

**Officer Involved Shooting of Eric Tintor
La Verne Police Department**

Officer Erick Eisen, #590

J.S.I.D. File #17-0459



JACKIE LACEY

District Attorney

Justice System Integrity Division

January 13, 2020

MEMORANDUM

TO: CHIEF NICK PAZ
La Verne Police Department
2061 Third Street
La Verne, California 91750

CAPTAIN KENT WEGENER
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Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

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

SUBJECT: Officer Involved Shooting of Eric Tintor
J.S.I.D. File #17-0459
L.A.S.D. File #017-00103-3199-145
La Verne File #170901533

DATE: January 13, 2020

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the September 23, 2017, non-fatal shooting of Eric Tintor by La Verne Police Department (LVPD) Officer Erick Eisen. It is our conclusion that Officer Eisen acted in lawful self defense when he fired his duty weapon.

The District Attorney's Command Center was notified of this shooting on September 23, 2017 at approximately 5:25 a.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by Los Angeles County Sheriff's Department (LASD) Lieutenant Rodney Moore.

The following analysis is based on reports, recorded interviews, photographs, and videos submitted to this office by LASD Homicide Bureau Detectives Dave Gunner and Alfred Jaime. The voluntary statement of Officer Eisen was considered as part of this analysis.

FACTUAL ANALYSIS

Tintor and Jaymie are married and live together in an apartment. On September 22, 2017, Jaymie and her friend Zinnia G. went out in the evening for dinner and drinks. When they returned to Jaymie's residence at about 11:30 p.m., they encountered Tintor who, according to Zinnia G., was "intoxicated." Jaymie, Zinnia G., and Tintor left the residence and went to the "Hi Brow" bar located at 547 East Foothill Boulevard in Pomona, to eat and drink some beer. Afterwards, the three returned to the residence. Once home, Tintor became agitated and started calling Jaymie a "bitch" and a "cunt." In response, Jaymie told Tintor to leave the residence.

Tintor grabbed a beer from the refrigerator and walked out the front door. Jaymie locked the door behind him.

A few minutes later, Tintor returned, banged on the front door, and demanded entry. Tintor screamed at Jaymie to give him money so he could get a hotel for the night. Tintor then jumped a wall and entered their backyard. Tintor approached the back kitchen window and began banging on it. Jaymie told Tintor to leave, but Tintor refused to do so.

Neighbor Marcelo F. awoke to the sounds of Tintor yelling. Marcelo F. looked out his upstairs bedroom window and witnessed Tintor banging on the back sliding glass door. He heard Tintor yell, "Fuck you bitch!" and "Open the fucking door!" Tintor then pulled the mesh screen door off the rails and continued to demand entry. Next, Tintor moved to the kitchen window and ripped off the screen. Tintor punched the kitchen window approximately two times causing it to shatter. After he broke the window, Tintor jumped over the wall and left.

Several neighbors called 9-1-1 to report the domestic disturbance. Including Peter W. who told the 9-1-1 operator that there was a guy trying to kick down a resident's door yelling, "I'm gonna shoot through the door! I'm gonna shoot through the door!" Peter. W. then heard glass break.

Eisen was working uniformed patrol and driving a marked black and white vehicle. He heard a radio broadcast of a male and female arguing where the "male was kicking/trying to kick a door down," which authorized a Code Three response. Eisen then responded to the scene with his lights and sirens activated.

Eisen arrived on scene, parked his vehicle, and proceeded towards Tintor's apartment. Tintor immediately jumped out from behind bushes and pointed a black object at Eisen, in a manner consistent with pointing a firearm. Tintor yelled at Eisen and began moving towards Eisen. Eisen believed Tintor was armed with a firearm and feared for his personal safety. As Tintor closed the distance, Eisen ordered Tintor to drop the item, however, Tintor refused. In response, Eisen fired several rounds from his firearm.¹ Tintor yelled, "You didn't get me" and continued to approach Eisen. As Eisen backed up, he observed the object in Tintor's hand light up. Realizing that Tintor was carrying a cell phone, Eisen holstered his firearm and drew his Taser. Eisen repeatedly told Tintor to drop the item, which Tintor refused. Tintor kept rushing towards Eisen, so Eisen deployed his Taser striking Tintor. The Taser deployment did not appear to affect Tintor and he kept walking towards Eisen. Tintor walked around the front of the patrol vehicle and in view of Eisen's dash camera. Eisen "cycled the Taser," administering a pulsating electrical charge to Tintor, however, this was ineffective as well. Tintor then stated to Eisen, "You want the real thing?"

