LOS ANGELES COUNTY DISTRICT ATTORNEY CHARGE EVALUATION WORKSHEET

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ХГ	ELONY	LAPD - INTERNAL AFFAIRS AGENCY FILE NO. (DR OR URN) D		DA CAS	DA CASE NO. 37953075			DATE 02/14/2017		
	/ISDEMEANOR			DA OFFICE CODE		VICTIM ASSISTANCE REFERRAL				
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SUSP						CHARGES				
NO.			SUSPECT			CODE	SECTION	OFFENSE DATE	REASON CODE	
	NAME (LAST, FIRST MIDDLE))					T-10122727			3052	
	GAINES, KEVIN					PC	118.1	04/13/2014	В	
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1						PC	110.1	04/29/2014	В	
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	08/18/1985 M									
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	NAME (LAST, FIRST MIDDLE))					PC	140 4	0.4/4.0/0.04.4		
	PARKS, MIC	HAEL				PC	118.1 118	04/13/2014 04/13/2014	B B	
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JAMES W. GARRISON/ap					1570	170				
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FILING OFFICER (PRINT): SGT. PETER HARRIS FILING OFFICER (SIGNATURE): Mailed 2/14/17 SERIAL #. 27304										
עכ	REASON CODES To Testify (FORM 8715) E. Witness Unavailable/Declines I.					ther (indic omments	ate the reason in section)	l l	L. Prosecutor Prefiling Deferral	
						eferred to Non-California DISTRICT ATTORNEY'S REASON CODES				
	A. Lack of Corpus F. Combined with Other J. D						Revocation of	M. Probation Violation filed in lieu of		
						arole lieu of Urther Investigation N. Referred to City Attorney for Misdemeanor Consideration				

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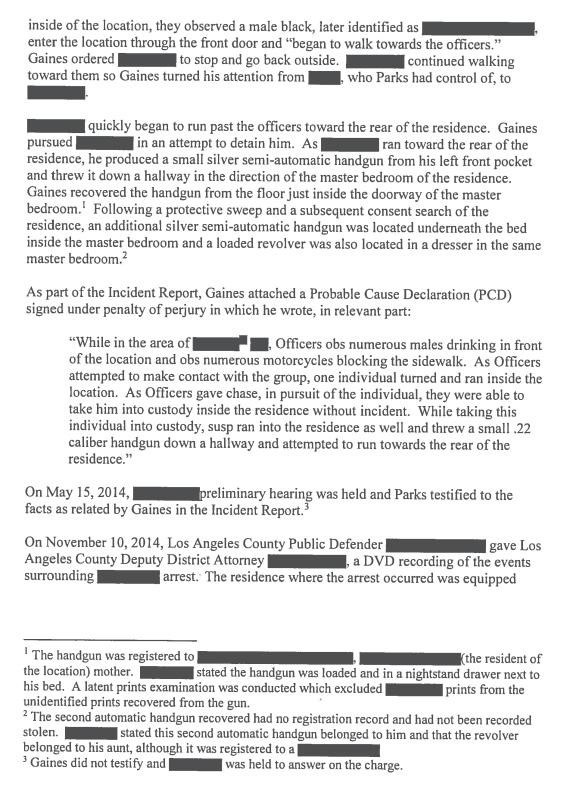
The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of allegations (stemming from two separate incidents in regards to Officer Kevin Gaines) that Los Angeles Police Department (LAPD) Officer Kevin Gaines, Serial #40210, and Officer Michael Parks, Serial #38811, committed the crimes of filing a false police report in violation of Penal Code 118.1 and perjury in violation of Penal Code 118, respectively. For the reasons set forth below, this office declines to initiate criminal proceedings.

The following analysis is based upon reports and video evidence submitted to this office by LAPD Sergeant Pete Harris and Detective Carrie Katsumata of the Internal Affairs Group (IAG), Criminal Investigative Division.

