHARDS,

Plaintiff,

- against -

**Plaintiff’s Rule 56.1
Counter Statement**

THE CITY OF NEW YORK, POLICE OFFICER (“PO”)
JESUS RAMOS, PO MARK FLEMING, PO REDMOND
MURPHY, and PO MARCOS OLIVEROS, individually
and in their official capacities,

18 Civ. 11287 (MKV)

Defendants.

-----X

Plaintiff submits this statement in response to the Local Civil Rule 56.1 Statement submitted by defendants The City of New York, Officer Jesus Ramos, Officer Mark Fleming, Officer Redmond Murphy, and Officer Marco Oliveros, pursuant to Rule IV(C)(ii) of the Court’s Individual Rules of Practice in Civil Cases, to set forth the material facts as to which they contend there is no genuine issue to be tried:¹

Plaintiff’s Responses to Defendants’ Rule 56.1 Statement

I. The Parties

1. On September 6, 2017, Miguel Antonio Richards (the “decedent”) resided at 3700 Pratt Avenue, Bronx, New York 10466 (the “location”). (Amended Complaint (“Am. Compl.”),

¶ 9).

Admitted.

¹ Plaintiff reserves the right to amend or correct this Response to Defendant’s Proposed 56.1 Statement prior to filing their opposition to Defendants’ summary judgment motion. Further, Plaintiff adopts the facts set forth herein only for purposes of this motion and reserves the right to present different or conflicting facts at any trial in this matter. *See Vasconcellos v. City of New York*, No.12 Civ. 8445 (CM) (HBP), 2015 U.S. Dist. LEXIS 121572, at *4 (S.D.N.Y. Sept. 9, 2015) (Local Civil Rule 56.1 “means a party can ‘admit’ facts that it intends to dispute at trial without suffering any prejudice – the ‘admission’ ...neither binds the party going forward if the motion is denied nor can it be admitted in evidence at trial.”).

2. On September 6, 2017, defendants Fleming, Murphy, Ramos, and Oliveros were employees of the City of New York, and members of the New York City Police Department (“NYPD”). (Answer to Amended Complaint, dated August 22, 2020 (“Ans. to Am. Complt.”), ¶ 7).

Admitted.

3. On September 6, 2017, defendants Officers Fleming, Murphy, Ramos, and Oliveros were all assigned as patrol officers in the 47th Precinct. (Relevant Portions of Transcript of Deposition of Mark Fleming (“Fleming Tr.”), Relevant Portions of Transcript of Deposition of Redmond Murphy (“Murphy Tr.”); Relevant Portions of Transcript of Deposition of Jesus Ramos (“Ramos Tr.”); Relevant Portions of Transcript of Deposition of Marco Oliveros (“Oliveros Tr.”))

Admitted.

4. On September 6, 2017, Officers Fleming and Murphy were working together, assigned to Sector “C” (“Charlie”) of the 47th Precinct. (Oliveros Tr., 28:23-25).

Admitted.

5. On September 6, 2017, Officers Ramos and Oliveros were working together, assigned to Sector “A” (“Adam”) of the 47th Precinct. (Ramos Tr., 27:12-16; Oliveros Tr., 26:22-23; Relevant Memo Book Entries of Marco Oliveros (“Oliveros Memobook”), D4604-4607).

Admitted.

II. Background

6. On September 6, 2017, at approximately 16:03 hours,² the landlord of 3700 Pratt Avenue, Glenmore Carey, called 911 and requested a wellness check on a tenant at the location who he had not seen in some time. (NYPD Intergraph Computer Aided Dispatch System Event Chronology (“ICAD”), D1014-1025.; Audio Statement of Glenmore Carey (“Carey Audio Stmt.”),

² For consistency, and ease of reference, all times are stated in 24-hour time.

D1455; Written Statement of Glenmore Carey (“Carey Written Stmt.”), D234-236; 911 Call of Glenmore Carey (“911 Call”), D1459).

Admitted.

7. On September 6, 2017, Mr. Carey reported in his 911 call that he had not seen his tenant, and that the tenant’s family had knocked on the tenant’s door and gotten no response. (911 Call, D1459).

Admitted.

8. The tenant in question was the decedent, Miguel Antonio Richards. (Carey Audio Stmt., D1455; Carey Written Stmt., D234-236).

Admitted.

9. On September 6, 2017, the wellness check at the location was assigned to Officers Fleming and Murphy, (Murphy Tr., 34:21-35:19).

Admitted.

10. On September 6, 2017, prior to arriving at the location, Officer Murphy spoke to Glenmore Carey by phone. Carey stated that he had not seen Richards in a long time, that he did not know whether Richards had any mental health history, that Richards smoked a lot of marijuana, and that there was not any odor emanating from the tenant’s bedroom. (Murphy Tr, 43:5-44:13; Fleming Tr., 34:4-35:14).

Admitted.

11. On September 6, 2017, Officers Fleming and Murphy arrived at the location at approximately 17:25 hours. (ICAD, D1014-1025, p. 1).

Admitted.

12. On September 6, 2017, upon arriving at the location, Officer Fleming spoke with Mr. Carey, who, in sum and substance, repeated what he had previously told Murphy on the phone. (Fleming Tr., 36:18-37:12).

Admitted.

13. On September 6, 2017, Officers Fleming and Murphy were in regular NYPD uniform, consisting of dark blue pants and shirts, with badges displayed on their chests, and wearing utility belts. (Relevant Body-Worn Camera Footage of Mark Fleming (“Fleming BWC”), D1485, *passim*; Relevant Body-Worn Camera Footage of Redmond Murphy (“Murphy BWC”), D1485, *passim*).

Admitted.

14. On September 6, 2017, Officers Murphy and Fleming were equipped with operable body-worn cameras. (Fleming BWC, D1485; Murphy BWC, D1485).

Admitted.

III. Officers Fleming and Murphy Encounter Richards

15. Mr. Carey, along with an acquaintance, led Officers Fleming and Murphy into the apartment which contained Richards’ bedroom. (Fleming Tr. at 37:21-38:16; Carey Audio Stmt.; Carey Written Stmt.)

Admitted.

16. Officers Fleming and Murphy approached Richards’ bedroom door, and found it to be locked. (Fleming Tr. at 38:21 – 39:4, Faddis Decl., Ex. C; Carey Audio Stmt., D1455; Carey Written Stmt., D234-236, p. 1).

