

**Officer Involved Shooting of Alfred Longoria
Los Angeles Police Department**

**Officer Brett Cohen, #40760,
Officer Marcus Kemp, #40780**

J.S.I.D. File #16-0023



**JACKIE LACEY
District Attorney**

**Justice System Integrity Division
November 30, 2017**

MEMORANDUM

TO: COMMANDER ROBERT A. LOPEZ
 Los Angeles Police Department
 Force Investigation Division
 100 West First Street, Suite 431
 Los Angeles, California 90012

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
 Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Alfred Longoria
 J.S.I.D. File #16-0023
 F.I.D. File #F005-16

DATE: November 30, 2017

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 16, 2016, fatal shooting of Alfred Longoria by Los Angeles Police Department (LAPD) Officers Brett Cohen and Marcus Kemp. It is our conclusion that Officers Cohen and Kemp acted in lawful self-defense and defense of others.

The District Attorney's Command Center was notified of this shooting on January 16, 2016, at approximately 4:59 p.m. The District Attorney Response Team responded and was given a briefing and walk-through of the scene.

The following analysis is based on reports submitted to our office by the LAPD Force Investigation Division. The reports include photographs, videos, audio-recorded interviews of witnesses, and radio transmissions. The compelled statements of Officers Cohen and Kemp were considered in this analysis.

FACTUAL ANALYSIS

Summary of Incident

On January 16, 2016, at approximately 2:00 p.m., Graham C. was in his side yard when he heard a noise coming from the backyard. Graham C. went to his backyard and saw a man, later identified as Alfred Longoria, on the hillside behind his home. Graham C. confronted Longoria, who pulled a BB gun from his bag and pointed it at Graham C. Graham C. recognized the BB gun as his own and asked Longoria to return it to him. Longoria refused and threatened to kill Graham C. In fear, Graham C. retreated to his home and called 9-1-1.

Graham C. advised the 9-1-1 operator that someone was in his backyard and was now running up the road. Police officers were dispatched to Graham C.'s residence. While waiting for officers to arrive, Graham C. received a call from LAPD dispatch and advised the operator that Longoria threatened Graham C. with a BB gun, which Longoria had taken from Graham C.'s home.

At approximately 2:47 p.m., LAPD's Communication Division broadcast, "Hollywood units, your prowler complaint at █████ Courtney Terrace is now a 211 suspect there now..... Stand-by for additional, it's now Code 3 ..."¹ The broadcast also included that Longoria had stolen Graham C.'s BB gun and threatened him with it, as well as a description of Longoria.²

LAPD Officers Marcus Kemp and Brett Cohen, of the Hollywood Area Entertainment District (HAED), responded to the area to assist in a perimeter containment. While en route, an LAPD air unit directed Kemp and Cohen to Longoria's location. Upon arriving at the location, Kemp and Cohen saw Longoria, exited their vehicle, and gave him commands to put his hands up. Longoria ran toward Kemp and Cohen and pointed a replica semiautomatic pistol (BB gun) at them. Fearing for their lives, Kemp and Cohen fired their service weapons at Longoria multiple times causing Longoria to fall to the ground and drop his weapon. Paramedics arrived at the location to treat Longoria, but he succumbed to his injuries.

Witness Statements

Statement of Graham C.

On January 15, 2016, at approximately 10:00 p.m., Graham C., who resides on Courtney Terrace in the City of Los Angeles, observed Longoria on a hillside behind his home, adjacent to his backyard. Graham C. armed himself with a sledgehammer and went to the backyard. As Graham C. raised the sledgehammer, Longoria fled the area in an unknown direction. Graham C. called 9-1-1, but Longoria was gone by the time the officers arrived.



On January 16, 2016, at approximately 2:00 p.m., Graham C. was in his side yard when he heard a noise coming from the backyard. He entered his house, went to his bedroom and noticed that his wallet was missing. Graham C. ran to his backyard and saw Longoria on the hillside. Graham C. ran up the slope and confronted Longoria. Longoria pulled a BB gun from his bag and pointed it at Graham C. Graham C. recognized the BB gun, which he had last seen inside his

¹ 211 refers to California Penal Code section 211, robbery.