FACTUAL ANALYSIS

The	Incident	
firearm by a Incident Rep in charge follow 2104. obtained a hot that contradic detention. A	felon in violation of Persont subsequent to the arm Superior Court Case #1 wing Parks' testimony a attorney, Deputy tome security surveilland cts Gaines' account of the sare against	for possession of a small Code section 29800(a). Gaines prepared an arrest. As a result, a felony charge was filed against was held to answer on the preliminary hearing held on May 15, Public Defender preliminary hearing held on May 15, Subsequently ce video from the house where the arrest took place the facts that justified and preferred the matter to the Justice System
5:02 p.m., Ga Enforcement intersection, residence loc bikes on the individuals d grass and wa	aines and Parks were or Detail in uniform and they observed a large grated at sidewalk blocking pedelrinking alcohol and obselkway of the residence.	athored by Gaines, on April 13, 2014 at approximately in patrol as part of the 77 th Division Gang in a marked patrol car. As they came to a stop at an group of males hanging outside in front of the They also observed numerous motorcycles and estrian traffic. As they got closer, they observed served numerous open containers of alcohol on the Based on the observed violations, the officers exited vestigation for the violations.
towards the hard and ask right shoulde back around unit to the loc	house and begin walking ked him to stop and turn or and observed myself and began to sprint insi cation as they went in p	male black, later identified as turn g towards the front door. Gaines quickly called out to a round. Gaines wrote that "looked over his and my partner's position and then quickly turned ide the location." The officers requested a back-up oursuit of the location. They were able to detain just a few feet

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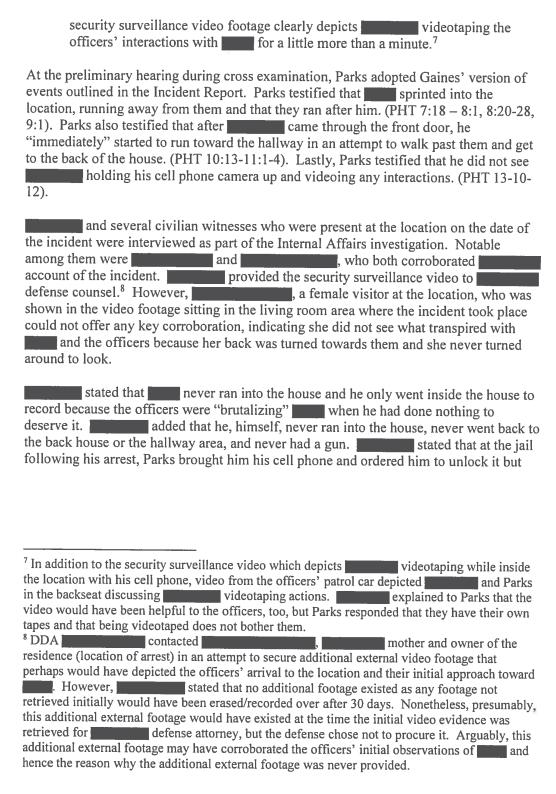


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with security cameras.⁴ The version of events narrated in the Incident Report authored by Gaines and testified to by Parks at the preliminary hearing is contradicted by the events captured on the security surveillance video, as well as by the statements of several witnesses provided to investigator. A comparison between the security surveillance video footage and the Incident Report reveals two discrepancies: First, did not "sprint" into the location. The video depicts entering the front door but does not appear to be running or sprinting as stated in the Incident Report or testified to by Parks.⁵ Second, while the officers were taking into custody, did not "run" into the residence as stated by Gaines in the PCD; nor did almost "immediately" run after entering the location as testified by Parks. Upon entering the location, stood near the entrance, took out his cell phone and began recording the struggle with which was not captured by the security cameras.6 Additionally, contrary to Park's testimony at the preliminary hearing that he never saw holding his camera up and videotaping any interactions, the

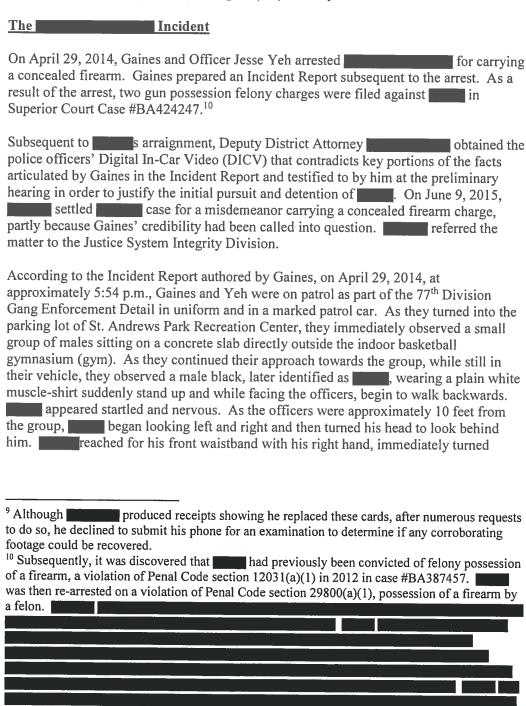
⁴ Four separate video clips from the security surveillance cameras were provided to investigators. The only video evidence received are the four video clips defense attorney chose to provide to this office. Although, presumably additional external footage existed at one time of the officers' initial arrival and approach to the location, none of this additional footage was ever provided. The video clips' date and time stamp match the date and time in question and contain no sound. Three of the video clips appear to be from a camera mounted by the front door to the house and facing the interior of the living room. The first of the four video clips captured entry into the location and the ensuing developments. A second video clip appears to be a continuation of the first video clip and depicts Parks going back inside the house and subsequently escorting a handcuffed and later a handcuffed outside the location. A third video clip appears to begin recording 24 minutes after the second video clip and depicts being brought handcuffed into the house by officers. The fourth video clip appears to be from a different camera and directed to the front yard of the house. This video clip depicts patrol cars parked in front of the location and officers' activities in front of the location. is seen walking into the house with a cup in his right hand, entering in a casual manner. then disappears in the house and out of view. A few seconds later, Gaines is observed entering quickly after ⁶ Three seconds after Gaines enters the location after walks into the frame. He stands at the doorway facing inward and appears to be manipulating a cell phone. begins to film with his cell phone pointed toward the interior. cell phone pointed toward the area where and the two officers were located for more than thirty seconds before moving further into the house and out of camera view.