Admitted.

17. Officers Fleming and Murphy knocked on the door and received no response. (Fleming Tr., 39:4-5; Murphy Tr., 54:2-5).

Admitted.

18. Officers Fleming and Murphy then attempted to gain more information from Carey, who indicated that Richards' family had also unsuccessfully attempted to contact him. (Fleming Tr., 39:7-14).

Admitted.

19. At approximately 17:45 hours, Mr. Carey decided to force open the door and Mr. Carey's acquaintance opened door with a screwdriver. (Fleming Tr. at 42:5-43:16; Murphy Tr. at 56:4-57:2; Fleming BWC, D1485, 00:00-00:12; Carey Written Stmt., D234-326, p. 1).

Denied. The officers directed Mr. Carey to force the door open. See Murphy Tr. 55:21-23.

20. When Fleming and Murphy first observed Richards, he was standing motionless near the foot of a bed in the bedroom wearing dark sunglasses, armed with a knife in his left hand. (Fleming BWC at 00:20, Faddis Decl., Ex. D; Murphy Tr. at 57:25-58:2, 60:14-61:7, 64:9-16, Faddis Decl., Ex. B; Fleming Tr. at 45:2-10, Faddis Decl., Ex. C.)

Admitted.

21. Richards was gripping the knife around the handle with the blade protruding from the bottom of his left fist and his left arm at his side. (Fleming BWC, D1485, 00:20-1:12).

Admitted.

22. Richards' right hand was not visible when Officers Fleming and Murphy first observed him. (Fleming BWC, D1485, *passim*; Fleming BWC Tr., D1150-1184, *passim*; Fleming Tr., 45:6-10; Murphy Tr. 60:24-61:3).

Denied. The body-worn camera footage shows that Richards's right hand may have been visible when the officers first opened the door. Murphy BWC 17:48:09.

23. After observing Richards in the bedroom, Officers Fleming and Murphy both activated their body-worn cameras to begin recording. (Fleming BWC, D1485; Fleming Tr., 50:7-13; Murphy BWC, D1485; Murphy Tr., 61:21-25).

Admitted.

24. Officers Fleming and Murphy drew their firearms and took cover behind the frame of the door way to Richards' bedroom. (Fleming Tr., 55:17-56:10; Murphy Tr., 61:4-9).

Admitted.

25. Several minutes after Fleming and Murphy first observed Richards, he moved his right arm further away, seeming to hide his right hand. (Fleming Tr., 48:12-49:13; Fleming BWC at 06:17).

Denied insofar as what Richards was "seeming" to do. To the extent Richards's right hand was not visible to the officers, that is because it was obscured by a backpack on the bed in front of Richards. Fleming Tr. 173:9-25.

26. Mr. Carey believed that Richards would have injured him if the police had not been present when the bedroom door was opened. (Carey Audio Stmt., D1455, 8:15-8:30).

Denied. Mr. Carey stated that "he could have" been injured if he walked into the bedroom by himself. Carey Audio Stmt., D1455, 8:15-8:30.

27. At some point, Mr. Carey called a friend, Ricardo Cohen, who knew Richards, to also come to the location. (Cohen Written Stmt., D242-247).

Admitted.

28. Mr. Cohen arrived at the location after the door to the bedroom had been opened. (Cohen Written Stmt., D242-257).

Admitted.

IV. Attempts to Disarm Richards Voluntarily

29. Based upon their observations of Richards, including his demeanor, their inability to see his right hand, and the knife, a deadly weapon, in his left hand, Officers Fleming and Murphy perceived that Richards might be a threat to himself or others. (Fleming Tr., 50:14-51:4; Murphy Tr., 63:21-64:16).

This paragraph contains multiple disjunctive, subjective assertions. It is denied insofar as the knife did not pose a “deadly” or immediate threat to the officers, who had their guns drawn and were taking cover behind a wall, Murphy Tr. 101:14-102:2, Fleming BWC *passim*, Murphy BWC *passim*; Fleming and Murphy did not perceive that Richards posed a threat to himself with the knife; and there were no civilians in the bedroom to whom Richards could have posed a threat. Fleming BWC *passim*; Murphy BWC *passim*.

30. Officers Fleming and Murphy did not believe that they could safely leave Richards, based on his demeanor and possession of at least one weapon, and possibly a second (Fleming Tr., 61:14-62:2, 139:2-12; Murphy Tr., 65:8-16).

Denied. The officers could have safely retreated or closed the door. Plaintiff is unable to further respond to this paragraph because it contains multiple disjunctive, contingent assertions.

31. Officers Fleming and Murphy thought it was possible, based on their observations, that Richards was concealing another weapon, possibly a firearm, in his right hand. (Fleming Tr., 64:23-65:23; Fleming BWC, D1485, 1:34-36; Fleming BWC Tr., D1150-1184, 3:15-16).

Admitted.

32. Officers Fleming and Murphy repeatedly instructed Richards to drop the knife and reveal the contents of his right hand. (Fleming BWC, D1485, *passim*; Fleming BWC Tr., D1150-1184, *passim*; Murphy BWC, D1485, *passim*; Murphy BWC Tr., D1054-1086, *passim*, Fleming Tr., 65:2-23).

Admitted, but Plaintiff objects to the use of the word “instructed.” The officers screamed commands at Richards and threatened to kill him. Murphy BWC 17:48:20-32; Murphy BWC 17:52:04-41.

33. In total, Officers Fleming and Murphy instructed Richards to put the knife down a total of approximately 50 times. (Fleming BWC, D1485, *passim*; Fleming BWC Tr., D1150-1184, *passim*).

Admitted, insofar as they screamed at him repeatedly over the course of approximately 15 minutes and threatened to kill him. Murphy BWC 17:48:20-32, 17:52:28-41, 17:55:43-59.

34. Officers Fleming and Murphy also instructed Richards to reveal the contents of his right hand numerous times. (Fleming BWC, D1485, *passim*; Fleming BWC Tr., D1150-1184, *passim*).

Admitted, but Plaintiff objects to the use of the word “instructed.” The officers screamed commands at Richards and threatened to kill him. Murphy BWC 17:52:04-33, 17:55:43-59.

