15-001941

INTERNAL AFFAIRS FILE

Los Angeles Police Department | Complaint Review Report

COMPLAINT FORM

Statute Date: 06/30/2016 | Investigative Complexity: 2 | Masked: No | CF No.: 15-001941

Complainant(s)

Name: [redacted] | Masked: No
DOB: | Business Address: [redacted]
Gender/Descent: | Los Angeles California 90012
Language: | Subj of Incident:
Injury: None | Source: [redacted]
Arrested: No | Method: Correspondence
Booking No.:
Identification: | Phone:

Date and Location of Occurrence

RD / Area Division: 1273 / 77th Street Area
Beginning/End Date: 04/29/2014 | Begin/End Time: 17:55
Cross Street 1: | Cross Street 2:
Address: 8701 South Saint Andrews Place Los Angeles California 90047

Accused Employee(s)

Name: Gaines, Kevin - 40210, PO 2 77TH GIT GED | Masked: No
DOB: [redacted] | Business Address:
Gender/Descent: Male / HIS
Length of Service: 4 Years 10 Months 7 Days | Assignment: GANG ENF UNIFORM
Injury: None | Duty Status: On Duty
Arrested: No | Phone:
Booking No.:

Involved Person(s)

Name: [redacted] | Masked: No
Involved Person Type: Sworn Employee Witness | Address:
DOB: [redacted]
Gender/Descent: Male / ASN | Subject of Incident:
Identification: | Phone:

Name: [redacted] | Masked: No
Involved Person Type: Sworn Supervisor | Address:
DOB: [redacted]
Gender/Descent: Male / HIS | Subject of Incident: No
Identification: | Phone:

Name: [redacted] | Masked: No
Involved Person Type: Sworn Employee Witness | Address:
DOB: [redacted]
Gender/Descent: Male / HIS | Subject of

17 SEP -8 PM 2:28
USE AS ORIGINAL

WORKFLOW

COMPLAINT FORM

Statute Date: 06/30/2016 | Investigative Complexity: 2 | Masked: No | CF No.: 15-001941

Complainant(s)
Date and Location of Occurrence
Accused Employee(s)
Involved Person(s)

		Incident:	
Identification:		Phone:	
Name:	[redacted]	Masked:	No
Involved Person Type:	Sworn Employee Witness	Address:	
DOB:	[redacted]		
Gender/Descent:	Male / ASN	Subject of Incident:	
Identification:		Phone:	
Name:	[redacted]	Masked:	No
Involved Person Type:	Sworn Employee Witness	Address:	
DOB:	[redacted]		
Gender/Descent:	Male / HIS	Subject of Incident:	
Identification:		Phone:	
Name:	[redacted]	Masked:	No
Involved Person Type:	Sworn Employee Witness	Address:	
DOB:	[redacted]		
Gender/Descent:	Male / HIS	Subject of Incident:	
Identification:		Phone:	

Brief Summary

Reported to Uninv Supervisor:	06/30/2015	Uninvolved Supervisor Name:	Vach, Jeffrey - 32811, SGT 1 IAG CID CIS SOUTH
Recorded By:	Vach, Jeffrey - 32811, SGT 1 IAG CID CIS SOUTH	Preliminary Investigator	Vach, Jeffrey - 32811, SGT 1 IAG CID CIS SOUTH
IAG CLASS:	Internal Affairs Group	Cross Reference:	1412-11343 Arrest Report

Supervisor Reviewing Serial No.	Area/Division	Complaint Type	Entity Investigating	Prima Facie
		Disciplinary	IAG CID CIS SOUTH	No

Statute Date: 06/30/2016 **COMPLAINT FORM** Masked: No CF No.: 15-001941

Preliminary Investigative Narrative:

In May 2015, Deputy District Attorney (DDA) [redacted] was assigned Case No BA424247, People VS. [redacted], which involved the detention and arrest of Deft [redacted] by 77th Street Gang Enforcement Detail (GED) officers on April 29, 2014.

In receiving the administrative reports and Digital In-Car Video System (DICVS) footage from the Los Angeles Police Department (LAPD), [redacted] discovered that the account of events memorialized in the official arrest report and testimony obtained from a transcribed record of the preliminary hearing, substantially differed from video and audio footage captured by the officer's own DICVS. DDA [redacted] opined the totality of the discrepancies reviewed raised serious legal concerns into the credibility of Police Officer II Kevin Gaines, Serial No. 40210, 77th St GED.