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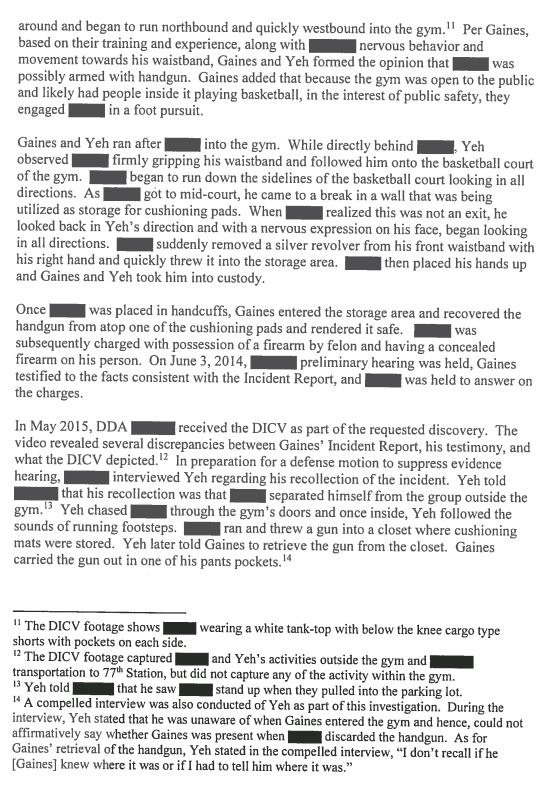


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refused. Thereafter, Gaines opened the phone and removed the Subscriber Identity Module (SIM) and Secure Digital (SD) memory cards.⁹



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Concluding that Yeh was credible because he could adequately describe what he heard and how he heard it, procured a negotiated disposition of case but referred the matter to the Justice System Integrity Division in respect to Gaines. A comparison between the DICV footage, Gaines' Incident Report, and Gaines' preliminary hearing testimony reveals several discrepancies: The officers were far down the parking lot when stood up. Gaines' report and testimony stated he and Yeh's police vehicle was approximately 10 feet away when stood up and ran into the gym, when in fact, the DICV revealed the distance was approximately 97 feet. The DICV footage further shows that never looked in the officers' direction, never grabbed his waistband, never walked backwards, did not run prior to entering the gym, and Gaines did not immediately follow Yeh into the gym. Instead, Gaines remained outside of the gym for 54 seconds, talking to several unidentified men and checking them for weapons, prior to joining Yeh inside. Nonetheless, the DICV footage does show standing from a seated position on a concrete curb and turning counter-clockwise away from Gaines and Yeh. disappears momentarily behind a tree and a bush. reappears, still facing away from the officers, and raises his left arm toward his upper torso area, while his right arm remains at his side. raises his right arm and walks casually into the gym. A second later, Yeh enters the camera view from the passenger side with his back toward the camera. Yeh runs towards the gym's doors and enters going out of view. was interviewed by Internal Affairs investigators while in custody in his pending felony criminal case. appeared to be convinced that the "real" officer who arrested him was "Beck" and not Gaines. 15 also denied possessing a gun. He believed that Gaines and Yeh made up his arrest because he never saw a photo of the gun Gaines and Yeh claimed he had in his possession.