35. Mr. Carey and Mr. Cohen also asked Richards to put the knife down. (Fleming BWC, D1485, *passim*; Fleming BWC Tr., D1150-1184, *passim*; Carey Written Stmt., D234-236; Cohen Written Stmt., D242-247).

Admitted, but Plaintiff objects to the use of the word “asked.” The civilians screamed commands at Richards and threatened to kill him. Fleming BWC, D1485, *passim*.

36. Mr. Cohen also contacted a relative of Richards, Peter Mitchell, by phone, to allow him to speak with Richards. After the call was initiated, Officer Fleming slid the phone into Richards’ bedroom, after which Mr. Mitchell also pleaded with Richards to drop the knife. (Fleming BWC, D1485, 03:25; Fleming Tr., 72:15-73:5; Cohen Written Stmt., D242-247; Mitchell Written Stmt., D237-241).

Admitted, except that Mr. Mitchell is not “a relative of Richards.”

37. Richards never responded verbally to the repeated attempts at communication. (Fleming BWC, D1485, *passim*; Murphy BWC, D1485, *passim*).

Admitted.

38. At no point did Richards relinquish down the knife. (Fleming BWC, D1485, *passim*; Murphy BWC, D1485, *passim*).

Admitted.

39. At no point did Richards respond to the requests of Officers Fleming or Murphy to reveal the contents of his right hand. (Fleming BWC, *passim*; Murphy BWC, *passim*).

Admitted.

V. Request for Less Lethal Force Option

40. Based on the threat Richards' refusal to comply with the instructions of Officers Fleming and Murphy, Officer Fleming determined that attempts at communication were ineffective and that a Taser should be used to involuntarily disarm Richards. (Fleming Tr., 66:21-76:7).

Admitted insofar as Fleming requested a unit with a taser to respond to the location.

Murphy BWC 17:51:54-17:52:00.

41. At approximately 17:50:53, Officer Fleming told Officer Murphy that he was going to request a supervisor to respond to the location. (Fleming BWC, D1485, 5:07; Fleming BWC Tr., D1150-1184, 9:15-16).

Admitted.

42. Officer Fleming then communicated with Sgt. Howard Roth, one of the patrol supervisors for the 47th Precinct that day, via police radio, and requested Sgt. Roth respond to the location. (Fleming BWC, D1485, 5:07-5:30; Fleming BWC Tr., D1150-1184, 9:22-10:7; ; ICAD).

Admitted.

43. At approximately 17:51:53, Officer Fleming called Officer Harris Jean, who was Sgt. Roth's driver, or "operator," for that day via cell phone, asked to speak to Sgt. Roth (Jean Tr., 14:4-15:8) and then stated, "we got a guy with a knife in his hand, he doesn't want to put it down—and we need him tased." (Fleming BWC, D1485, 6:05-15; Fleming BWC Tr., D1150-1184, 10:18-24)

Admitted.

44. At approximately 17:52:39, Sgt. Roth requested the NYPD dispatcher to direct another unit from the 47 Precinct to respond to the location and also mark him as responding. (Fleming BWC, D1485, 6:52-7:07; Fleming BWC Tr., D1150-1184, 12:4-21; ICAD, D1014-1025).

Admitted.

45. At approximately 17:54, the NYPD dispatcher changed the type of job to “54E1,” “Ambulance Case,” which automatically routed the job to emergency medical services (“EMS”). (ICAD, D1014-1025, pp. 1-2).

Admitted.

46. At approximately 17:54:53, an EMS unit was dispatched to the location, with an expected time of arrival (“ETA”) of 18:05. (ICAD, D1014-1025, p. 2).

Admitted.

47. At approximately 17:53:06, Officer Fleming told the dispatcher, “we just need one unit with a Taser. We don’t need a whole bunch of guys coming over here.” (Fleming BWC, D1485, 7:20-21; Fleming BWC Tr., D1150-1184, 13:3-5).

Admitted.

48. At approximately 17:53:41, the NYPD dispatcher requested confirmation as to whether the situation involved an emotionally disturbed person (“EDP”) and Officer Fleming responded in the affirmative. (Fleming BWC, D1485, 7:54-58; Fleming BWC Tr., D1150-1184, 13:10-24).

Admitted.

49. Officers Ramos and Oliveros heard the request for a Taser and responded to the location. (Ramos Tr., 21:22L22:3).

Admitted.

50. At approximately 17:59:50, Officers Fleming and Murphy were approached from behind by two additional officers, ESU Det. Hartnett and Officer O'Rourke, at which time Richards moved slightly, making an apparent firearm in his right hand visible to Officer Murphy, who announced that Richards had a knife and a gun. (Murphy BWC, D1485, 12:50-56; Fleming BWC, D1485, 14:03-14:10; Harnett Tr., 54:7-23; Fleming Tr., D1485, 67:13-68:9).

Denied. Officer Murphy did not actually see an apparent firearm in Richards's hand. Murphy Tr. 92:8 – 16. See also ¶¶ 146-175, *infra*.

51. At approximately 17:59:58, Det. Hartnett and Officer O'Rourke left the apartment to "suit up." (Fleming BWC, D1485, 14:10; Fleming BWC Tr. D1150-1184, 23:6-7)

Admitted.

52. At that point, Officer Fleming was also able to see the apparent firearm in Richards' right hand. (Fleming Tr., 70:8-18, 75:11-23).

Denied. Fleming did not actually see an apparent firearm in Richards's hand. See ¶¶ 146-175, *infra*. Further, Fleming testified that he saw the firearm at the time Officer Ramos entered, so Fleming did not see the gun at the point that ESU was leaving the scene. Fleming Tr. 70:4-18. Furthermore, after Murphy first announced that Richards had a gun while ESU was present, Fleming asked him on video, "he's got a gun?" Fleming BWC 17:59:55 – 18:00:00. Fleming testified that Ramos obscured his view of Richards raising his arm when Ramos first approached the bedroom. Fleming Tr. 78:6-10. Fleming testified that that he was able to see the gun in Richards's hand the second time Ramos approached Richards with the Taser. Fleming Tr. 70:11-18. However, body camera footage shows that Ramos blocked Fleming's view of Richards to an even greater extent on his second entry. Oliveros BWC 18:00:58 – 18:01:04. Therefore, it is impossible that Fleming would not be able to see Richards raise his arm during Ramos's first approach but somehow saw the gun during Ramos's second approach. Fleming

stated that he was able to see Richards's hand during Ramos's second approach because Richards had moved approximately two feet to the right after Ramos entered the apartment. Fleming Tr. 70:11 – 71:17. However, this testimony was false: a comparison of the body camera footage shows that Richards did not move from his original position. Fleming BWC 17:46:30-40; Ramos BWC 18:00:59 - 18:01:02.