DDA [redacted] believed that while none of the discrepancies changed the fact the defendant illegally possessed a gun on April 29, 2014, they did call into question the credibility of Officer Gaines, which was vital in proving key elements of the incident that occurred off-camera.

This complaint came to the Department's attention on June 30, 2015, when Sergeant I Jeffrey Vach, Serial No. 32811, Criminal Investigation Division (CID) - South Section, Internal Affairs Group (IAG), received a complaint package from the Los Angeles County District Attorney's Office, Justice System Integrity Division.

Statute Date: 06/30/2016 | **COMPLAINT FORM** | Masked: No | CF No.: 15-001941

		DR No.	Date of Traffic Collision	Fleet Safety History (Prior PTCs)	
☐	PTC:			Last 5 Years	Career
		Court Date	Court Case No.	FTA History (Sustained Only)	
☐	FTA:			Last 5 Years	Career
		Qualification Month / Year	Reason	FTQ History (Sustained Only)	
☐	FTQ:		Forgot ☐ Shot and Failed ☐	Last 5 Years	Career

☒ Disciplinary

Non-Disciplinary (Check the applicable box below)

☐ **POLICY/PROCEDURE** - The facts of the case revealed that the complaint relates to Department policy/procedure and not to a specific employee's actions.

☐ **EMPLOYEE'S ACTIONS DID NOT RISE TO THE LEVEL OF MISCONDUCT** - A preliminary investigation revealed that the allegations did not rise to the level of misconduct and/or the named employee's actions were protected by law or found to be consistent with Department policy or procedure.

☐ **EMPLOYEE'S ACTIONS COULD HAVE BEEN DIFFERENT** - The facts in the complaint revealed the employee's actions could have been different. However, the employee's act or omission is best addressed through corrective action by the employee's commanding officer. The corrective action(s) taken was: (Check all that apply)

- ☐ COUNSELING
- ☐ TRAINING
- ☐ COMMENT CARD
- ☐ NOTICE TO CORRECT DEFICIENCIES
- ☐ REFERRAL

☐ **DEMONSTRABLY FALSE** - The complaint was demonstrably false, or, demonstrates an irrational thought process and was consistent with the complainant's established patttern of making chronic or crank complaints.

☐ **DEPARTMENT EMPLOYEE(S) NOT INVOLVED** - The preliminary investigation revealed that the complaint did not involve Department employee(s).

☐ **RESOLVED THROUGH ALTERNATIVE COMPLAINT RESOLUTION (ACR)** - The complainant and the employee(s) resolved the complaint through ACR.

AREA / DIVISION COMMANDING OFFICER	☒ APPROVED ☐ REFERRED FOR DISCIPLINARY CONSIDERATION		GROUP/BUREAU CO	☒ CONCUR ☐ DO NOT CONCUR	
NAME (PLEASE PRINT)	RANK	AREA ~~DIV~~	NAME (PLEASE PRINT)	RANK	GROUP / BUREAU
RAFAEL RAMIREZ	CAPT III	77 STREET AREA	[illegible]	Cmdr	OSB
SIGNATURE / SERIAL NO.	DATE		SIGNATURE / SERIAL NO.	DATE	
[signature] 27442	8/15/17		[signature] 31200	9-7-17	

Los Angeles Police Department
Complaint Adjudication Form

09/05/2017 <== Date on the IAG, ARS-Communication Slip, or on the chain of command investigation (Manual Section 3/824).	CF No. 15-001941

EMPLOYEE: ☐ Multiple Employees

LAST NAME, FIRST M.I.	SERIAL NO.	RANK AT TIME OF INCIDENT	AREA/DIV. AT TIME OF INCIDENT	DUTY STATUS	ARRESTED
[redacted]			77th Street Area	☑ ON ☐ OFF	☐ YES ☑ NO

ASSIGNMENT TYPE AT TIME OF INCIDENT
☐ PATROL ☐ AREA DETECTIVE ☐ ADMIN/COVETED ☐ SPECIALIZED DIV ☑ UNIFORM GED

COMPLAINANT (LAST NAME, FIRST, M.I.) [redacted] ☐ DEPARTMENT

ADJUDICATION SUMMARY: Enter allegation number(s) under the respective dispositions. Check Military endorsement for the disposition recommended.

