

Officer Involved Shooting of Abie G [REDACTED]
Los Angeles Police Department

Officer Kevin Scott, #31774

J.S.I.D. File #16-0574



JACKIE LACEY

District Attorney

Justice System Integrity Division

February 2, 2018

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 Abie G■■■
J.S.I.D. File #16-0574
F.I.D. File #F071-16

DATE: February 2, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 4, 2016, non-fatal shooting of Abie G■■■ by Los Angeles Police Department (LAPD) Officer Kevin Scott. It is our conclusion that Officer Scott's shooting of G■■■ was accidental.

The District Attorney's Command Center was notified of this shooting on November 4, 2016, at approximately 4:10 p.m. The District Attorney Response Team responded to the location. They were given a briefing and walk-through of the scene by LAPD Lieutenant Brian Gilman.

The following analysis is based on reports, recorded interviews, videos and photographs submitted to this office by the LAPD's Force Investigation Division. The departmentally compelled statement of Officer Scott was not considered in this analysis.

FACTUAL ANALYSIS

On November 4, 2016, at approximately 3:20 p.m., Officer Scott and his partner, Officer Roberto Morales, were patrolling the Venice Boardwalk on their LAPD horses. While on patrol, they approached Jarod S■■■, Samantha M■■■ and Robert F■■■ who were sitting on the sand next to a cement bicycle path along the Pacific coast. Some of the possessions of the group were strewn on the pathway.¹ Scott and Morales asked S■■■ and M■■■ to move their property but they did not respond to the officers' request. Scott and Morales dismounted from their horses to speak with S■■■ after it became clear he was intoxicated.

¹ S■■■, M■■■, and F■■■ consider themselves "travelers." They are transient and homeless. S■■■ admitted to consuming one liter of vodka and smoking marijuana before the officers contacted him. M■■■ and F■■■ also admitted to consuming significant amounts of alcohol before interacting with the officers.

As Morales was speaking to S█, M█ was shouting and cursing at the officers. Morales conducted a records check for S█ over the police radio and was told that S█ had an outstanding misdemeanor warrant for his arrest. In response, Morales told S█ that he was under arrest and requested the response of an LAPD van to transport S█ to jail. While Morales and Scott were waiting for the van to arrive, M█ became more combative toward the officers. She approached the officers several times, despite being warned not to interfere with S█'s arrest. M█'s yelling attracted a small crowd who gathered around the officers.

As Morales and Scott were trying to detain S█, F█ was with three dogs, including his 55 pound, brown pit bull.² As M█ became angrier, the dogs started barking aggressively toward the officers. M█ continued moving toward and cursing at the officers and was detained for interfering with their investigation. As soon as the officers detained M█, she immediately resisted arrest and started trying to wrestle with Morales and Scott. The officers were able to handcuff M█, but she continued flailing her legs and trying to get up. As Morales was holding M█ on the ground, the pit bull near F█ charged Scott, and bit him on the left hand and forearm. In response, Scott drew his firearm with his right hand and shot the dog one time as the dog was biting his left wrist.

As Scott and Morales were trying to restrain S█ and M█, Abie G█ and her boyfriend, Richard M█, were riding rental bicycles north on the bicycle path toward the altercation. They maneuvered their bicycles to the far side of the path to continue past when they saw a large brown dog attack Scott. M█, who was riding in front of G█, saw the dog biting Scott's hand. He turned to watch where he was going when he heard a gunshot, then turned back to see that Scott had fired a shot with his right hand as the dog was actively biting his left hand. As soon as the shot rang out, M█ heard G█ scream; he looked over to see her lying in the sand with "an entry wound in her leg."

G█ was riding behind M█ when they came around a curve and saw the officers arresting a man and a woman. G█ saw several dogs around and "noticed that [a] dog was biting onto an officer's arm and then the next thing I know, my leg hurt." Morales broadcast a help call on his radio and summoned an ambulance for G█. G█ was transported to the hospital and an intact bullet was removed from her right calf. The bullet had apparently traveled through the pit bull and impacted G█'s leg as she rode past.

It is undisputed that Scott fired one time at the dog.

LEGAL ANALYSIS

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

² There were multiple witnesses to the shooting. Most of the witnesses agreed that the dogs were on leashes but were not being restrained when the pit bull attacked Scott. F█, M█ and S█ all insisted that the dog was standing with or near F█ and was never aggressive; however, each of them stated that they did not see what happened when Scott shot. Based on the totality of the evidence, their statements are not credible.

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, Scott shot a 55-pound pit bull which was actively attacking him. He fired his weapon one time. Unfortunately, at the moment he fired, G■■ happened to be riding a bicycle into the path of Scott’s shot. There is no evidence that Scott willfully intended to strike G■■. Because the striking of G■■ was accidental, there is no criminal liability for battery.

Further, there is no evidence that Scott shot his firearm in a grossly negligent manner. Scott only fired one shot, fired that shot as the dog was biting his arm, and apparently aimed directly into the dog’s chest when he shot. 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 traveled through the dog and impacted G■■ as she was riding past on her bicycle.

Because G■■ was shot accidentally and Scott did not act with gross negligence, there is no criminal liability for his conduct.³

CONCLUSION

We conclude that Officer Kevin Scott’s shot accidentally struck Abie G■■ when defending himself from a 55-pound pit bull dog. We are closing our file and will take no further action in this matter.

³ To be charged with animal cruelty, Scott would have had to kill the dog “maliciously” meaning that he had an “unlawful intent to disturb, annoy or injure an animal.” CALCRIM No. 2953. Because he acted to stop the dog from attacking him further, Scott cannot be said to have acted unlawfully.