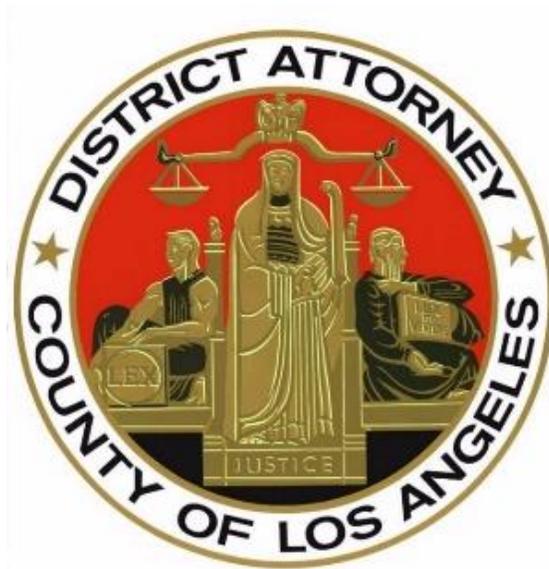


Non-Fatal Officer Involved Shooting of Tiffany Paco

Alhambra Police Department

Corporal Kevin Laing, #117

J.S.I.D. File #20-0003



Justice System Integrity Division

November 20, 2020

MEMORANDUM

TO: CHIEF TIMOTHY VU
Alhambra Police Department
211 South First Street
Alhambra, California 91801

CAPTAIN KENT WEGENER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Non-Fatal Officer Involved Shooting of Tiffany Paco
J.S.I.D. File #20-0003
LASD File #020-00001-3199-057
APD File #20-00082

DATE: November 20, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the January 5, 2020, non-fatal shooting of Tiffany Paco by Alhambra Police Department (APD) Corporal Kevin Laing. It is our conclusion that there is insufficient evidence to prove beyond a reasonable doubt that Corporal Laing was not acting in lawful self-defense.

The District Attorney's Command Center was notified of this shooting on January 5, 2020, at 5:41 a.m. The District Attorney's 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 LASD Detectives Michael Valento and John Duncan. The reports include photographs, videos, audio-recorded interviews of witnesses, radio transmissions, surveillance video, and body-worn camera (BWC) video. The voluntary statement of Corporal Laing was also considered in this analysis.

FACTUAL ANALYSIS

The Burglary

On January 5, 2020, at approximately 3:30 a.m., APD Corporal Kevin Laing was on patrol with his K-9 partner "Mitch" in an industrial area located in the City of Alhambra. Laing was in police uniform and driving a marked patrol vehicle.

Laing observed Tiffany Paco and Tania G. in the driveway of a closed storage facility loading property into a Nissan Sentra automobile.¹ A photograph of them loading property into the car is shown below:



Figure 1- Video surveillance of Tania G. and Paco loading property into a stolen automobile.

Laing, believing a burglary was in progress, stopped his patrol vehicle, partially blocked the driveway, and illuminated Tania G. and Paco with a spotlight. Laing exited and drew his service weapon. He ordered Paco and Tania G. to stop or he would deploy his K-9. Paco and Tania G. did not comply. They dropped the property they were carrying and entered the Nissan. Paco entered the driver's seat and Tania G. sat in the backseat.

It was later determined that Paco and Tania G. were in possession of bolt cutters, had cut the lock off a storage unit, and were loading stolen property from that unit into their automobile when confronted by Laing.²

The Shooting

The shooting was recorded on Laing's BWC and surveillance video from a nearby business.

Laing stood in front of Paco and Tania G.'s car, blocked their exit, pointed his service weapon at them, and ordered them to stop and turn off the car or he would shoot.

Surveillance video showing the positions of Laing and Paco and Tania G. as Laing ordered them to stop is shown below:

¹ It was later determined that the Nissan had been stolen.

² Paco and Tania G. were charged in case number GA107144. Paco pled no contest to evading a police officer. She was also charged with assaulting a police officer and burglary. Those charges were dismissed as part of the plea agreement and she is awaiting sentencing. Tania G. pled no contest to commercial burglary and was sentenced to probation.



Figure 2- Video Surveillance of Laing Confronting Paco and Tania G.³

Paco then drove the car toward Laing, causing him to backpedal. Paco stopped the car before hitting Laing.

Paco opened her door. Laing ordered her to stay in the car. Laing moved around to the side of the car and kicked the driver's door closed. At that point Laing was no longer standing directly in front of the car. He was adjacent to the left front fender. Paco accelerated forward.