	SUSTAINED	NOT RESOLVED	UNFOUNDED	EXONERATED	INSUFFICIENT EVIDENCE TO ADJUDICATE	OTHER JUDICIAL REVIEW	PENALTY: No Penalty	Admin	OR	Susp Days	Demotion	Discharge or Term on Probation	BOR
Division Commanding Officer	4		1				☐	☐	☐		☐	☐	☐
Area Commanding Officer	4		1				☐	☐	☐		☐	☐	☐
Group Commanding Officer							☐	☐	☐		☐	☐	☐
Bureau Commanding Officer	4		1				☐	☐	☐		☐	☐	☐
Chief of Police							☐	☐	☐		☐	☐	☐

PENALTY RATIONALE: (Explain, if recommendation deviates from Penalty Guide.) ☐ PTC (See attached Form 1.13 for findings and penalty recommendation.)

[redacted] was not served as he resigned from the Department.

☐ Continued on back

DIVISION COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	EMPLOYEE'S SIGNATURE (ADMONISHMENT ONLY)	SERIAL NO.	DATE
GROUP/AREA COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	☐ Concur ☐ Military Endorsement (See back page.)		
	27442	8/16/17			
BUREAU COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	☒ Concur ☐ Military Endorsement (See back page.)		
	31281	9-7-17			

FINAL DEPARTMENT ACTION [redacted]

☐ CSC OVERULE ☐ BOR - GUILTY (Counts:) ☐ BOR - NOT GUILTY (Counts:)

NAMED EMPLOYEE (LAST NAME, FIRST, MI) [redacted]	☐ UNKNOWN	CF No. 15-001941

EMPLOYEE INTERVIEW

EMPLOYEE INVESTIGATION REVIEW

Other than Sustained, Admonishments, or Official Reprimand

This complaint investigation has been completed. A review of the investigation has resulted in the proposed findings listed on the front of this form. You have the opportunity to review the completed investigation, including the letter of transmittal, and to make a written response. Any such response must be in writing and submitted to the commanding officer listed on the front of this form with 30 calendar days of this service. Thirty days from that date will be:

NOTICE OF PROPOSED DISCIPLINARY ACTION

Notice of Proposed Disciplinary Action

This complaint investigation has been completed. A review of the investigation has resulted in the proposed findings listed on the front of this form. You are hereby notified that I am proposing to the Chief of Police that you receive the penalty specified on the front of this form for the allegations sustained in the findings, which are attached to this form **You have an opportunity to respond orally or in writing by:**

Your response will be reviewed by the Chief of Police for evaluation prior to adjudication of this matter.

The employee shall initial the boxes that apply:

- ☐ I have received a copy of the investigation materials.
- ☐ I have waived my right to receive a copy of the investigative material.
- ☐ I was informed of my right to respresentation prior to discussing this matter.
- ☐ I intend to submit a response.
- ☐ I do not intend to submit a response.
- ☐ I have received documentation regarding my fitness and suitability to perform the duties of my position (civilian employee).

I have discussed this matter with the employee.	Your signature acknowledges receipt of materials, but does not indicate concurence with my recommendations.
DIVISION COMMANDING OFFICER'S SIGNATURE SERIAL NO. DATE	EMPLOYEE'S SIGNATURE SERIAL NO. DATE

C/O'S RESPONSE TO EMPLOYEE:

Date response received:

- ☐ No employee response was submitted by the date specified.
- ☐ After reviewing the employee's response, I found no new information to cause me to change my recommended findings and/or penalty.
- ☐ A review of the employee's response has caused me to take the following actions: (See below).

☐ See continuation page.

MILITARY ENDORSEMENT RATIONALE:

☐ See continuation page.

Los Angeles Police Department
Complaint Adjudication Form

09/05/2017 <== Date on the IAG, ARS-Communication Slip, or on the chain of command investigation (Manual Section 3/824).	CF No. 15-001941

EMPLOYEE: ☐ Multiple Employees

LAST NAME, FIRST M.I.	SERIAL NO.	RANK AT TIME OF INCIDENT	AREA/DIV. AT TIME OF INCIDENT	DUTY STATUS	ARRESTED
Gaines, Kevin ☐ UNKNOWN	40210	Police Officer II	77th Street Area	☑ ON ☐ OFF	☐ YES ☑ NO

ASSIGNMENT TYPE AT TIME OF INCIDENT
☐ PATROL ☐ AREA DETECTIVE ☐ ADMIN/COVETED ☐ SPECIALIZED DIV ☑ UNIFORM GED

COMPLAINANT (LAST NAME, FIRST, M.I.) [redacted] ☐ DEPARTMENT

ADJUDICATION SUMMARY: Enter allegation number(s) under the respective dispositions. Check Military endorsement for the disposition recommended.