53. At approximately 18:00:03 hours, Officer Murphy described the apparent firearm to Officer Fleming as silver, and stated that he did not know if it was a toy or not. (Fleming BWC, D1485, 14:17; Fleming BWC Tr. D1150-1184, 23:10-12).

Admitted.

VI. Attempt to Use Less Lethal Force

54. At approximately 18:00:49 hours, Officer Ramos entered the apartment, followed by his partner Officer Oliveros. (Ramos BWC, D1485, 1:06; Oliveros BWC, 1:15).

Admitted.

55. Officer Ramos was equipped with a Taser. (Ramos Tr., *passim*).

Admitted.

56. Officer Ramos observed that both Officers Fleming and Murphy were taking cover behind the door frame of Richards' bedroom with their firearms drawn. (Ramos Tr., 55:12-23).

Denied. Fleming and Murphy were in front of the door, not taking cover. Oliveros BWC 18:00:52-59.

57. Officer Ramos also observed that Richards was holding a knife in his left hand. (Ramos Tr., 31:20-23).

Admitted.

58. At approximately 18:00:57, Officer Ramos approached Officers Fleming and Murphy and asked, “Do you want to take him down now?” meaning to use his Taser on Richards. (Fleming BWC, D1485; Fleming BWC Tr. D1150-1184).

Admitted.

59. At approximately 18:00:57, Officers Fleming and Murphy both told Officer Ramos to use his Taser on Richards at that time. (Fleming BWC, D1485; Fleming BWC Tr. D1150-1184).

Admitted.

60. At that time, Officer Oliveros was positioned behind Officers Fleming, Murphy, and Ramos. (Oliveros BWC, 00:20).

Admitted.

61. At approximately, 18:01:00, Officer Ramos stepped toward the bedroom, while raising his Taser, preparing to discharge it at Richards. (Ramos BWC, 1:16-1:17; Oliveros BWC 00:22-24).

Admitted.

62. As Officer Ramos stepped toward the doorway, Richards raised his right hand in the direction of Officer Ramos and the other officers, holding an object with a laser on top. (Ramos BWC, 1:18-1:19; Ramos Tr., 88:22-91:14; Fleming Tr., 77:21-78:3).

Denied. There is no credible evidence that Richards was “holding an object with a laser on top.” Ramos testified that he did not see anything in Richards’s right hand when Richards purportedly raised his arm. Ramos Tr. 92:10-19. Fleming testified that his view at that time was obstructed by Ramos and did not testify that he saw Richards holding an object with a laser on top as Ramos entered the bedroom. Fleming Tr. 77:21-78:3. To the extent any officers saw a laser light in the bedroom, the light was created by Ramos’s Taser, which was equipped with

a laser site. Oliveros BWC 18:00:56 - 18:01:02; Oliveros Tr. 63:18 - 74:15, 81:19 - 85:15, 87:5 - 90:14; Ramos Tr. 88:24 - 98:24, 124:4 - 131:22; Fleming Force Investigation Interview (produced as D001482).

63. Officer Ramos jumped backward slightly when Richards raised his arm, and then moved toward him again when Richards lowered his arm. (Ramos BWC, 1:19-20; Oliveros BWC, 00:22-24).

Admitted.

64. As Officer Ramos crossed into the bedroom, again raising his Taser, Richards raised his arm holding an object in a pistol grip and Officer Ramos saw a laser move toward him from Richards, observed the laser reflect off of his badge on his chest, and believed that Richards was pointing a gun at him. (Ramos Tr., 93:10-15, 95:22-96:4, 97:22-98:20).

Denied. Miguel's right hand is not visible on any of the officers' body-worn camera footage at the time Ramos re-entered the room. Fleming BWC 18:01:02-10, Murphy BWC 18:01:02-10, Oliveros BWC 18:01:02-10, Ramos BWC 18:01:02-10. The only camera angle that would have depicted Miguel at this time was Fleming's body-worn camera, which Fleming had intentionally blocked. Fleming BWC 17:53:20 - 18:01:08; Fleming Tr. 167:4-18.

65. Officer Fleming also saw Richards lift the apparent firearm in his right hand, with a laser dot on the top of it, and point it at Officer Ramos, and so discharged his firearm at Richards. (Fleming Tr., 80:2-8).

Denied. There is no credible evidence that Fleming "saw Richards lift the apparent firearm in his right hand." See Response to ¶ 64, *supra*. Fleming told the Force Investigation Division that he discharged his weapon because he "thought [Richards] shot Ramos," Fleming FID Interview 24:20-49 (produced as D001482), yet it is clear from body-worn camera footage

that Ramos fell *after* and *in response* to hearing Fleming discharge his weapon. Ramos BWC 18:01:06-10.

Fleming testified that Ramos obscured his view of Richards raising his arm when Ramos first approached the bedroom. Fleming Tr. 78:6-10. Fleming claims that he was able to see the gun in Richards's hand the second time Ramos approached Richards with the Taser. Fleming Tr. 70:11-18. However, body camera footage shows that Ramos blocked Fleming's view of Richards to a greater extent on his second entry. Oliveros BWC 18:00:58 – 18:01:04. Therefore, it is impossible that Fleming would not be able to see Richards raise his arm during Ramos's first approach but somehow saw the gun during Ramos's second approach. Fleming also stated that he was able to see Richards's hand during Ramos's second approach because Richards had moved approximately two feet to the right after Ramos entered the apartment. Fleming Tr. 70:11 – 71:17. However, this testimony was false: a comparison of the body camera footage shows that Richards did not move from his original position. Fleming BWC 17:46:30 – 17:46:40; Ramos BWC 18:00:59 - 18:01:02.

66. After the first gunshot, Officer Ramos began to fall toward the bedroom door, opened to the left side of the door frame. (Fleming Tr., 81:14-19, Ramos Tr., 100:18-24).

Admitted.

67. As Officer Ramos fell, he discharged his Taser. (Fleming Tr., 81:14-19).

Admitted.