² No description of the BB gun was provided.

home, and asked Longoria to return it to him. Longoria threatened to come back and kill Graham C., and stated he had a .22 caliber gun in his bag. Graham C. told Longoria to drop the BB gun and leave because the police had already been called. Graham C. further told Longoria, “If you point that at the police, you’re gonna get shot.” Longoria continued to point the BB gun at Graham C.’s face. Graham C. feared he would be injured and returned to his home to call 9-1-1. Graham C. advised the 9-1-1 operator that Longoria had returned from the previous night and was in his neighbor’s backyard. Graham C. further stated that Longoria had taken items from his home, including his BB gun, that he pointed and threatened Graham C. with.

Statement of Albert G.

Albert G. was working as a landscaper in the front yard of a residence located on Nichols Canyon Road when he heard a helicopter overhead, circling the area.³ Albert G. heard talking over the PA system but could not understand what was being said. Albert G. looked east across Nichols Canyon Road and saw Longoria sliding down the hillside that faces the property. Albert G. made eye contact with Longoria, who was carrying a black bag in his right hand and headed in his direction.⁴ Albert G. believed Longoria would attempt to enter the property so he yelled to the homeowner who was inside the residence, “Ms. E [redacted], close the gate!” at which point the iron electronic gate to the property began to close.



Longoria reached the gate seconds before it closed. Longoria put his hand on the gate and told Albert G., “Open the fucking gate!” Albert G. replied, “Hey man, just, you know back the F [sic] up, back the fuck up.” Longoria stepped back to the passenger side of a Toyota Camry that was parked near the driveway, north of the gate, and appeared to hide. As Albert G. began to back away, Longoria returned to the gate and displayed a black 9mm semiautomatic pistol. Longoria pointed the pistol at Albert G. and repeated, “Open the fucking gate!” Albert G. told Longoria, “Hey man, just, I don’t want any problems. Just walk away.” Longoria then returned to the passenger side of the Toyota Camry and ducked down.

³ Nichols Canyon Road is a narrow two lane road that runs north and south with large residential lots on the west side of the street. The property where Albert G. was employed faces a wooded hillside on the east side of the street.

⁴ Albert G. described Longoria as looking like a “tweaker,” “somebody who does drugs.”

Shortly after, Albert G. heard a police vehicle stop abruptly, south of where Longoria was standing. Albert G. saw Longoria suddenly raise his left hand, point the pistol in a southerly direction and run towards the police vehicle. Albert G. heard a voice yell, “Stop! Put your hands up!” Two to three seconds later, Albert G. heard several gunshots.⁵

Statement of Officer Andrew Nunez

On January 16, 2016, Officer Andrew Nunez was assigned as a Tactical Flight Officer on LAPD Air Unit 3. At approximately 2:49 p.m., Nunez responded to a 211 call on Courtney Terrace. Upon arriving at the location, Nunez observed Longoria and requested additional units to set up a perimeter containment. Nunez then observed Longoria descending a steep hillside in a westerly direction toward Nichols Canyon Road from Curson Terrace. Nunez requested additional units respond to Nichols Canyon Road.

From the air unit, Nunez observed Kemp and Cohen driving northbound on Nichols Canyon Road and directed them to Longoria’s location. Once Kemp and Cohen arrived, Longoria ran south on Nichols Canyon Road towards Kemp and Cohen. Nunez saw Longoria raise his hand and extend his left arm outward in the direction of Kemp and Cohen. Nunez then saw Longoria fall to the ground and believed that a shooting had occurred.

Officers’ Compelled Statements⁶

Compelled Statement of Officer Marcus Kemp.

[REDACTED]

⁵ Albert G. did not witness the shooting due to shrubbery blocking his view to the south.

⁶ Unlike private citizens, public sector employees can be forced to submit to questioning regarding the performance of their official duties and, so long as they are not required to waive their privilege against self-incrimination, their refusal to submit to such questioning can result in administrative discipline including termination from public service. *Gardner v. Broderick* (1968) 392 U.S. 273, 278; *Uniformed Sanitation v. City of New York* (1968) 392 U.S. 280, 284-285. The LAPD orders officers who are involved in an officer involved shooting incident to submit to questioning concerning the performance of their official duties, and ordered Kemp and Cohen to do so in the present case. Kemp and Cohen, like any individual, possess a right under the Fifth Amendment of the United States Constitution to be free from being compelled to give testimony against themselves. *Uniformed Sanitation v. City of New York, supra, at 284-285*. The effect of this legal compulsion is that Kemp and Cohen’s statements cannot be used against them in a criminal proceeding, nor can any material derived from the compelled interviews be used against them. *Garrity v. New Jersey* (1967) 385 U.S. 493, 496-497; *Spielbauer v. County of Santa Clara* (2009) 45 Cal. 4th 704, 715. Further, because these compelled statements are part of Kemp and Cohen’s police personnel file, the statements are confidential and may not be disclosed absent an evidentiary showing and court order. Penal Code section 832.7.

