

Deposition of: George Johnson

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Cedric Marshall v. City of Miami, et al. (Case No.: CV-67-04693 S)

Appearances of Examining Counsel:

For Plaintiff Marshall:

Robert Wilson  
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For Defendant City of Miami:

Bradley Cristol  
Deputy City Attorney

### **Prior Depositions**

Johnson has been deposed twice. (Page 4.) The two prior depositions were in his capacity as a member of the police department. They were probably taken in 1987, maybe later. (Pages 60-61.)

### **Education**

Johnson attended some college, but will not say where. (Pages 6-7.) He took courses in general education and administration of justice. He thinks that he finished his classes in 1980. He graduated from high school in 1978. (Pages 6-7.)

### **Employment History**

From 1980, Johnson worked construction full-time until he obtained a position with the police department in 1983. (Page 7.) He entered the police academy on September 19, 1993. After six months of training, he was assigned to SE Division as a new officer assigned to patrol. He worked there for 14 months before transferring to Communications, where he was assigned to 911 incoming emergency phone lines. He worked there for nine months and then worked with the North Division until 1990. He worked with patrol, the special problems unit and a gang suppression unit. In 1990, he obtained a position at the Air Support Division, where he trained as a tactical flight officer and served in that job for four and a half years. (Page 8.) He passed the sergeant exam, was named sergeant and assigned to NE Division as a patrol sergeant. After 13 or 14 months, he was assigned as a sergeant for a federal portion of the gang enforcement effort in Miami. He ran that part of the unit for six months. He was next assigned to the SW unit for eight months. Johnson returned to the Air Support division as a sergeant in April 1999. He got out of flight training in 1999. (Page 9, 12.) From 1999 to the

present, he has been a sergeant in the Air Support Division. (Page 10.) As of February 2001, he was sergeant 2 assigned to morning watch as watch commander. He ensured that the days off were completed for the personnel, assignments were met, flight requirements were met, aircraft were assigned to the appropriate personnel, and aircraft were in a safe and flyable condition. (Pages 11-12.) He supervises the officer rank and the sergeant 1. His current position is officer in charge of Support Section of Air Support Division. (Pages 12-13.)

### **Duties as a Pilot for a Follow, Stop and Detention**

As of February 2001, Johnson's duties include piloting air units. (Page 13.) When flying as a line pilot, his primary responsibility is the safe operation of the aircraft while engaged in law enforcement activities, including grand theft auto stops. (Pages 13-14, 16-17, 22, 47.) Weather, terrain and environment are some variables that affect safety. (Pages 16, 23.) He constantly scans the instruments for any trouble with the aircraft's systems and monitors aircraft traffic frequencies to operate within FAA guidelines. (Page 14.) He would monitor additional aviation radio. (Page 14.) For a grand theft auto stop, his duty is to get the aircraft in a position for his partner to see what he or she needs to on the ground. (Page 17, 22.) His job is to keep his partner on target. It would be helpful in terms of orienting the airship to a visual contact area to look at the ground, but that could only be done if it is safe. (Pages 23-25, 47.) Johnson knows how to talk on a police frequency and exchange information, but it is not his job to do so. (Page 52.)

### **Tactical Flight Officer Responsibilities**

A tactical flight officer sits on the pilot's left and expresses where they need to be and tries to give instructions and directions. The tactical officer is responsible for visual contact. (Page 14-18, 23.) They interact through an intercom wired into their helmets to ensure that their police mission was met if it is safe to do so. (Pages 15-17.) One of the purposes of the air unit is for the police department to make visual contact of the suspect, so that other objectives can be achieved. (Page 22.) To a degree, the tactical flight officer keeps the pilot apprised of what is happening on the ground. The tactical flight officer may or may not say when officers are approaching the subject. (Pages 22-26.)

The tactical flight officer also keeps a running log and note pad strapped to his leg to document pertinent information as it is received from the police radio. That information is critical to the location in which they need to fly to and assist the ground units. The information may include the time in which the call is received, the type of call, the location of the call and suspect and vehicle information. Those types of things would probably be kept on the temporary log as they fly. At a later date, they will transfer that into a computer log and complete a document like Exhibit 2. (Pages 31-32.)