68. After Officer Ramos began to fall, Officer Murphy could also see Richards pointing was appeared to be a silver handgun in the officer's direction, and discharged his firearm. (Murphy Tr.)

Denied. Defendants do not cite any portion of the record in support of this assertion. Further, Murphy provided inconsistent testimony as to whether he discharged his weapon in

response to a movement by Richards, Murphy Tr. 112:12-15, or in response to shots fired by Fleming. Murphy Tr. 119:24-122:12-14.

69. Officers Fleming and Murphy stopped firing when they perceived that Richards was no longer pointing what appeared to be a firearm at anyone. (Fleming Tr., 80:25-81:10, 85:3-12).

Denied. Richards never pointed what “appeared to be a firearm” at anyone. See response to ¶ 64, *supra*. Fleming and Murphy kept firing as Richards fell. Fleming Tr. 202:12-203:22; Murphy BWC 17:55:43 – 17:55:59. Analysis by NYPD’s Crime Scene Unit (“CSU”) showed that at least one shot was fired at a downward trajectory toward where Richards landed on the floor. CSU Photos (produced as D000479 – D000484).

70. Officers Fleming and Murphy discharged their firearms over a total of approximately five seconds. (Ramos BWC, 1:12-1:17).

Admitted.

71. Officer Murphy fired nine rounds, leaving seven rounds unexpended in his weapon. (Murphy Tr.; NYPD Property Voucher, D834-835).

Admitted.

72. Officer Fleming fired seven rounds, leaving nine rounds unexpended in his weapon. (Fleming Tr.; NYPD Property Voucher, D828-829).

Admitted.

VII. Securing Richards and the Crime Scene

73. At approximately 18:01:12, immediately after the shooting, Officer Ramos exited the bedroom. (Ramos BWC, 1:30).

Admitted.

74. At approximately 18:01:20 hours, Officers Fleming, Murphy, and Oliveros entered the bedroom. (Fleming BWC, 15:30; Ramos BWC, 1:37-1:45).

Admitted.

75. When Officers Fleming and Murphy entered the room, Richards was lying prone on the floor between the foot of the bed and the wall, with his head closer to the dresser and his right arm extended almost to the edge of the dresser. (Fleming BWC, 15:32).

Admitted insofar as Richards fell near the dresser. Fleming BWC 18:01:20.

76. When Officers Fleming and Murphy entered the bedroom, Richards was still moving his arms and head. (Fleming BWC, 15:30-16:05; Fleming Tr., 88:10-16).

Denied. The officers' body-worn camera footage does not show Richards moving his arms or head, except that his arm slightly twitched. Fleming BWC 18:01:14-26.

77. When officers entered the room, Richards was still holding the knife in his left hand. (Fleming BWC, 15:32-37; Fleming Tr.).

Admitted insofar as the knife was still resting in Richards's immobilized hand. Mr. Richards was not deliberately "holding" the knife, since he was incapacitated and not capable of movement. Fleming BWC 18:01:18; Fleming Tr. 89:13-17.

78. Officer Fleming stepped to Richards and kicked the knife out of his left hand. (Fleming BWC, 15:40-45; Fleming Tr., 88:10-16).

Denied. Fleming stomped on Richards's hand. Fleming BWC 18:01:26-31; Fleming Force Investigation Interview (produced as D001482); Murphy Tr. 129:2-5.

79. The officers attempted to handcuff Richards, in accordance with NYPD practice. (Fleming Tr., 88:19-89:3).

Admitted insofar as the officers attempted to handcuff Richards. Denied to the extent that there is no support in the record that handcuffing a dying, incapacitated gunshot victim who posed no threat to officers was consistent with NYPD practice.

80. Officer Oliveros put on disposable gloves and handcuffed Richards. (Fleming BWC, 16:20-16:40; Oliveros Tr.)

Admitted.

81. After Richards was handcuffed, Officer Fleming attempted to locate the apparent firearm that Richards had been holding. (Fleming BWC, 16:40; Fleming Tr., 89:22-90:9).

Denied to the extent that any officer actually saw an “apparent firearm” that Richards had been holding. See Responses to ¶¶ 62, 64-65, *supra*.

82. At approximately 18:02, Det. Hartnett and Officer O’Rourke returned to the bedroom with their medical bag. (Fleming BWC, 16:50-16:55).

Admitted.

83. As members of ESU, both Det. Hartnett and Officer O’Rourke were certified emergency medical technicians (“EMTs”). (O’Rourke Tr., 13:2-9).

Admitted.

84. Upon their return, Det. Hartnett and Officer O’Rourke began attending to Richards’ injuries. (O’Rourke Tr., 29:25-30:16).

Admitted.

85. While Det. Hartnett and Officer O'Rourke were working on Richards, Officer Fleming continued to search for the apparent firearm. (Fleming BWC, 16:55-18:30).

Denied. The officers did not perceive Richards to have been holding an "apparent firearm." See Responses to ¶¶ 62, 64-65, *supra*. After the shooting, Fleming falsely stated "when we first pulled up, he had a laser pointer coming at us." Fleming BWC 18:03:15 - 18:03:28, 18:03:45 - 18:04:05.

86. At approximately 18:04, Officer Fleming looked under the dresser and located the apparent firearm. (Fleming BWC, 18:30; Fleming Tr., 91:23-92:21).

Denied. See ¶¶ 146-175. *infra*.

87. When Officer Fleming located the apparent firearm under the dresser, he stated, "Oh, there we go," (Fleming BWC, 18:30; Fleming BWC Tr., 31:24), and then noted, "maybe it was like a toy or something." (Fleming BWC, 18:30-33; Fleming BWC Tr., 32:2-6).

Denied. Fleming did not locate any "apparent firearm" under the dresser. Fleming did make the self-serving statement, "Oh, there we go. There's a fucking – whatever, it's like a toy or something." Fleming BWC, 18:04:11-20. But there is no evidence of any "apparent firearm" under the dresser other than Fleming's self-serving statements – no other officer saw it there and there is no video, photograph, or forensic evidence corroborating that it was ever there. Fleming claims to have moved it but never told anyone – not the crime scene investigators, the Force Investigation Division or a superior officer – until his deposition in this matter three years later. See *infra* ¶¶ 169-170.

88. Officer Fleming then dragged the apparent firearm out from under the dresser with his foot. (Fleming BWC, 18:33-19:02; Fleming Tr., 93:15-19).

