

**LOS ANGELES COUNTY DISTRICT ATTORNEY
CHARGE EVALUATION WORKSHEET**

<input checked="" type="checkbox"/> FELONY	AGENCY NAME LAPD - INTERNAL AFFAIRS	DA CASE NO. 37953075	DATE 02/14/2017
<input type="checkbox"/> MISDEMEANOR	AGENCY FILE NO. (DR OR URN) 14-003455/15-001941	DA OFFICE CODE J.S.I.D. #14-0701R	VICTIM ASSISTANCE REFERRAL <input type="checkbox"/> YES - NOTIFY VWAP <input checked="" type="checkbox"/> NO

SUSP NO.	SUSPECT				CHARGES			
					CODE	SECTION	OFFENSE DATE	REASON CODE
1	NAME (LAST, FIRST MIDDLE)) GAINES, KEVIN				PC	118.1	04/13/2014	B
					PC	118	04/13/2014	B
					PC	118.1	04/29/2014	B
	DOB 08/18/1985		SEX (M/F) M	BOOKING NO.	VIP -- Yes X No			
	<input type="checkbox"/> Gang Member Name of Gang: _____ <input type="checkbox"/> Victim Gang Member Name of Gang: _____							
Victim Name: _____				Victim DOB: _____				
2	NAME (LAST, FIRST MIDDLE)) PARKS, MICHAEL				PC	118.1	04/13/2014	B
					PC	118	04/13/2014	B
	DOB 03/24/1986		SEX (M/F) M	BOOKING NO.	VIP -- Yes X No			
	<input type="checkbox"/> Gang Member Name of Gang: _____ <input type="checkbox"/> Victim Gang Member Name of Gang: _____							
	Victim Name: _____				Victim DOB: _____			
3	NAME (LAST, FIRST MIDDLE))							
	DOB		SEX (M/F)	BOOKING NO.	VIP -- Yes -- No			
	<input type="checkbox"/> Gang Member Name of Gang: _____ <input type="checkbox"/> Victim Gang Member Name of Gang: _____							
	Victim Name: _____				Victim DOB: _____			
	Comments SEE ATTACHED.							

COMPLAINT DEPUTY (print) JAMES W. GARRISON/ap	COMPLAINT DEPUTY (SIGNATURE) 	STATE BAR NO. 157070	REVIEWING DEPUTY (SIGNATURE)
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I have conveyed all relevant information to the above-named Deputy District Attorney to be used in consideration of a filing decision.

FILING OFFICER (PRINT): SGT. PETER HARRIS FILING OFFICER (SIGNATURE): mailed 2/14/17 SERIAL #: 27304

<u>DEPARTMENT OF JUSTICE</u> <u>REASON CODES</u> (FORM 8715) A. Lack of Corpus B. Lack of Sufficient Evidence C. Inadmissible Search/Seizure	D. Victim Unavailable/Declines To Testify E. Witness Unavailable/Declines to Testify F. Combined with Other Counts/Cases G. Interest of Justice	H. Other (indicate the reason in Comments section) I. Referred to Non-California Jurisdiction J. Deferred for Revocation of Parole K. Further Investigation	L. Prosecutor Prefiling Deferral <u>DISTRICT ATTORNEY'S</u> <u>REASON CODES</u> M. Probation Violation filed in lieu of 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 [REDACTED] Incident

On April 13, 2014, Gaines and Parks arrested [REDACTED] for possession of a firearm by a felon in violation of Penal Code section 29800(a). Gaines prepared an Incident Report subsequent to the arrest. As a result, a felony charge was filed against [REDACTED] in Superior Court Case #BA423587. [REDACTED] was held to answer on the charge following Parks' testimony at [REDACTED] preliminary hearing held on May 15, 2104. [REDACTED] attorney, Deputy Public Defender [REDACTED], subsequently obtained a home security surveillance video from the house where the arrest took place that contradicts Gaines' account of the facts that justified [REDACTED] and [REDACTED] detention. As a result, Head Deputy of Central Operations CT-11 [REDACTED] dismissed the charge against [REDACTED] and referred the matter to the Justice System Integrity Division.