	SUSTAINED	NOT RESOLVED	UNFOUNDED	EXONERATED	INSUFFICIENT EVIDENCE TO ADJUDICATE	OTHER JUDICIAL REVIEW	PENALTY: No Penalty	Admin	OR	Susp Days	Demotion	Discharge or Term on Probation	BOR
Division Commanding Officer							☐	☐	☐		☐	☐	☐
Area Commanding Officer	[redacted] 5		2	6			☐	☐	☐		☐	☐	☑
Group Commanding Officer							☐	☐	☐		☐	☐	☐
Bureau Commanding Officer	[redacted] 5		2	6			☐	☐	☐		☐	☐	☑
Chief of Police							☐	☐	☐		☐	☐	☐

PENALTY RATIONALE: (Explain, if recommendation deviates from Penalty Guide.) ☐ PTC (See attached Form 1.13 for findings and penalty recommendation.)

☐ Continued on back

DIVISION COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	EMPLOYEE'S SIGNATURE (ADMONISHMENT ONLY)	SERIAL NO.	DATE
GROUP/AREA COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	☐ Concur ☐ Military Endorsement (See back page.)		
Capt [illegible]	27442	8/16/17			
BUREAU COMMANDING OFFICER'S SIGNATURE	SERIAL NO.	DATE	☒ Concur ☐ Military Endorsement (See back page.)		
[illegible]	31202	9-7-17			

FINAL DEPARTMENT ACTION

Internal Affairs Group Use Only
C/O - SUST - REMOVED ON PRIOR BOR - EFFECTIVE 7-28-17. DS 3-14-18
REPLY - 30 DAY LETTER

☐ CSC OVERULE ☐ BOR - GUILTY (Counts:) ☐ BOR - NOT GUILTY (Counts:)

NAMED EMPLOYEE (LAST NAME, FIRST, MI)	☐ UNKNOWN	CF No.
Gaines, Kevin		15-001941

EMPLOYEE INTERVIEW

EMPLOYEE INVESTIGATION REVIEW

Other than Sustained, Admonishments, or Official Reprimand

This complaint investigation has been completed. A review of the investigation has resulted in the proposed findings listed on the front of this form. You have the opportunity to review the completed investigation, including the letter of transmittal, and to make a written response. Any such response must be in writing and submitted to the commanding officer listed on the front of this form with 30 calendar days of this service. Thirty days from that date will be:

NOTICE OF PROPOSED DISCIPLINARY ACTION

Notice of Proposed Disciplinary Action

This complaint investigation has been completed. A review of the investigation has resulted in the proposed findings listed on the front of this form. You are hereby notified that I am proposing to the Chief of Police that you receive the penalty specified on the front of this form for the allegations sustained in the findings, which are attached to this form **You have an opportunity to respond orally or in writing by:** 9/28/2017

Your response will be reviewed by the Chief of Police for evaluation prior to adjudication of this matter.

The employee shall initial the boxes that apply:

- ☑ I have received a copy of the investigation materials.
- ☐ I have waived my right to receive a copy of the investigative material.
- ☑ I was informed of my right to respresentation prior to discussing this matter.
- ☑ I intend to submit a response.
- ☐ I do not intend to submit a response.
- ☐ I have received documentation regarding my fitness and suitability to perform the duties of my position (civilian employee).

I have discussed this matter with the employee.	Your signature acknowledges receipt of materials, but does not indicate concurence with my recommendations.
DIVISION COMMANDING OFFICER'S SIGNATURE SERIAL NO. DATE	EMPLOYEE'S SIGNATURE SERIAL NO. DATE
27442 8/31/17	9/31/17

C/O'S RESPONSE TO EMPLOYEE: Date response received:

- ☐ No employee response was submitted by the date specified.
- ☐ After reviewing the employee's response, I found no new information to cause me to change my recommended findings and/or penalty.
- ☐ A review of the employee's response has caused me to take the following actions: (See below).

☐ See continuation page.

MILITARY ENDORSEMENT RATIONALE:

☐ See continuation page.

LETTER OF TRANSMITTAL
CF No. 15-001941

ADJUDICATION

Public Complaint by: [redacted] Los Angeles, CA

The Complaint Investigation, CF No. 15-001941, resulted in six allegations of misconduct against two Department employees:

Police Officer II Kevin Gaines — 77th Street Area
Serial No. 40210

[redacted]

The allegations are listed below with the recommendations for classification and supporting rationale.

[redacted]

CLASSIFICATION

It is recommended that Allegations 1 and 2 be classified as **UNFOUNDED**.