Denied. Fleming could not have reached the object with his foot because the clearance between the bottom of the dresser and the floor was only a few inches and Fleming claimed

that the toy gun was located in “the center area” underneath the dresser. Fleming Tr. 92:9-15, 93:8-11. *See also supra* ¶ 87, *infra* ¶¶ 146-175.

89. After dragging the apparent firearm out from under the dresser, Officer Fleming illuminated the object with his flashlight and attempted to record its location with his body-worn camera. (Fleming BWC, 19:02; Fleming Tr., 195:4-23).

Denied. Fleming did not drag the toy gun out from under the dresser; he placed it next to the dresser. *See infra* ¶¶ 146-175.

90. At that point,, Officer Fleming left the bedroom. (Fleming BWC, 19:02-20:06).

Admitted.

VIII. Medical Response and Autopsy

91. Emergency medical services arrived on the scene at approximately 18:05 hours. (ICAD).

Admitted.

92. Richards was pronounced dead at approximately 18:11 hours.

Admitted.

93. The Office of the Chief Medical Examiner performed an autopsy of Richards’ body on September 7, 2017. (Autopsy Report, D1246-1259., p. 1).

Admitted.

94. The OCME concluded that Richards’ cause of death was a gunshot wound of the torso. (Autopsy Report, D1246-1259, p. 2).

Admitted.

95. Richards sustained seven gunshot injuries, including one penetrating shot to the torso, two perforating shots to the torso, one perforating shot to the left wrist, one penetrating wound to the right hip, and two graze wounds. (*Id.*, pp. 4-7).

Admitted.

96. During the autopsy, Taser barbs were also removed from the clothing at Richards' right chest and left thigh. (Id., p. 10).

Admitted.

IX. Crime Scene Response

97. At approximately 18:30 hours, the NYPD Crime Scene Unit ("CSU") responded to the location. (CSU Case/Run Information Sheet ("CSU Info. Sheet"), D4835)

Admitted.

98. CSU photographed the imitation firearm beside the dresser inside Richards' bedroom. (Photo "A" of Imitation Firearm, D445).

Admitted.

99. CSU photographed the knife inside Richards' bedroom. (Photo of Knife, D443).

Admitted.

100. CSU photographed the laser function in use on the imitation firearm. (Photo "B" of Imitation Firearm, D473).

Admitted.

101. CSU recovered and vouchered the imitation pistol and knife from the scene. (NYPD Property Voucher No. 2000689803, D841-842).

Admitted.

102. CSU measured and diagrammed Richards' apartment. (Crime Scene Diagram ("CSU Diagram"), D1314).

Admitted.

Plaintiff's Statement of Additional Facts

103. At the beginning of the encounter, Fleming, Murphy and the landlord walked into Richards's bedroom without realizing Richards was present. Murphy Tr. 57:15 - 58:24.

104. Murphy entered five feet or more into Richards's bedroom towards Richards, and Fleming and the landlord entered farther into the room. Murphy Tr. 58:6-19.

105. Richards's bedroom measured 13 feet by 9 feet. CSU Diagram (produced as D1314).

106. By the time the officers realized Richards was present, Fleming and the landlord were close enough to Richards that Richards could have struck them if he chose to. Murphy Tr. 58:6-19.

107. Murphy testified that Richards initially menaced the officers with the knife by extending his arm towards the officers and pointing it directly at the officers for "several minutes" until ESU arrived. Murphy later changed his sworn testimony after seeing that his body camera footage contradicted his prior testimony and admitted that Richards had not raised the knife but had kept it by his side pointed downwards. Murphy Tr. 60:20-23, 63:18 - 64:4, 65:24 - 66:25, 74:25 - 78:14, 79:5-21, 117:4-24, 209:20 - 210:14.

108. Richards's bed was between Richards and the officers for the entire encounter. Fleming BWC *passim*; Murphy BWC *passim*; Ramos Tr. 32:11-25.

109. Richards could not flee or retreat farther away from the officers. Fleming BWC *passim*; Murphy BWC *passim*; Ramos Tr. 34:18 - 37:3.

110. Nothing physically prevented Murphy or Fleming from retreating or backing up from their position. Ramos Tr. 37:4-13, 58:16-20.

111. Murphy suggested closing the door to Richards's bedroom until additional help arrived. Fleming said that they could not, and Murphy deferred to Fleming because Fleming was a "senior officer." Murphy 67:24 - 68:10.

112. Fleming received de-escalation training at the police academy approximately 11 years prior to the shooting, but as of September 5, 2017, he had not received any refresher courses and could not remember any of the de-escalation training. Fleming Tr. 134:19 - 135:24, 146:6-9.

113. Within approximately two minutes of encountering Richards, Fleming identified that Richards was an emotionally disturbed person ("EDP") and that Richards was not acting rationally. Fleming Tr. 143:15 - 144:17.

114. Fleming shouted commands at Richards. Fleming Tr. 146:3-5.

115. Fleming threatened to use deadly force on Richards several times before Murphy claimed that he saw a gun. For example, Fleming stated: "I don't want to shoot you. Put your hand up and drop that knife;" "You understand, you are seconds away from getting shot if you don't show me what's in your other hand;" "I don't want to shoot you man, but I will if you come at me with that knife;" "Put that knife on the floor so I don't have to hurt you." Fleming BWC 17:46:40-46, 17:52:10-18, 17:52:36-41, 17:55:33-34.

116. Fleming knows that an officer should not shout commands at an EDP because it may "aggravate them or distress them." Fleming Tr. 146:6 - 147:7.

117. Approximately seven minutes into the encounter with Richards, Fleming affirmatively attempted to stop the NYPD's Emergency Services Unit ("ESU") from responding by stating into his radio when asked if he wanted ESU to respond, "I'll advise, just have a unit with a Taser come over." Murphy BWC 17:53:45-50.

118. Det. Hartnett, who has been an ESU officer for approximately eight years, testified that he has never heard of an officer not wanting ESU to respond to a scene to help with an EDP. Hartnett Tr. 18:6-12, 41:19-23.

119. The ESU is specially trained to handle EDPs with advanced psychological training and tools. ESU is notified on every EDP call and responds to thousands of EDP calls per year. Hartnett Tr. 18:13-21:2.