### **Radio Communications**

With regard to the intercom system in Johnson's helmet, he is not listening to the same radio frequency as the tactical flight officer. (Pages 15, 17-19.) He can, but needs to

make a conscious decision to reach over to the mixer panel and toggle a switch to on or off. Each of the switches is for a certain radio in the aircraft. The first 2 switches are pilot radios. The rest are a combination of radios available to the tactical flight officer. (Pages 18-21.) He does not have direct access to the radio frequencies being used on the ground by the police department or his own radio that he can listen to what is going on between the patrol vehicles and Communications. (Pages 21-22.) The intercom is voice-activated; it opens up for listening when you speak. (Page 18.) He cannot say whether he typically leaves the toggle switch open so that he can hear what the tactical flight officer is listening to when he is on the scene. If the incident were of a nature in which he thought that it would be critical to have 2 sets of ears, he would switch the toggle on. (Pages 17-19.)

### **Marshall's Stop**

Johnson does not recall whether or not he was listening to the tactical flight officer's radio frequency at the time of Marshall's stop and detention on February 11, 2001. (Pages 20-21.) He cannot recall if there was other air traffic in the area of Marshall's stop. There were no communications between he and air traffic control at the time of the stop. He knows this based on the log and his memory. They were north of the airport's airspace. There were not any other areas of concern that would make him think it was appropriate to listen to the tactical flight officer's frequency at the time of Marshall's stop and detention, but he cannot be certain whether he was listening to Smith's radio frequencies. (Pages 20, 43-44.) He does not remember hearing any radio communications between the officers on the ground or the officers and Communications concerning Marshall or Marshall's vehicle on the night in question. (Pages 43, 44.) He is not involved in the radio communications with people on the ground when he is acting as a pilot in an air unit. That is not in his job description. (Page 52.)

### **Exhibit 2**

Exhibit 2 is a copy of the Air Support Division Daily Log, dated February 11, 2001. (Page 27.) Johnson reviewed it in preparation for his deposition, but did not contribute to its creation. He was the pilot and watch commander depicted in the log. (Page 27.) Part of duties and responsibilities are to review Exhibit 2 and ensure its accuracy within a day or two of being generated. The start times and down times reflect what the flight schedule was for the day, the crew was accurate, and the date is accurate. (Page 28.) Activity 9 reflects activity concerning Marshall's stop and detention. The time, 2:22, is the approximate time the tactical flight officer felt they received the call. The term "End" reflects the time in which the aircraft completed service on the call. (Pages 28-29.) He is not sure what device Smith used to document those times, but he might have used a watch or clock on board. (Pages 29-31.) They responded to a Code 37, which is an indicator that quite possibly the car is stolen and a direction of travel. (Pages 33-34, 36.) From looking at Exhibit 2, there does not appear to be any time delay from completing one incident and then responding to the incident in question. (Pages 33-34.)

### **Experience Flying with Smith**

Johnson has flown with Smith about three times. (Page 30.) He was supervising him as of February 2001 as he was assigned to A.M. watch. (Page 30.) They were in unit Air 70. The air unit designations are not like the designations for the police cars. (Pages 30-32.)

### **Visual Enhancements**

Johnson is not sure if Smith used the FLIR or the binoculars throughout the time of Marshall being followed by their air unit. It depends on what the tactical flight officer is doing with regard to whether the tactical officer will inform him that he is going to use the FLIR or binoculars. (Page 33.)

### **Work with Smith**

Johnson is not sure how many times he has worked with Smith. It may be at least 3 times. On the date of Marshall's stop and detention, he was supervising Smith as the watch commander. (Page 30.)

### **Contact and Observation of Marshall's Vehicle**

Johnson does recall receiving information from Smith concerning a vehicle heading westbound on the freeway that needed an approach the night of Marshall's incident. (Page 35.) He has no personal recollection of where they were prior to responding to the call for Marshall's incident. At some point, he became aware that his air unit was within visual contact range of Marshall's vehicle and could see black and whites following a vehicle. (Pages 35, 37.) Smith confirmed that he believed that was the vehicle in question. (Page 35.) The information he would have about the type of stop would come from his partner. (Pages 35-36.) He is not sure how closely they were following Marshall's vehicle, but they were approaching from east to west. (Page 36.) At some point the vehicle stopped. He knew this from what was described by Smith on the freeway and may have caught a glimpse confirming this. (Pages 37-39, 42.) He orbited the aircraft as safely as he could and made every attempt possible to keep Smith on target. (Pages 37, 40.) Within a short period of time, Smith advised him that it was a Code 4 and they departed. (Pages 37-38, 40, 43.)

