

**Officer Involved Shooting of Hung Doan Nguyen
Long Beach Police Department**

Officer Madison Moss, #10547

J.S.I.D. File #15-0632



JACKIE LACEY

District Attorney

Justice System Integrity Division

July 20, 2016

MEMORANDUM

TO: CHIEF ROBERT LUNA
Long Beach Police Department
400 West Broadway
Long Beach, California 90802

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

SUBJECT: Officer Involved Shooting of Hung Doan Nguyen
J.S.I.D. File #15-0632
L.B.P.D. DR File #15-73007

DATE: July 20, 2016

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the November 26, 2015, non-fatal shooting of Hung Doan Nguyen by Long Beach Police Department (LBPD) Officer Madison Moss. We have concluded that Officer Moss acted lawfully in self defense.

The District Attorney's Command Center was notified of the shooting on November 27, 2015, at approximately 12:53 a.m. The District Attorney's Response Team responded to the location and was given a preliminary briefing on the circumstances of the incident and a walk-through of the scene.

The following analysis is based upon investigative reports, evidence reports and transcribed witness statements taken during the course of the investigation by the LBPD and submitted to this office by Detectives Robert Gonzales and Malcolm Evans, LBPD Gang and Violent Crimes Division. Officer Moss's voluntary statements were considered in this analysis.

FACTUAL ANALYSIS

On November 26, 2015, at approximately 11:22 p.m., LBPD Officer Madison Moss was on uniform patrol when she received a radio call of a possible battery. The dispatch operator stated that a battery victim had reported they were bleeding and in need of paramedics.¹ It was unknown if any weapons were involved or if the suspect was still at the scene. Moss radioed that she would respond to the incident, which was occurring at 327 Sunset Street. Moss was advised that Long Beach Fire Department (LBFD) was also in route.

¹ The male caller was difficult to understand and did not know his address. He stated that he was "bleeding a lot" and that "somebody beat me." The caller then ended the call and did not answer when the dispatch operator called back.

Upon arrival at the scene, Moss, who was in full police uniform, parked her marked police vehicle in front of 327 Sunset Street and turned on the vehicle's rear amber lights. Approaching the wrought iron fence that led to the front of the home, she found it locked. Decorative tips from the fence were seen broken on the ground.²

Moss approached using the driveway attached to the side of the home. The driveway was also guarded by a sideways-sliding wrought iron gate, but the gate was unlocked and partially open. Moss observed two vehicles parked in the driveway and a light emanating from the side entrance of the home.

Moss decided to enter the property, not waiting for backup, because she believed there was a battery victim that was bleeding and in need of immediate medical attention. As she pulled the gate fully open, she observed flashing lights approaching, so she knew backup would be arriving shortly.

As Moss entered the property, she observed that the side entrance to the home was open and that there were additional lights inside the home that further illuminated the side door. Moss began walking down the driveway along the fence separating the neighbor's property, searching for the battery victim.

As Moss moved along the fence, 10-15 feet away from the door, she observed Hung Doan Nguyen step out of the house onto the side porch carrying a large meat cleaver in his right hand.³ Blood was dripping from Nguyen's forehead as he stopped and stared at Moss.

Unsure if Nguyen was the victim of the battery or the assailant, Moss unholstered her service weapon and pointed it at him. Moss ordered Nguyen to put down the knife. This order was heard by Officer Kevin Johansen, who was arriving at the scene.⁴ Nguyen turned his body and looked at Moss.

Nguyen raised the meat cleaver above his head and held it in the air perpendicular to his body. Moss again ordered Nguyen to put down the knife. Nguyen cocked his arm in a backward motion, bending his elbow into the beginning position of an overhand throwing motion.⁵

As Nguyen started to swing his arm forward, and believing Nguyen to be an imminent threat to her life, Moss fired four rounds at Nguyen to end the threat. Due to the rapid pace at which the events occurred, Moss was not able to retreat to a position of safety or identify herself verbally as a police officer.

² Earlier in the evening, neighbor Silvia Martinez heard Nguyen repeatedly hitting the wrought iron fence with an object she believed to be a tire iron or baseball bat. A baseball bat was located in Nguyen's home.

³ The meat cleaver was 12 inches in total length with a 7 inch metal blade.

⁴ Silvia Martinez also heard a female voice yell, "Drop the knife!"

⁵ Johansen was not yet in a position to see Nguyen's actions, nor were any other witnesses other than Moss.

Nguyen fell to the ground, laying inside the entryway to the residence. Believing him to no longer be a threat, Moss approached the entryway and stood at the bottom of the steps leading up to the porch. Moss observed that the meat cleaver was laying on the ground next to Nguyen's head.

Officer Johansen radioed for paramedics. Officers Reno and Rodriguez then arrived on scene. Rodriguez stayed with Nguyen, while Moss, Johansen and Reno conducted a safety sweep of the home, in an attempt to locate any possible victims inside.

Finding none, the officers returned to where Nguyen was laying and assisted Rodriguez in providing him with medical attention. Paramedics arrived and transported Nguyen to Long Beach Memorial Hospital. While at the hospital, medical staff determined that Nguyen was heavily intoxicated. Nguyen repeatedly threatened to shoot the nurses who were trying to administer first aid.⁶

On November 27, 2015, LBPD Detectives Gonzales and Evans interviewed Nguyen at the hospital. Nguyen told them he had been drinking the previous night and had no memory of the confrontation with Officer Moss.⁷ Nguyen identified the meat cleaver as his property and admitted he has previously been arrested for alcohol-related incidences including domestic violence. Nguyen also had no memory of placing the 9-1-1 call reporting his injuries and requesting assistance.⁸

Nguyen pled no contest in case number NA103100 to a felony violation of Penal Code § 69 and was sentenced to three years formal probation.

LEGAL ANALYSIS

California law permits the use of deadly force in self-defense or in the defense of others if it reasonably appears that the person claiming the right of self-defense or defense of others actually and reasonably believed that he was in danger of great bodily injury or death. 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. Mercer (1962) 210 Cal.App.2d 153, 161.

In protecting himself or another, a person may use all 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 imminent injury. CALCRIM No. 3470.

“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

⁶ Nguyen yelled, “Don’t touch me, I’m gonna shoot you” and “Shoot you guys. I’m going to shoot you.”

⁷ Nguyen specifically remembered drinking four beers earlier in the day and approximately ten tequila shots at a neighbor’s party earlier in the evening.

⁸ Based on his head wound and the slurring voice in the 9-1-1 recording, investigators determined that Nguyen was the battery victim that had called 9-1-1.

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 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.

CONCLUSION

The evidence examined in this investigation shows that Officer Moss responded to a call of a possible battery. Moss did not know if the assailant was armed or still at the scene. Moss arrived at the scene, and in search of the victim, entered the property through a partially open gate.

Nguyen appeared at the side entry of the home, holding a meat cleaver. Moss repeatedly ordered Nguyen to put down the knife, but instead raised it above his head and cocked it back into the starting position of a throwing motion. Fearing imminent great bodily injury or death, Moss fired four shots at Nguyen, ending the threat.

Given the quickly evolving and life-threatening scenario that confronted Officer Moss, we conclude that she acted lawfully in self defense. We are therefore closing our file and will take no further action on this matter.