120. Approximately ten minutes into the encounter with Richards, Fleming stated to Richards that if Richards did not obey Fleming by dropping the knife, Fleming would hurt him. Fleming BWC 17:55:30-33; Fleming Tr. 172:12 - 173:5.

121. The ESU officers arrived with a Taser. Murphy knew that the ESU officers had a Taser. Murphy Tr. 70:24 - 71:12.

122. Neither Fleming nor Murphy asked the ESU officers to use their Taser. Murphy Tr. 71:6-24.

123. Fleming claims that he did not know what the ESU officers meant when they said they were going to “suit up” and that he had never heard that before and did not know whether they would come back. Fleming Tr. 177:18 - 178:10.

124. Murphy knew what “suit up” meant and that ESU were coming back upstairs shortly. Murphy Tr. 95:15-18, 106:5-14.

125. ESU officer Det. O’Rourke saw Richards, Murphy and Fleming moments before the shooting and felt the situation was under control. O’Rourke Tr. 27:16-17.

126. The NYPD Patrol Guide Procedure 221-113 is titled “Mentally Ill or Emotionally Disturbed Persons” and directs that “If the emotionally disturbed person is armed or violent, no attempt will be made to take the EDP into custody without the specific direction of a supervisor

unless there is an immediate threat of physical harm to the EDP or others are present.” PG 221-113 (produced as D001773) (emphasis in original); Hartnett Tr. 30:3.

127. Patrol Guide Procedure 221-113 further instructs: “If an EDP is not immediately dangerous, the person should be contained until assistance arrives.” PG 221-113 (produced as D001773); Harnett Tr. 34:9-14.

128. Patrol Guide Procedure 221-13 also states:

In all [cases other than an EDP constituting an immediate threat of serious physical injury or deal to himself or others, or a unarmed, compliant and non-violent EDP], if EDP’s actions do not constitute an immediate threat of serious physical injury or death to himself or others:
(1) Attempt to isolate and contain the EDP while maintaining a zone of safety until arrival of patrol supervisor and Emergency Service Unit Personnel.
(2) Do not attempt to take EDP into custody without the specific direction of a supervisor.

PG 221-13 (produced as D001774) (emphasis in original); Hartnett 37:13 - 38:10.

129. Richards standing with a knife in his bedroom did not constitute an “immediate” threat. Ramos Tr. 74:2-14.

130. Murphy knew that he needed a supervisor’s approval before taking an EDP into custody when the EDP was “isolated and contained.” Murphy Tr. 156:3-8.

131. Throughout the entire encounter with Richards, Richards was “isolated and contained.” Fleming Tr. 169:23-24; Hartnett 35:11-17 (a person kept within a single room of an apartment is isolated and contained); Murphy Tr. 95:19 - 96:4; O’Rourke Tr. 25:12-16; Ramos Tr. 48:2-6.

132. Prior to Ramos approaching Richards with a Taser for the purpose of taking him into custody, Richards never made a threatening gesture or statement. Fleming BWC *passim*; Murphy BWC *passim*; Murphy Tr. 69:21 - 70:2.

133. Ramos knew that anytime he used physical force, including using a Taser, he was required to make an independent assessment based on the totality of the circumstances. Ramos Tr. 40:21 - 41:10.

134. Ramos moved in to Tase Richards because Fleming and Murphy told him to do so, and Ramos did not make an independent assessment of the situation. Ramos Tr. 33:14 - 39:18, 45:8 - 52:8, 79:21 - 82:13; 120:3 - 121:5, 126:2-19.

135. Richards was never given any warning that he would be Tased prior to Ramos firing the Taser at Richards. Ramos Tr. 101:18-25, 104:16-24.

136. After Richards was shot multiple times, Oliveros placed his knee on Richards's back and handcuffed Richards as he lay incapacitated and bleeding on the ground. Oliveros saw no apparent firearm on the floor near Richards. Fleming BWC 18:02:02-27; Oliveros BWC 18:02:02-36; Oliveros Tr. 45:4 - 48:20; Santana BWC 18:02:02-33.

137. None of the officers' body camera videos show an apparent firearm in Richards's hand at any time. Candela BWC; Fleming BWC; Murphy BWC; Oliveros BWC; Ramos BWC; Santana BWC.

138. Fleming covered his own body camera for seven minutes and forty-eight seconds during the confrontation with Richards, during which time the officers Tased and fatally shot Richards. Fleming BWC 17:53:20 - 18:01:08; Fleming Tr. 167:4-18.

139. After Murphy said he saw a gun in Richards's hand, Fleming continued to focus on the knife in Richards's hand. Fleming BWC 17:59:45 - 18:00:54.

140. Ramos was closest to Richards and did not see a gun in Richards's hand when he entered the bedroom. Ramos Tr. 89:22 - 92:19.

141. At the time Ramos and Oliveros claimed to see a red dot coming towards Ramos, Ramos was raising his own Taser, which projects a red laser dot. Oliveros only saw one red dot, and the red dot traveled away from Ramos, not towards him. Oliveros BWC 18:00:56 - 18:01:02; Oliveros Tr. 63:18 - 74:15, 81:19 - 85:15, 87:5 - 90:14; Ramos Tr. 88:24 - 98:24, 124:4 - 131:22.

142. During the shooting, the red laser dot from Ramos's Taser moved around Richards's bedroom. Murphy BWC 18:01:05-07.

143. The red laser dot that moved around Richards's bedroom emanated from Ramos's direction. Murphy BWC 18:01:05-07.

144. The red laser dot can be seen on Richards's body as Richards falls. Ramos BWC 18:01:08.

145. Immediately after the shooting, when Fleming, Murphy, and Oliveros entered the bedroom, the toy gun was not present on the floor in the corner of the dresser and wall where it later appeared on Fleming's body camera. Fleming BWC 18:01:16-24; 18:03:14-30; Murphy BWC 18:01:50-54, Oliveros BWC 18:02:00-14.

146. The toy gun is not visible on any bodycam footage or photograph in any location other than the corner of the dresser and the wall where it appears on Fleming's body camera at 18:04:47.

147. After the shooting, as Fleming and Murphy searched for the gun that they claimed Richards had in his possession, Fleming stated "when we first pulled up, he had a laser pointer coming at us." Fleming BWC 18:03:15-28 18:03:45 - 18:04:05.