### **Orbit Distance**

Johnson thinks he completed a left-hand orbit and departed to the north. (Page 40.) He does not know the approximate height of the air unit from the ground while he was orbiting the scene. It varies. (Pages 45-47.) Orbit distance is directly related to the environment and the safety areas provided. In a general sense, he tries to operate between 500 and 800 feet from the ground. (Pages 45-46.) When he glimpsed down and saw that Marshall's vehicle was stopped, he cannot estimate how far away his air unit was at that time. (Pages 46-47.) He would estimate in the range of 800 to 1000 feet from the

ground, due to the fact that it was at night. He would have wanted a few extra hundred feet of safety, which equates to his time in descent if something were to happen. He cannot see quite as well at night, so he increases his altitude. For his distance of separation of his eyeballs to the vehicle, he gives a rough estimate of 2 city blocks or 500 yards. (Pages 47-50.)

### **Marshall's Actions during Following and Stop**

Marshall stopped on the right, as far as he could on the paved road. (Page 39.) Johnson does not recall seeing Marshall and does not know what he looks like. (Page 41.) He does not recall Smith telling him that Marshall was getting out of the vehicle, that Marshall was in a prone position, or that guns were drawn and officers were approaching. (Page 42.) He does not recall Smith telling him that Marshall had been taken into to custody and detained. (Page 43.) He does not know why Marshall was stopped on the night in question. Smith never informed him that Marshall's vehicle was being impounded. (Page 50.) Johnson did not overhear any radio communications or anything that led him to believe that Marshall was being uncooperative in any way during the following, stop and detention. (Page 50.) He did not hear or ever become aware of anything that led him to believe that Marshall was taking some sort of aggressive action towards officers during this incident. Other than what he has already testified to, he does not recall any conversations with his partner concerning the stop and detention of Marshall on the night of the incident. (Pages 50-51.)

### **Smith Exhibit 1**

Exhibit 1 is from Smith's deposition. (Pages 51-52.) Johnson has seen similar documents, but does not typically deal with computer printouts. The printouts are in police cars or in all of the police stations and are an attempt to record information by the operator working that police frequency on that night. (Page 53.) To Johnson, it does not reflect radio communications regarding a particular incident amongst police department personnel. It is not a document that he would normally see or be requested to decipher. (Page 53.) There have been times where they were asked if they could obtain information regarding incidents and this type of record might be requested. (Page 54.) Pages 104-106 reference something that would be typed by the operator on duty and may not reflect all communications. (Page 55.) Pages 104-106 reference "Air 70 less 1 min, ETA" leading him to believe that there was likely some communication from his aircraft to this operator which is not reflected in this exhibit. He does not assume that the words "Now W/B 10 FY approaching Western" was from the air unit; it could have come from a ground unit. Some of the information came from the airship, but he does not think that it can be safely assumed that all of it did. (Pages 55-57.) "2L40 C4 suspect in custody" references the unit designation; 2 is the Rampart area of the city; L indicates single officer assigned; 40 is the designation of the supervisor; C4 indicates that the situation is under control; suspect in custody means that the person has been detained. (Page 57.) The unit escorting the person to the police station should make an attempt to document

their time accurately. Whether it was done in this incident, he is not sure. He is not sure what "Disposition ID OCC" means. (Pages 58-59.)

### **Communications about Marshall's Incident**

Other than talking with counsel, Johnson has not spoken with anyone about Marshall's incident. He has not spoken to Smith about the actual events that unfolded on that day. (Pages 59-60.) Smith informed him that they had been subpoenaed and asked him if he had reviewed the log. None of his supervisory personnel at the police department have discussed the Marshall matter with him. (Pages 59-60.)

### **Prior Grand Theft Auto Stops**

Johnson does not recall, when he was a patrol officer, ever having a situation similar to Marshall's, where the suspect was, in fact, not in possession of a stolen vehicle and he let the suspect leave the scene. (Pages 61-62.) He cannot think of a time of this happening while he has been a member of the air unit. He has no personal knowledge of this occurring, but has not heard of it occurring. (Pages 61-63.)