RATIONALE

This classification is best supported by the statement of Deputy District Attorney [redacted], who prosecuted and convicted [redacted] for illegal possession of a handgun. [redacted] stated, "…none of the discrepancies changed "the fact" that [redacted] illegally possessed a gun on the date of incident…" [redacted] is the only person who disputes the fact that he had a handgun. [redacted] credibility, as a felon and known gang member with a prior arrest for the same crime, is suspect at best. Although [redacted] denied to the investigator that he had the gun, he had already pled guilty to possession of the gun. Further, [redacted] repeatedly misidentified the arresting officers, yet insisted that he knew each officer by sight. There is no dispute that the officers recovered a gun from the location and that [redacted] was the person arrested and convicted for the crime. There is also no question that [redacted] is the person who the officers immediately focused upon and chased into the building where the gun was recovered. Therefore, it is recommended that Allegations 1 and 2 be classified as **UNFOUNDED.**

[redacted]

CLASSIFICATION

It is recommended that Allegations 3 and 4 be classified as **SUSTAINED**.

RATIONALE

There is no question that the arrest report differs from the DICVS recording of the incident. Specifically, the initial physical movements of [redacted] and whether or not Officer Gaines immediately gave chase to [redacted] or stopped to search others beforehand, are inconsistent and therefore inaccurate. Both officers acknowledged in their interviews that these differences exist. Therefore, it is recommended that Allegations 3 and 4 be classified as **SUSTAINED.**

ALLEGATION 5. The Department alleges that on June 3, 2014, Officer Gaines, while on-duty, made false statements in his testimony in Los Angeles Superior Court, Department 33.

CLASSIFICATION

It is recommended that Allegation 5 be classified as **SUSTAINED**.

RATIONALE

When Officer Gaines testified in court he had an obligation to be completely factual. If he did not remember certain details he should have said so. While the inconsistencies are not especially relevant to the crime in question, when uttered under oath they are nonetheless false.

Officer [redacted] clearly saw something that led him to believe that [redacted] had a gun but it is doubtful that Officer Gaines interpreted it this way as he casually walks up to the group. Instead of testifying to his own observations he apparently adopted his partner's observations as his own.

Officer Gaines is currently facing unrelated allegations of a similar nature that are pending before a Board of Rights. This weighs on this adjudicator and these findings. Officer Gaines' credibility is questionable at best. Therefore, it is recommended that Allegation 5 be classified as **SUSTAINED.**

[redacted]

CLASSIFICATION

It is recommended that Allegation 6 be classified as **EXONERATED**.

RATIONALE

Officer Gaines admits that he did not fully stop for each of the stop signs while approaching the park. He did, however, clear each intersection before proceeding. A complete and thorough review of the video reveals that there are no pedestrians or other moving vehicles in sight at any of the three stop signs. Further, Officer Gaines is driving at a speed that appears to be at, or below, the speed limit of 25 mph in each instance. For the record, it was daylight and visibility was excellent. This was not casual driving, it was a tactical operation. The investigation indicates that he and Officer [redacted] were planning to surprise the group at the gym. Officer Gaines clearly explained his knowledge of the area around the park and how the gang lookouts operate. This is a well-established countermeasure employed by gangs throughout the city. The vehicle code specifically authorizes such driving during active emergency situations, which the Department has long interpreted as applying to tactical operations. This adjudicator has been present at countless tactical operations where officers did not fully stop at a stop sign while approaching the location and further finds no evidence of any kind in the investigation to indicate that there was anything "unsafe" about Officer Gaines' driving. In fact, they achieved their objective of surprise and recovered a gun from a known gang member, possibly preventing loss of life or another felonious crime from happening. Therefore, it is recommended that Allegation 6, as amended, be classified as **EXONERATED.**

DIGITAL IN-CAR VIDEO/BODY WORN VIDEO/AUDIO RECORDINGS

DICVS was instrumental in both sustaining and unfounding allegations in this investigation. It was also relevant to the criminal prosecution of [redacted]

EMPLOYEE DEVELOPMENT PLAN, OFFICER GAINES

Officer Gaines will be directed to formal training with the 77th Training Unit on report writing. This is where he went wrong in this investigation and where a better report would have prevented this investigation from ever arising. The importance of viewing video before writing the report will be impressed upon him and he will be trained on the Body Worn Video as well.