According to the Incident Report authored by Gaines, on April 13, 2014 at approximately 5:02 p.m., Gaines and Parks were on patrol as part of the 77th Division Gang Enforcement Detail in uniform and in a marked patrol car. As they came to a stop at an intersection, they observed a large group of males hanging outside in front of the residence located at [REDACTED] [REDACTED]. They also observed numerous motorcycles and bikes on the sidewalk blocking pedestrian traffic. As they got closer, they observed individuals drinking alcohol and observed numerous open containers of alcohol on the grass and walkway of the residence. Based on the observed violations, the officers exited their patrol vehicle to conduct an investigation for the violations.

As they got closer, they observed a male black, later identified as [REDACTED], turn towards the house and begin walking towards the front door. Gaines quickly called out to [REDACTED] and asked him to stop and turn around. Gaines wrote that [REDACTED] "looked over his right shoulder and observed myself and my partner's position and then quickly turned back around and began to sprint inside the location." The officers requested a back-up unit to the location as they went in pursuit of [REDACTED]. They were able to detain [REDACTED] just as he passed the threshold of the front doorway. While detaining [REDACTED] just a few feet

inside of the location, they observed a male black, later identified as [REDACTED], enter the location through the front door and "began to walk towards the officers." Gaines ordered [REDACTED] to stop and go back outside. [REDACTED] continued walking toward them so Gaines turned his attention from [REDACTED], who Parks had control of, to [REDACTED].

[REDACTED] quickly began to run past the officers toward the rear of the residence. Gaines pursued [REDACTED] in an attempt to detain him. As [REDACTED] ran toward the rear of the residence, he produced a small silver semi-automatic handgun from his left front pocket and threw it down a hallway in the direction of the master bedroom of the residence. Gaines recovered the handgun from the floor just inside the doorway of the master bedroom.¹ Following a protective sweep and a subsequent consent search of the residence, an additional silver semi-automatic handgun was located underneath the bed inside the master bedroom and a loaded revolver was also located in a dresser in the same master bedroom.²

As part of the Incident Report, Gaines attached a Probable Cause Declaration (PCD) signed under penalty of perjury in which he wrote, in relevant part:

"While in the area of [REDACTED], Officers obs numerous males drinking in front of the location and obs numerous motorcycles blocking the sidewalk. As Officers attempted to make contact with the group, one individual turned and ran inside the location. As Officers gave chase, in pursuit of the individual, they were able to take him into custody inside the residence without incident. While taking this individual into custody, susp ran into the residence as well and threw a small .22 caliber handgun down a hallway and attempted to run towards the rear of the residence."

On May 15, 2014, [REDACTED] preliminary hearing was held and Parks testified to the facts as related by Gaines in the Incident Report.³

On November 10, 2014, Los Angeles County Public Defender [REDACTED] gave Los Angeles County Deputy District Attorney [REDACTED], a DVD recording of the events surrounding [REDACTED] arrest. The residence where the arrest occurred was equipped

¹ The handgun was registered to [REDACTED], [REDACTED] (the resident of the location) mother. [REDACTED] stated the handgun was loaded and in a nightstand drawer next to his bed. A latent prints examination was conducted which excluded [REDACTED] prints from the unidentified prints recovered from the gun.

² The second automatic handgun recovered had no registration record and had not been recorded stolen. [REDACTED] stated this second automatic handgun belonged to him and that the revolver belonged to his aunt, although it was registered to a [REDACTED]

³ Gaines did not testify and [REDACTED] was held to answer on the charge.

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 [REDACTED] investigator.

A comparison between the security surveillance video footage and the Incident Report reveals two discrepancies:

First, [REDACTED] did not “sprint” into the location. The video depicts [REDACTED] entering the front door but [REDACTED] 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 [REDACTED] into custody, [REDACTED] did not “run” into the residence as stated by Gaines in the PCD; nor did [REDACTED] almost “immediately” run after entering the location as testified by Parks. Upon entering the location, [REDACTED] stood near the entrance, took out his cell phone and began recording the struggle with [REDACTED] which was not captured by the security cameras.⁶

Additionally, contrary to Park’s testimony at the preliminary hearing that he never saw [REDACTED] 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 [REDACTED] 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 [REDACTED] and [REDACTED] 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 [REDACTED], and later a handcuffed [REDACTED], outside the location. A third video clip appears to begin recording 24 minutes after the second video clip and depicts [REDACTED] 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.