[REDACTED]

[REDACTED]

Compelled Statement of Officer Brett Cohen

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Firearms

Longoria was armed with a Colt Defender .177 caliber, Co2 BB gun pistol with black plastic grips, designed to look like a Colt Defender compact 1911 .45 firearm.¹⁰

The pistol was found on the east side of Nichols Canyon Road lying against the hillside embankment, on its left side with the muzzle pointing east. The Co2 cartridge was laying in the north lane of traffic and the black plastic grip was laying in the dirt shoulder on the west side of Nichols Canyon Road. The hammer was down and the manual safety was off. BB's were visible inside the grip portion of the pistol.



Longoria's pistol recovered at the scene.

Kemp and Cohen were each armed with a department-authorized Glock 9mm Model 17, semiautomatic pistol.¹¹

Autopsy

On January 18, 2016, Deputy Medical Examiner Kevin Young, M.D., performed a post-mortem examination of Longoria's body. Two gunshot wounds were observed during the examination; one fatal entering the right upper chest, travelling from right to left, front to back and downward; and one non-fatal wound entering his left buttock, travelling from left to right, slightly back to front and downward. Doctor Young ascribed the cause of death to multiple gunshot wounds.

A toxicology analysis revealed that Longoria had the presence of amphetamine and methamphetamine in his system at the time of his death.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears to the person claiming the right of self-defense or the defense of others that he

¹⁰ The Colt Defender BB gun that Longoria pointed at the officers was determined to be the BB gun stolen from Graham C.'s residence. An additional black BB gun was recovered from inside Longoria's black bag.

¹¹ The investigation determined that Kemp fired three rounds and Cohen fired four rounds.

actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code § 197; *People v. Randle* (2005) 35 Cal.4th 987, 994 (overruled on another ground in *People v. Chun* (2009) 45 Cal.4th 1172, 1201); *People v. Humphrey* (1996) 13 Cal.4th 1073, 1082; *see also*, CALCRIM No. 505.

In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470. If the person's beliefs were reasonable, the danger does not need to have actually existed. *Id.*

“Where the peril is swift and imminent and the necessity for action immediate, the law does not weigh in too nice scales the conduct of the assailed and say he shall not be justified in killing because he might have resorted to other means to secure his safety.” *People v. Collins* (1961) 189 Cal.App.2d 575, 589.

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than the 20/20 vision of hindsight... The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor* (1989) 490 U.S. 386, 396-397.

Under Penal Code section 16700(a), an imitation firearm means any BB gun, replica of a firearm, or other device that is “so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive the device is a firearm.”

The evidence examined in this investigation shows that Officers Kemp and Cohen responded to a robbery call. They were advised that Longoria had stolen Graham C.'s BB gun and threatened him with it, but were not provided with any further description of the BB gun. While en route to assist with a perimeter containment, they were advised of Longoria's whereabouts and responded to that location.

Upon arriving at the location and observing Longoria, Longoria immediately ran towards the officers with a BB gun in his hand pointed directly at the officers. Longoria showed no signs of retreating as he passed the patrol vehicle despite the officers commanding him to stop. He came in close proximity to the officers and kept his gun fixed in their direction. Given the similarity between the BB gun and a real semiautomatic gun, Officers Kemp and Cohen reasonably believed Longoria was pointing a real firearm at them. The officers had no description of the stolen BB gun and could not determine at that moment whether the gun possessed by Longoria was the BB gun reported stolen by Graham C. Officers Kemp and Cohen had only seconds to react while Longoria rapidly advanced towards them. In reasonable fear for their lives, the officers fired multiple rounds at Longoria.

CONCLUSION

For the foregoing reasons, we conclude that Officers Marcus Kemp and Brett Cohen acted lawfully in self-defense and defense of another when they used deadly force against Alfred Longoria. We are therefore closing our file and will take no further action in this matter.