PENALTY

The allegations that are sustained here are serious in nature. Inaccuracies in reporting can endanger both officers' careers and the freedom of the public. Sometimes it is the little details that make or break a case and therefore it must be impressed upon Officer Gaines that he cannot allow this to happen again. Therefore, in accordance with the Department Penalty Guide, I recommend that Officer Gaines be directed to a Board of Rights.

WORK HISTORY ANALYSIS

A complete and thorough review of Officer Gaines' TEAMS report was conducted. Officer Gaines has been employed by the Department for eight years. Officer Gaines has no sustained complaints. However, he is currently pending a Board of Rights for an unrelated case, with a different partner, where the allegations also include false testimony. This factored into the recommendation for a Board of Rights in this matter.

WORK PERMIT REVIEW

A review of Officer Gaines' work permit history revealed that he does not have any current work permits; therefore, no conflict of interest concerns, or impairment of performance or efficiency issues were identified.

RELIEF FROM DUTY RECOMMENDATIONS

None.

DOWNGRADE CONSIDERATIONS

None.

EMPLOYEE DEVELOPMENT PLAN OFFICER [redacted]

None. Officer [redacted] left LAPD during this investigation and is now a law enforcement officer with another agency in another state.

PENALTY

The allegations that are sustained here are serious in nature. Inaccuracies in reporting can endanger both officers' careers and the freedom of the public. Therefore, in accordance with the Department Penalty Guide, I recommend that Officer [redacted] be directed to a Board of Rights.

WORK HISTORY ANALYSIS

No TEAMS or personnel files were available to review as Officer [redacted] resigned from the Department effective October 22, 2016.

WORK PERMIT REVIEW

Not available.

RELIEF FROM DUTY RECOMMENDATIONS

None.

DOWNGRADE CONSIDERATIONS

None.

APPROVED BY:

RAFAEL RAMIREZ, Captain
Commanding Officer
77th Street Area

8/16/17
Date

INVESTIGATIVE RESPONSIBILITY: The Investigating Officer (I/O) for this case was Detective II Carrie A. Katsumata, Serial No. 30832, Internal Affairs Group (IAG), Criminal Investigation Division (CID), South Section. She can be contacted at (213) 996-4151. Requests for a supplemental investigation must be approved by the CID commanding officer (C/O) via an Intradepartmental Correspondence, Form 15.02.

STATUTE DATE: The original statute date was June 30, 2016. The case was tolled from its inception due to a possible criminal filing. On February 14, 2017, Head Deputy District Attorney (DDA) James W. Garrison, Justice System Integrity Division (JSID) rejected the criminal case due to insufficient evidence. The new statue date is February 14, 2018.

> **Note**: The below investigation, pages 1-15, document the Criminal investigation presented to JSID for filing consideration. The remaining pages document the Administrative investigation. Some additions/corrections/changes to the *Criminal* portion of the investigation were made by Detective III Barbara S. Moulton, Serial No. 25985, CID South Section, upon final review and submission to CID. The changes to the Criminal investigation were marked in brackets, [ ].

BACKGROUND: On April 29, 2014, Police Officer II Kevin Gaines, Serial No. 40210, and Police Officer II [redacted] 77th Street Gang Enforcement Detail (GED), arrested [redacted] for possession of a gun by a felon at the St. Andrews Recreation Center.[1] According to the arrest report Gaines wrote, he and [redacted] were driving northbound on St. Andrews Place passing 88th Street and they conducted a westbound turn into the recreation center's parking lot. As Gaines and [redacted] continued to drive toward a group of male blacks outside the recreation center's gym, [redacted] suddenly stood up, reached for the front waistband of his shorts with his right hand, and then ran into the gym. [redacted] chased after [redacted] into the gym and observed [redacted] throw a gun, which [redacted] subsequently directed Gaines to recover (Addendum 1).[2]

On June 3, 2014, Gaines testified in [redacted] preliminary hearing and [redacted] was held to answer. [redacted] did not testify.[3] Representing the people was Deputy District Attorney (DDA) [redacted] and the defense attorney was Deputy Public Defender (DPD) [redacted]. On June 9, 2015, [redacted] pled nolo contendere and he was convicted for a lesser charge of carrying a concealed firearm. He was sentenced to 32 days in Los Angeles County Jail and placed on formal probation for 12 months. The initial charge of a felon with a gun was dismissed due to a plea negotiation.

SUMMARY: On June 12, 2015, DDA [redacted] wrote a memorandum to Head Deputy James Garrison, JSID, regarding Gaines' testimony in the above preliminary hearing. DDA [redacted] noted that footage from the officers' Digital-in-Car Video System (DICVS) was inconsistent with the arrest report and with Gaines' testimony (Addenda 2-3).