⁵ [REDACTED] is seen walking into the house with a cup in his right hand, entering in a casual manner. [REDACTED] then disappears in the house and out of view. A few seconds later, Gaines is observed entering quickly after [REDACTED].

⁶ Three seconds after Gaines enters the location after [REDACTED], [REDACTED] walks into the frame. He stands at the doorway facing inward and appears to be manipulating a cell phone. [REDACTED] then begins to film with his cell phone pointed toward the interior. [REDACTED] is seen filming with his cell phone pointed toward the area where [REDACTED] and the two officers were located for more than thirty seconds before moving further into the house and out of camera view.

security surveillance video footage clearly depicts ██████ videotaping the officers' interactions with ██████ for a little more than a minute.⁷

At the preliminary hearing during cross examination, Parks adopted Gaines' version of events outlined in the Incident Report. Parks testified that ██████ sprinted into the location, running away from them and that they ran after him. (PHT 7:18 – 8:1, 8:20-28, 9:1). Parks also testified that after ██████ came through the front door, he "immediately" started to run toward the hallway in an attempt to walk past them and get to the back of the house. (PHT 10:13-11:1-4). Lastly, Parks testified that he did not see ██████ holding his cell phone camera up and videoing any interactions. (PHT 13-10-12).

██████ and several civilian witnesses who were present at the location on the date of the incident were interviewed as part of the Internal Affairs investigation. Notable among them were ██████ and ██████, who both corroborated ██████ account of the incident. ██████ provided the security surveillance video to ██████ defense counsel.⁸ However, ██████, a female visitor at the location, who was shown in the video footage sitting in the living room area where the incident took place could not offer any key corroboration, indicating she did not see what transpired with ██████ and the officers because her back was turned towards them and she never turned around to look.

██████ stated that ██████ never ran into the house and he only went inside the house to record because the officers were "brutalizing" ██████ when he had done nothing to deserve it. ██████ added that he, himself, never ran into the house, never went back to the back house or the hallway area, and never had a gun. ██████ stated that at the jail following his arrest, Parks brought him his cell phone and ordered him to unlock it but

⁷ In addition to the security surveillance video which depicts ██████ videotaping while inside the location with his cell phone, video from the officers' patrol car depicted ██████ and Parks in the backseat discussing ██████ videotaping actions. ██████ explained to Parks that the video would have been helpful to the officers, too, but Parks responded that they have their own tapes and that being videotaped does not bother them.

⁸ DDA ██████ contacted ██████, ██████ mother and owner of the residence (location of arrest) in an attempt to secure additional external video footage that perhaps would have depicted the officers' arrival to the location and their initial approach toward ██████. However, ██████ stated that no additional footage existed as any footage not retrieved initially would have been erased/recorded over after 30 days. Nonetheless, presumably, this additional external footage would have existed at the time the initial video evidence was retrieved for ██████ defense attorney, but the defense chose not to procure it. Arguably, this additional external footage may have corroborated the officers' initial observations of ██████ and hence the reason why the additional external footage was never provided.

around and began to run northbound and quickly westbound into the gym.¹¹ Per Gaines, based on their training and experience, along with ██████ nervous behavior and movement towards his waistband, Gaines and Yeh formed the opinion that ██████ was possibly armed with handgun. Gaines added that because the gym was open to the public and likely had people inside it playing basketball, in the interest of public safety, they engaged ██████ in a foot pursuit.