LEGAL ANALYSIS

Filing a False Police Report and Perjury

Penal Code section 118.1 provides:

Every peace officer who files any report with the agency which employs him or her regarding the commission of any crime or any investigation of any crime, if he or she knowingly and intentionally makes any statement regarding any material matter in the report which the officer knows to be false, whether or not

¹⁵ The investigation revealed that there was, in fact, an Officer Beck assigned to 77th Station at the time of arrest with somewhat similar physical characteristics to Gaines, but Officer Beck was not involved in April 29, 2014 arrest.

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the statement is certified or otherwise expressly reported as true, is guilty of filing a false police report...

Penal Code section 118(a) provides in relevant part that:

Any person who, having taken an oath that he will declare or certify truly before any competent tribunal, officer, or person, in any of the cases in which the oath may by law of the State of California be administered, willfully and contrary to the oath, states as true any material matter which he knows to be false, is guilty of perjury. A false statement is material if it could have influenced the outcome or proceedings. *People v. Rubio* (2004) 121 Cal.App.4th 927. Materiality is an issue that must be decided by a jury. *People v. Kobrin* (1995) 11 Cal.4th 416.

In addition, pursuant to the Los Angeles County District Attorney's Legal Policies Manual, the prosecution must consider the possibility of conviction by an objective fact finder when deciding whether to file criminal charges.

Viewing the evidence in its totality, it cannot be proven beyond a reasonable doubt that
Parks' testimony under oath at preliminary hearing and Gaines' Incident
Report and his declaration in the PCD were false. Although the portion of the security
surveillance video footage provided by attorney casts doubt on the assertion
that "sprinted" into the location, the video footage is incomplete in that it does not
depict movements prior to approaching the front door of the location. The
complete video footage was never provided. The lack of this video footage leaves open
the plausible argument on behalf of Gaines and Parks that did sprint towards the
location - justifying Gaines and Parks' actions, but this was not captured by the partial
video provided by attorney. It is also significant that the the transfer of th
only witness present in the living room at the time of the officers' altercation with
could not or would not, corroborate and account that was
detained for no reason and that he was assaulted by the officers.
Further, although the security surveillance video shows walking into the location to begin filming, shortly thereafter he disappears from camera view allowing the
argument on behalf of the officers that that is when he interfered with the officers'
actions and then proceeded into the hallway to toss the gun. It weighs against
credibility that he declined to make his phone available to see if his account of events
could be corroborated by a forensic examination of his phone.
As for case, although the evidence shows that Gaines may have attributed
suspicious behavior to that is unsupported by the DICV footage, some of the video
footage is not absolutely clear such that it can be said that those actions on part
never took place. Such is the case when is standing by the entryway to the gym,
where the video footage does not clearly depict body movements. This leaves

¹⁶ CALCRIM No. 2640

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room for the possibility that did exhibit the suspicious behavior described by Gaines, but that it was not captured by the video due to its distance and position. Further, individually, the discrepancies, in and of themselves, are not material and could be attributed to innocent miss-recollection. Such is the case with Gaines' estimation that he made his observations of behavior from 10 feet away, when a close examination of the video and the location indicated the observations may have been made from a farther distance. denies he possessed a gun and claims Yeh and Gaines made the arrest up, presumably planting the gun on him. However, has credibility issues which make any criminal case against the officers' in this case difficult to prove beyond a reasonable doubt. Not only is confused about the officer who "falsely" arrested him, but he has a serious and lengthy criminal history which would serve to impeach his credibility in any criminal proceeding against these officers. serious felony offenses with allegations of evidence tampering, casting doubt on his credibility when he denies he possessed a gun on the date he had his encounter with Yeh and Gaines. Lastly, as for the allegation that Gaines testified falsely when he stated he personally observed discard the handgun and only learned that from Yeh, the falsity of this statement also cannot be proven beyond a reasonable doubt. During his compelled interview, Yeh stated that he was unaware of when Gaines entered the gym and hence, cannot say if Gaines personally observed discard the handgun. Yeh's statement leaves open the possibility that Gaines made his own observations of discarding the gun. **CONCLUSION** The video evidence in the matter certainly calls into question the accuracy of Gaines' police report and Parks' testimony. The video evidence in the matter similarly raises questions as to the accuracy of Gaines' police report and preliminary hearing testimony. Nonetheless, despite the issues raised by these two matters, objectively and in its totality, there is insufficient evidence to prove beyond a reasonable doubt that Officers Kevin Gaines and Michael Parks committed the crimes of filing a false police report and perjury in the matter, and insufficient evidence to prove beyond a reasonable doubt that Gaines committed those same crimes in the matter. Therefore, prosecution in these two matters is declined and this office will take no further action.