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[1] 8701 South St. Andrews Place.
[2] [redacted] later promoted to Police Officer III and transferred to Metropolitan Division.
[3] The hearing was held in Los Angeles Superior Court, Department 33.

DDA [redacted] noted that Gaines wrote in the arrest report:

> "As my partner and I continued our approach toward the group while still in our vehicle, we observed a male/black (later ID as susp [redacted]) who was wearing a plain white muscle shirt suddenly stand-up and while facing in our direction began to walk backwards. [redacted] appeared startled and had a very nervous gait [sic] on his face. As my partner and I were approx. 10 feet away from the group, [redacted] began looking left and right and then turned his head to look behind him. It was at this point [redacted] reached for the front waistband of his shorts with his right hand and immediately turned around and began to run N/B an[d] then quickly W/B into the gym."

DDA [redacted] additionally noted that Gaines testified as above at the preliminary hearing on June 3, 2014. He also testified that he immediately followed [redacted] into the gym, chasing after [redacted]. Gaines further testified that he and [redacted] ran into the gym after [redacted] When asked if Gaines could tell who else was present outside the recreation center, he testified that he could not tell who was out there as his attention was directed to [redacted] and he did not have time to talk to anyone else.

DDA [redacted] wrote that the "problem with the report and the testimony concerning this matter is that it is inconsistent with the police officers' own" DICVS. She listed the following key discrepancies:

1. The officers were far down the parking lot when [redacted] stood up;
2. [redacted] never looks in the officer's direction;
3. [redacted] never grabs his waistband;
4. [redacted] never walks backward;
5. [redacted] did not run prior to entering the gym;
6. Gaines did not immediately follow [redacted] into the gym, instead he stopped to talk to several unidentified men seated outside and checks them for weapons. He remains outside of the recreation center for about 1.5 minutes.

DDA [redacted] believed none of the discrepancies changed "the fact" that [redacted] illegally possessed a gun on the date of incident, but the discrepancies did question Gaines' credibility, which was vital to prove key elements of the incident, which occurred off-camera.

Head Deputy Garrison subsequently forwarded DDA [redacted] memorandum to IAG on June 30, 2015 (Addendum 4).

> **Note:** The above DICVS footage also depicted tactical issues of Department concern, which will be addressed in the IAG investigation. Also, the DICVS footage did not depict the recovered gun, an old Colt "Police Positive" .38 revolver, as it was not visible in either officer's hands.

[redacted] was interviewed and advised he never had a gun. He claimed to never have seen the gun that Gaines and [redacted] recovered in the gym. Butler believed the officers "made up" his arrest.]

[**Note:** [redacted] was interviewed for the *criminal* investigation. [redacted]

[redacted]

ALLEGATION 5. The Department alleges that on June 3, 2014, Officer Gaines, while on-duty, made false statements in his testimony in Los Angeles Superior Court, Department 33.

DDA [redacted][4] was the Calendar Deputy for Department 134 on June 17, 2014, when [redacted] case was sent to her for court arraignment. [redacted] was previously held to answer at a preliminary hearing on June 3, 2014.

[redacted] noted several issues delayed prosecution of [redacted] case. In particular, the prosecution requested but was not provided with the DICVS until several months later. When [redacted] reviewed the DICVS, she noted several inconsistencies between Gaines' written report, his testimony, and what the DICVS depicted. Therefore, she notified JSID via her chain of command.

[redacted] noted the inconsistences with Gaines in her memorandum and she ordered a stop-action video from the DICVS footage via her organization's sound department, which freeze-framed several of [redacted] actions. None of [redacted] actions that Gaines described in his report and testimony were depicted in the video.

[4] I/O Katsumata interviewed DDA [redacted] on February 10, 2016 and uploaded it to the complaint management system (CMS) under [redacted] [redacted] reviewed the memo prior to the recording. The memo's contents were not repeated verbatim in the recorded interview.

On June 5, 2015, the defense filed a motion to suppress evidence, which was scheduled to be heard on June 9, 2015.[5] The motion challenged the probable cause for [redacted] arrest. [redacted] met and interviewed [redacted] to prepare for the motion to suppress. [redacted] thought [redacted] would "regurgitate" what Gaines wrote in the police report.