At this time, LVPD Officer Laura Toscano arrived on scene responding to the domestic violence call. She arrived approximately 45 seconds after Eisen, in a marked patrol vehicle. She parked her vehicle directly opposite of Eisen's vehicle facing his in the parking lot. See figure one.

¹ Eisen fired his duty weapon seven times, but Tintor was not struck by the gunfire.



Figure 1: Tintor walked towards Eisen, around the front of patrol vehicle, while Taser wires attached to him.

As Tintor kept approaching Eisen, Tintor reached with his right hand into his back pocket.



Figure 2: Tintor reached for his back pocket as he walked towards Eisen.

Eisen believed Tintor was reaching for a weapon. In fear, Eisen again drew his service weapon and fired his weapon twice, striking Tintor.² At the same time Eisen fired, Toscano ran towards Eisen to assist him. One of Eisen's bullets ricocheted off the floor and struck Toscano. See Figures three and four.

² Per Detective Jaime, the investigators were not able to determine when exactly Tintor was struck by the bullets. However, the fact that Tintor did not fall down and stated, "You didn't get me," after the first shots likely shows he was not injured until the second round of shots were fired.



Figure 3: Bullet ricocheted off the ground as Toscano runs towards Eisen.



Figure 4: Toscano is struck by Eisen's bullet.

After Toscano was struck, she dropped to the ground and crawled to take cover behind an adjacent parked car. Eisen went over to Toscano to render aid to her. Additional officers arrived and rendered aid to Tintor until the La Verne Fire Department took over medical treatment. Tintor and Toscano were transported to Pomona Valley Hospital. Tintor was treated for gunshot

wounds to his chest and to his lower hip. Toscano was treated for a gunshot wound to her pelvis. Both Tintor and Toscano survived their injuries.

After Tintor was transported to the hospital, LVPD Officer Greg Rodriguez located a clear plastic straw and white powdery substance amongst Tintor's clothing.³ The substance was later tested and found to contain .364 grams of cocaine. A subsequent screening test of Tintor's blood done at the hospital, revealed the presence of cocaine in his system and that he had a Blood Alcohol Concentration of .07%. A subsequent confirmatory test of his blood, discovered cocaine was not present, however, 46 ng/ml of Benzoylcegonie was present, which is a compound formed in the liver by the metabolism of cocaine.



Figure 5: A bag of cocaine was located amongst Tintor's clothing

Joshua O., a neighbor and witness, advised LVPD Officer Michael Martinez that he saw Tintor hide something under a rock just before Eisen arrived. Joshua O. directed Martinez to a rock in the area of the parking lot where the dirt meets the pavement. Martinez lifted the rock and seized an additional baggie containing a white powdery substance, later confirmed to contain 0.924 grams of cocaine.

A criminal case was filed against Tintor in case #KA117029. He was charged with one felony count of Penal Code § 148.10(a), resisting a peace officer causing serious bodily injury to

³ Tintor's clothing was removed by treating paramedics from La Verne Fire Department and left behind when they transported Tintor to the hospital.

Toscano, and one misdemeanor charge of Penal Code § 594(a), vandalism. On February 20, 2018, Tintor pled no contest to both counts and was placed on formal probation. On March 6, 2018, Tintor wrote an apology letter.

3/6/18

I would like to sincerely apologize to the officers involved in the incident on September 23rd, 2017. I was not myself the night of the incident and was not even aware of my actions or thoughts. After losing my house, and going through bankruptcy I found myself in a battle with alcoholism which led up to this event. After multiple gunshot wounds, dying on the hospital operating table several times, and miraculously awakening in critical condition, I have a much greater appreciation for life, family and God. I have dedicated my life to sobriety and being here, so for my family. Not a day goes by where I don't feel bad about the people who were affected by my drinking problems. I am actively involved in AA and NA meetings and I like to make amends with the people whose lives were affected by my actions, including the officers of the La Verne Police Department.