Gaines and Yeh ran after ██████ into the gym. While directly behind ██████, Yeh observed ██████ firmly gripping his waistband and followed him onto the basketball court of the gym. ██████ began to run down the sidelines of the basketball court looking in all directions. As ██████ got to mid-court, he came to a break in a wall that was being utilized as storage for cushioning pads. When ██████ realized this was not an exit, he looked back in Yeh's direction and with a nervous expression on his face, began looking in all directions. ██████ suddenly removed a silver revolver from his front waistband with his right hand and quickly threw it into the storage area. ██████ then placed his hands up and Gaines and Yeh took him into custody.

Once ██████ was placed in handcuffs, Gaines entered the storage area and recovered the handgun from atop one of the cushioning pads and rendered it safe. ██████ was subsequently charged with possession of a firearm by felon and having a concealed firearm on his person. On June 3, 2014, ██████ preliminary hearing was held, Gaines testified to the facts consistent with the Incident Report, and ██████ was held to answer on the charges.

In May 2015, DDA ██████ received the DICV as part of the requested discovery. The video revealed several discrepancies between Gaines' Incident Report, his testimony, and what the DICV depicted.¹² In preparation for a defense motion to suppress evidence hearing, ██████ interviewed Yeh regarding his recollection of the incident. Yeh told ██████ that his recollection was that ██████ separated himself from the group outside the gym.¹³ Yeh chased ██████ through the gym's doors and once inside, Yeh followed the sounds of running footsteps. ██████ ran and threw a gun into a closet where cushioning mats were stored. Yeh later told Gaines to retrieve the gun from the closet. Gaines carried the gun out in one of his pants pockets.¹⁴

¹¹ The DICV footage shows ██████ wearing a white tank-top with below the knee cargo type shorts with pockets on each side.

¹² The DICV footage captured ██████ and Yeh's activities outside the gym and ██████ transportation to 77th Station, but did not capture any of the activity within the gym.

¹³ Yeh told ██████ that he saw ██████ stand up when they pulled into the parking lot.

¹⁴ A compelled interview was also conducted of Yeh as part of this investigation. During the interview, Yeh stated that he was unaware of when Gaines entered the gym and hence, could not affirmatively say whether Gaines was present when ██████ discarded the handgun. As for Gaines' retrieval of the handgun, Yeh stated in the compelled interview, "I don't recall if he [Gaines] knew where it was or if I had to tell him where it was."

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. ██████ then 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.

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.¹⁶ 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 [REDACTED] 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 [REDACTED] attorney casts doubt on the assertion that [REDACTED] "sprinted" into the location, the video footage is incomplete in that it does not depict [REDACTED] 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 [REDACTED] *did* sprint towards the location – justifying Gaines and Parks' actions, but this was not captured by the partial video provided by [REDACTED] attorney. It is also significant that [REDACTED], the only witness present in the living room at the time of the officers' altercation with [REDACTED], could not or would not, corroborate [REDACTED] and [REDACTED] account that [REDACTED] was detained for no reason and that he was assaulted by the officers.

Further, although the security surveillance video shows [REDACTED] 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 [REDACTED] 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 [REDACTED] case, although the evidence shows that Gaines may have attributed suspicious behavior to [REDACTED] 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 [REDACTED] part never took place. Such is the case when [REDACTED] is standing by the entryway to the gym, where the video footage does not clearly depict [REDACTED] body movements. This leaves

¹⁶ CALCRIM No. 2640

room for the possibility that [REDACTED] 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 [REDACTED] 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.

[REDACTED] denies he possessed a gun and claims Yeh and Gaines made the arrest up, presumably planting the gun on him. However, [REDACTED] has credibility issues which make any criminal case against the officers' in this case difficult to prove beyond a reasonable doubt. Not only is [REDACTED] 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. [REDACTED] is currently awaiting trial on 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 [REDACTED] 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 [REDACTED] discard the handgun. Yeh's statement leaves open the possibility that Gaines made his own observations of [REDACTED] discarding the gun.

CONCLUSION

The video evidence in the [REDACTED] matter certainly calls into question the accuracy of Gaines' police report and Parks' testimony. The video evidence in the [REDACTED] 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 [REDACTED] matter, and insufficient evidence to prove beyond a reasonable doubt that Gaines committed those same crimes in the [REDACTED] matter. Therefore, prosecution in these two matters is declined and this office will take no further action.