Laing, believing he would be crushed between Paco's car and his patrol car, fired a single round into the Nissan, apparently striking Paco in the right thumb. Paco and Tania G. sped away.

Laing was not struck or injured.

Laing's exact position at the time of the shooting cannot be determined with certainty from the surveillance video because the camera view was partially obstructed by a tree.

Laing's BWC is also not definitive because of the movement of the camera. However, it appears that Laing was facing Paco and the driver's side of her car, and his back was to his patrol car, when he fired.

The last frame of the surveillance video, a moment before Laing backpedaled and was obstructed by the tree, is shown below:

³ At the time of the shooting Laing had backpedaled and he cannot be seen in the video because the view is obstructed by a palm tree.



Figure 3- Video surveillance showing Laing backpedaling and Paco driving forward a moment before the round was fired.

The Pursuit and Crash

Paco and Tania G. sped away with several APD patrol units in pursuit. After approximately one and a half miles, Paco tried to make a right turn at approximately 95 m.p.h and crashed into a bridge. Paco was severely injured and had to be extricated from the vehicle. A photograph of the crashed Nissan is shown below:

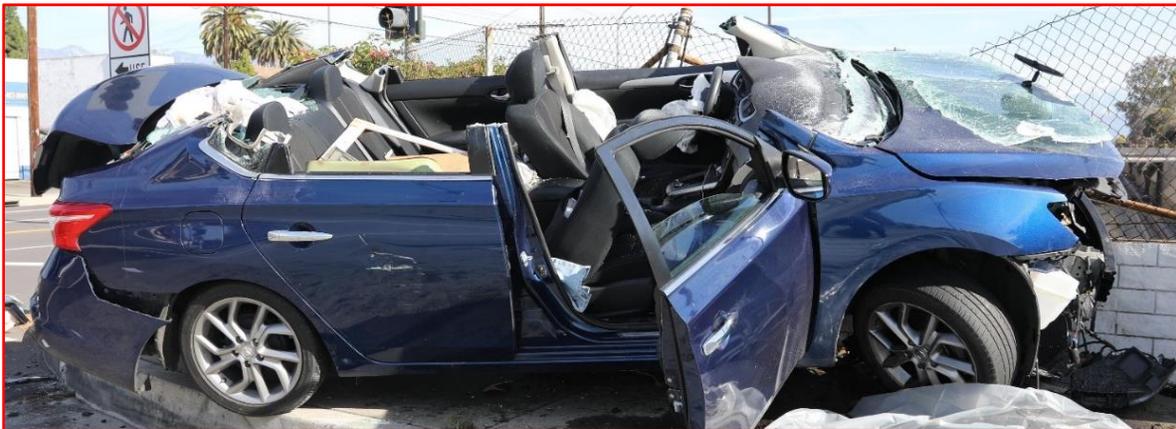


Figure 4- Photograph of the crashed Nissan after the fire department removed the roof to extricate Paco.

Paco's Thumb Injury

It appears that Laing's round struck Paco in the right thumb. Paco said the round struck her in the thumb, and a projectile was recovered from the shifter knob in the vehicle. However, Paco's physician could not determine with medical certainty what caused Paco's thumb injury.

Paco's Statements

While being extricated from the vehicle, Paco told an officer that she had been shot in the thumb. Two days later, detectives attempted to interview Paco in the hospital. Paco asked for a lawyer and did not provide a statement to the detectives.

Tania G.'s Statement

Tania G. told detectives she was involved in burglarizing the storage facility when she saw the police arrive. The officer "said stuff" but she could not recall what the officer said. When detectives asked Tania G. if Paco drove the car toward the officer, Tania G. replied, "Um, well, yeah, cause, yeah in a way, in a way, yeah, cause he was on the side, you know. Just pointing a gun at us." She said that when Paco drove off, the officer was not in front of their car. He was between the driver's side of their car and the patrol car. Tania G. did not know how close Paco came to hitting the officer. She said, "I mean, he was in the middle, you know? And so, I don't know. I don't know how close he was in the car, to the car. Like I said, he was in the middle but he was not close to the car enough to get hit, you know?"

Officer Laing's Statement

Laing provided a voluntary statement to investigators.

Laing said he was on patrol in an area where numerous commercial burglaries had occurred. He saw a Nissan Sentra parked in a closed storage facility. The trunk of the car was open and the trunk light was on. Laing stopped to make sure everything was "okay." He saw Paco and Tania G. running inside the storage facility and carrying property. He believed a burglary was in progress so he exited his patrol car, drew his service weapon, and ordered Paco and Tania G. to stop or he would deploy his K-9 partner "Mitch."