Sincerely,
Eric Tintor

Figure 6: Apology letter written by Tintor.

LEGAL ANALYSIS

Shooting of Tintor

A police officer may use reasonable force to effect an arrest, prevent escape, or overcome resistance of a person the officer believes has committed a crime. Penal Code § 835a. An officer “may use all the force that appears to him to be necessary to overcome all resistance, even to the taking of life; [an officer is justified in taking a life if] the resistance [is] such as appears to the officer likely to inflict great bodily injury upon himself or those acting with him.” People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

California law permits any person to use deadly force in self defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also* 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.

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

Actual danger is not necessary to justify the use of deadly force in self defense. If one is confronted by the appearance of danger which one believes, and a reasonable person in the same position would believe, would result in death or great bodily injury, one may act upon those circumstances. The right of self defense is the same whether the danger is real or merely apparent. People v. Toledo (1948) 85 Cal.App.2d 577.

In protecting oneself or another, a person may use all the force that they believe is reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury that appears to be imminent. CALCRIM No. 3470

In this case, Eisen responded to the scene with a heightened sense of caution due to the nature of the dispatch. Immediately upon exiting his patrol vehicle, Tintor jumped out from behind some bushes and pointed a black object at Eisen. Considering these circumstances, coupled with the fact that Tintor refused to drop the item and kept coming towards Eisen, Eisen, forced to make a split second decision, reasonably concluded that Tintor had a weapon and Eisen’s life was in danger. As such, Eisen’s decision to fire at Tintor in order to protect his life was reasonable.

Shortly after the first volley, Eisen learned that the object in Tintor’s hand was a cell phone. Armed with this new information, Eisen reasonably chose to decrease the level of force. Eisen deployed his Taser in an attempt to gain compliance from Tintor.

Tintor, however, did not comply despite getting tased. Tintor kept approaching Eisen. Tintor threatened Eisen by asking him if he wanted the “real thing.” Eisen reasonably believed that Tintor was asking Eisen if he wanted to get shot by a gun, as opposed to his cell phone. Tintor then reached to his back pocket as he closed the distance between them. Based on these actions, it was reasonable for Eisen to believe that Tintor was reaching for a deadly weapon. As such, Eisen’s decision to fire his duty weapon at Tintor was reasonable.

Shooting of Toscano

To be convicted of a battery causing serious injury in California, a person must have willfully and unlawfully touched another person and that touching caused an injury. CALCRIM No. 925. For a touching to be unlawful, a person must not only touch another person, “but must do so with wrongful intent. A person acts with wrongful intent when he or she intentionally does a prohibited act.” Penal Code section 20; CALCRIM No. 250. A person cannot be convicted of a crime if the prohibited act was committed accidentally. *See* CALCRIM No. 3404.

To be convicted of shooting a firearm in a grossly negligent manner, a person must “act in a reckless way that creates a high risk of death or great bodily injury.” Penal Code section 246.3; CALCRIM No. 970. The act must be “so different from the way an ordinarily careful person would act in the same situation that his or her act amounts to disregard for human life or indifference to the consequences of that act.” *Id.*

In this case, Eisen fired his weapon twice at Tintor and one of the bullets ricocheted off the ground and hit Toscano as she was running towards the confrontation to assist Eisen. The evidence shows Eisen unintentionally shot Toscano. There is no evidence that Eisen willfully intended to strike Toscano. Because the striking of Toscano was accidental, there is no criminal liability for battery.

Furthermore, there is no evidence that Eisen fired his firearm in a grossly negligent manner. Eisen’s bullet hit Tintor, his target, when he fired his weapon. This evidence does not suggest he acted “in a reckless way that creates a high risk of death or great bodily injury;” it is only through extremely unfortunate circumstances that the bullet ricocheted off the ground, and hit Toscano as she was running towards the conflict in an attempt to assist Eisen in detaining Tintor.

Because Toscano was shot accidentally and Eisen did not act with gross negligence, there is no criminal liability for his conduct.

CONCLUSION

We conclude that Eisen acted lawfully in self defense when he shot at Tintor. Furthermore, Toscano was shot accidentally by one of Eisen’s bullets when he was lawfully defending himself. We are closing our file and will take no further action in this matter.