148. Neither Fleming, Murphy, nor any other officers or civilians said before the shooting that they saw a laser pointer coming from Richards's direction. Candela BWC; Fleming BWC; Murphy BWC; Oliveros BWC; Ramos BWC; Santana BWC.

149. New York City Police Officer John "Johnny Mac" McLoughlin entered the apartment at the same time as other responding officers and stood at the entryway of the bedroom looking in and ushering other officers out. Candela BWC 18:02:30-32; Ramos BWC 18:02:25-28.

150. McLoughlin was present at the 2012 fatal shooting of Ramarley Graham by his then-partner Richard Haste. Haste thought that Graham had a gun, but no gun was recovered after

the fatal shooting. Haste was indicted for the shooting. McLoughlin testified in front of the Grand Jury in the Haste matter. McLoughlin Tr. 51:24 - 55:19.

151. Ramarley Graham and Miguel Richards are the only two individuals to be fatally shot by police within the confines of the 47th Precinct in more than 10 years. Fleming Tr. 100:7-23.

152. McLoughlin was wearing a body camera but did not turn it on when entering the apartment. McLoughlin Tr. 17:8-9.

153. After entering the apartment, walking to the bedroom and looking inside, McLoughlin left the apartment and went outside the building. Candela BWC 18:03:18-53.

154. While McLoughlin was outside, and as Fleming searched for the toy gun inside the bedroom, Murphy asked, "Where is it? Where is it?" then lowered his voice and said, "Where is he?" Murphy BWC 18:03:30-39.

155. Outside of the apartment, an individual in a dark hooded sweatshirt handed McLoughlin a small silver and black item, which McLoughlin held in a pistol grip. Candela BWC 18:03:50-53.

156. McLoughlin re-entered the apartment at 18:04:24. Murphy BWC 18:04:24.

157. After searching for the toy gun, Fleming exited the bedroom. Fleming BWC 18:04:23-29.

158. Once outside of the bedroom, Fleming was approached by McLoughlin, the only NYPD officer who re-entered the apartment. Murphy BWC 18:04:27-32

159. McLoughlin extended his right arm and handed a black-and-silver object to Fleming. Murphy BWC 18:04:29-32; McLoughlin Tr. 45:4 - 47:3.

160. Immediately after McLoughlin handed the object to Fleming, McLoughlin turned towards Murphy, whose body camera had just captured the handoff, and made a “cut” motion across his neck with his fingers. Murphy BWC 18:04:32-36; McLoughlin Tr. 19:10-20.

161. Also immediately after McLoughlin handed the object to Fleming, Fleming re-entered the bedroom crime scene where ESU was working to stanch the bleeding of Richards’s gunshot wounds. Fleming Tr. 194:4 - 195:3; Murphy BWC 18:04:41 - 18:05:12.

162. Fleming entered the bedroom, passed by Richards as he bled to death, and stood to the left of the dresser facing the wall. Fleming BWC 18:04:41 - 18:05:11; Murphy BWC 18:04:41 - 18:05:11.

163. After a moment facing the wall, Fleming bent over to direct his body camera at the ground where the toy gun had appeared for the first time. Fleming BWC 18:04:41 - 18:05:11.

164. Fleming testified that he was trying to “create evidence here for the investigators” by filming the toy gun. Fleming Tr. 195:11 - 196:7.

165. Fleming shined his flashlight on the floor to the left of the dresser where the toy gun was, then exited the bedroom a second time. Fleming BWC 18:04:41 - 18:05:11; Murphy BWC 18:04:41 - 18:05:11.

166. McLoughlin stood in the doorway to the bedroom, partially blocking Murphy’s body camera, and watched as Fleming walked to the location to the left of the dresser, where the toy gun was recovered, and stood there for a moment. Murphy BWC 18:04:41 - 18:05:11.

167. Fleming told the Force Investigation Division investigators approximately three months after the shooting that he did not move the toy gun, and that he “left it right where it was”. Fleming Tr. 117:6 - 119:7.

168. Although Fleming now claims that he moved the toy firearm from under the dresser, in the three years following the shooting, he never told anyone (other than possibly his attorneys)

that he moved the toy gun from where he found it, nor did he make any attempt to correct his statement to FID. Fleming Tr. 95:16 - 97:7.

169. The clearance under Mr. Richards's dresser was only a few inches. Fleming Tr. 92:5 - 95:9.

170. Murphy testified at deposition that he "definitely" never saw the toy gun in the room after the shooting. Tr. 192:8-19.

171. No other officer or investigator claimed to see the toy gun under the dresser. Candela BWC; Fleming BWC; Murphy BWC; Oliveros BWC; Ramos BWC; Santana BWC.

172. No other officer or investigator claimed to see Fleming drag the toy gun out from under the dresser using his foot, as he now claims. Candela BWC; Fleming BWC; Murphy BWC; Oliveros BWC; Ramos BWC; Santana BWC.

173. After the shooting, Fleming and Murphy rode in the ambulance together for a 10-minute trip to the hospital. Murphy Tr. 194:6 - 196:5.

174. Hours after the shooting, Ramos, Oliveros, Fleming and Murphy rode in a van together from the hospital to the precinct and discussed the incident. Ramos Tr. 139:22 - 141:18.

Dated: New York, New York
January 18, 2021

Zachary Margulis-Ohnuma
Daniel McGuinness

Counsel for the Estate of
Miguel Richards

By: _____ /s/

TO: VIA ECF and Email
Hannah Faddis
Zachary Kalmbach

Attorneys for Defendants

Docket No. 18 Civ. 11287 (MKV)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE ESTATE OF MIGUEL ANTONIO RICHARDS,

Plaintiff,

- against -

THE CITY OF NEW YORK, POLICE OFFICER (“PO”) JESUS RAMOS, PO
MARK FLEMING, PO REDMOND MURPHY, and PO MARCOS
OLIVEROS, individually and in their official capacities,

Defendants.

**PROPOSED STATEMENT OF MATERIAL FACTS
PURSUANT TO LOCAL RULE 56.1**

JAMES E. JOHNSON

Corporation Counsel of the City of New York
*Attorney for Defendants City of New York, Fleming, Murphy, Ramos, and
Oliveros*

100 Church Street
New York, New York 10007

Of Counsel: Hannah V. Faddis
Tel: (212) 356-2486

Due and timely service is hereby admitted.

New York, N.Y., 202.....

..... Esq.

Attorney for.....