Paco and Tania G. did not comply, quickened their pace, and entered the Nissan through the passenger side. Laing ordered Paco and Tania G. to stop or he would shoot. Paco, who had entered the driver's seat, drove the vehicle toward him and stopped.

Paco raised her hands and Laing thought Paco was going to comply. However, Paco's right hand disappeared from Laing's view. Laing was concerned that Paco could be arming herself.

Paco opened the driver's side door. Laing kicked the door closed because he did not want Paco to exit the car with a weapon.

Laing was standing near Paco's driver's side mirror with his back to his patrol car when Paco drove her car forward and slightly toward him. He believed he did not have anywhere to go, had no path to retreat, and was going to be pinned between Paco's vehicle and his patrol car. Laing believed that if Paco continued to drive forward he would get crushed. He fired one round at Paco. He believed that firing his service weapon at Paco was the only option to keep him from getting pinned between his vehicle and Paco's vehicle. Laing said that using less-lethal means at that point would have been futile because Paco's window was up.

After Laing fired the round Paco flinched and sped away.

LEGAL ANALYSIS

The Law

California law permits the use of deadly force in self-defense or in the defense of others if the person claiming the right of self-defense or the defense of others actually and reasonably believed that he or others were in imminent danger of great bodily injury or death. Penal Code section 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.

A peace officer is justified in using deadly force upon another person when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary for either of the following reasons: (1) to defend against an imminent threat of death or serious bodily injury to the officer or to another person; or (2) To apprehend a fleeing person for any felony that threatened or resulted in death or serious bodily injury, if the officer reasonably believes that the person will cause death or serious bodily injury to another unless immediately apprehended. Penal Code sections 835a(c)(1)(A) & (B).

A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is on that, from appearances, must be instantly confronted and addressed. Penal Code section 835a(e)(2).

When considering the totality of the circumstances, all facts known to or perceived by the peace officer at the time, including the conduct of the officer and the subject leading up to the use of deadly force is taken into consideration. Penal Code sections 835a(a)(4) & (e)(3). The peace officer's decision to use force is not evaluated with the benefit of hindsight and shall account for occasions when officers may be forced to make quick judgments about using force. Penal Code section 835a(a)(4).

In evaluating whether a police officer's use of deadly force was reasonable in a specific situation, it is helpful to draw guidance from the objective standard of reasonableness adopted in civil actions alleging Fourth Amendment violations. "The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with 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.

Analysis

No criminal liability attaches to Laing's actions unless the prosecution can prove *beyond a reasonable doubt* that he was not actually and reasonably in fear for the safety of himself or others

when he fired his service weapon. *People v. Banks* (1976) 6 Cal.App.3d 379, 383-384. The prosecution cannot meet that burden in this case.

The evidence reviewed in this investigation shows that Paco and Tania G. were burglarizing a storage facility when Laing attempted to detain them at gunpoint. Laing stood in front of Paco's car and ordered her to stop the car, turn off the car, and stay in the car. Paco did not comply and drove the car toward Laing, causing him to backpedal. Paco then attempted to get out of the car. When Laing moved from the front of the car to the side of the car to kick the door closed, Paco drove forward. At that point, Laing was facing Paco and the driver's side of her car. His back was to his patrol car. Although the evidence does not establish that the path of the Nissan would have crushed Laing, Laing's statement that he believed that he was in imminent danger is not patently unreasonable.

Notably, a person is not guilty of a crime if he commits an act under an honest and reasonable belief in the existence of certain facts and circumstances, which, if true, would make such an act lawful. CALCRIM No. 3406; *People v. Raszler* (1965) 169 Cal.App.3d 1160; citing *People v. Osborne* (1979) 77 Cal.App. 3d 479. When a person commits an act based on a reasonable mistake of fact, his guilt or innocence is determined as if the facts were as he perceived them. *Id.* Moreover, if the person's beliefs were reasonable, *the danger does not need to have actually existed. Id.* (emphasis added).

Here, given the rapidly unfolding events, Laing's physical position, the unpredictability of Paco's driving and crashing the Nissan at almost 100 m.p.h., there is insufficient evidence to show that Laing's belief that he was going to be crushed was unreasonable.

CONCLUSION

Based on a review of the totality of the circumstances in this case, there is evidence that Laing fired his service weapon based on an honest and reasonable belief that Paco presented a deadly threat to him. Therefore, there is insufficient evidence to prove beyond a reasonable doubt that he did not act in lawful self-defense. We are closing our file and will take no further action in this matter.