[redacted] recollection was that [redacted] separated himself from the group outside the recreation center. [redacted] clarified that [redacted] did not run from him, it was he who ran after [redacted] [redacted] chased [redacted] through the recreation center's doors and once inside, [redacted] followed the sound of running footsteps. All of a sudden, footsteps from the ongoing basketball game stopped as the sound of other running of footsteps continued. [redacted] chased the running footsteps, identified as [coming] from [redacted] [redacted] ran past the stage and threw a gun into a closet where mats were stored. [redacted] later told Gaines to retrieve the gun from the closet.

[redacted] believed [redacted] statement was credible, as he could describe what he heard and how he heard it, compared to what Gaines wrote and what was depicted in the DICVS. [redacted] told [redacted] that Gaines carried the gun out of the gym in one of his pants pockets.[6]

[redacted] confirmed [redacted] case was disposed for a lesser, misdemeanor, charge of carrying a concealed firearm and informal probation. She could not prove the higher charge of a felon with a gun, due to Gaines' credibility was called into question.

Witness [redacted][7] was outside the recreation center's gym as he waited to play in a basketball tournament occurring inside the gym. He estimated there were over 50 people inside. [redacted] walked into the gym through the double doors and stood to the left of the stage. He was surprised when a police officer, later identified as [redacted] stopped him inside the gym 20 seconds later. [redacted] did not see the police before he entered the gym.

[redacted] ordered [redacted] to stop and put his hands up and [redacted] complied as he held a mini iPad in one of his hands. [redacted] grabbed [redacted] by one of his arms and escorted him further into the gym to a secluded area toward the back of the gym. [redacted] escorted [redacted] away from other people, where [redacted] could turn his back and no one was behind him. [redacted] then handcuffed [redacted] and pat-down searched him three times.[8]

[redacted] called for an additional officer and when one arrived, [redacted] did not recognize the officer, who the investigation later identified as Gaines, as he only saw the officer from far away. [redacted] did not know Gaines until Gaines got on the stand and stated his name for [redacted] case.

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[5] Penal Code (PC) Section 1538.5.
[6] He did not specify which pocket.
[7] I/O Katsumata and Sergeant II Peter Harris, Serial No. 27304, IAG, interviewed [redacted] on December 16, 2015 at Los Angeles County Men's Central Jail. The recording was later uploaded to CMS.
[8] [redacted] did not use the term "pat-down," but described the action.

Note: [redacted] repeatedly misidentified Gaines as "Officer [redacted]" and misattributed [redacted] actions as those of Gaines, or "[redacted]." He described [redacted] as bald with a muscular build. [redacted] noted he knew [redacted] from past contacts and he was familiar with [redacted] build compared to Gaines.' He further distinctly remembered he looked at the officer's name tag to verify it was [redacted] and not Gaines who arrested him on the incident date. The investigation confirmed [redacted] was the first officer that contacted [redacted] inside the gym. There was no "Officer [redacted]" involved in [redacted] April 29, 2014 arrest.

During [redacted] case, he requested a copy of the DICVS, which did not match Gaines' arrest report and testimony.[9] [redacted] was not aware that officers pursued him into the gym. The officers told him at the station that he was arrested for a gun and he told them he was searched three times and he did not have anything. [redacted] admitted to a charge of possession of a firearm and took a misdemeanor conviction though he did not have a firearm.

Note: [redacted] also claimed he told his first defense attorney, DPD [redacted], that he wanted to tell the judge that the "real" officer who arrested him was "[redacted]," not Gaines. He claimed it was "a switch off," that [redacted] arrested him and handed him off to Gaines.

[redacted] added that he had been through a similar experience before. He noted that "the weird part" in his April 29, 2014 arrest was that he never saw a photo of the gun Gaines and [redacted] claimed he had in his possession. Therefore, [redacted] believed Gaines and [redacted] made up his arrest.

[redacted] also added that he was arrested as an ex-convict with a gun on August 31, 2012 by Police Officer [redacted][10] [redacted] fought that case and won. However, [redacted] thought it was odd that [redacted] was in the court room on June 3, 2014, observing the preliminary hearing. [redacted] was not involved in the case. [redacted] believed [redacted] attended the preliminary hearing to coach Gaines, who was less experienced and so [redacted] could not attach a Pitchess motion to Gaines. [redacted] believed Gaines was never in the gym, as he kept getting crossed up by DPD [redacted] and Gaines could not recall the bleachers, the stage, or the layout of the gym.[11] [redacted] believed Gaines lied on the stand. [redacted] reasoned that if he had a gun as Gaines stated, he could have easily run out of the gym through the two other doors.

Note: [redacted] claimed an "older" black man, in his 40's, who frequently loitered near the picnic tables at the recreation center, recorded video of [redacted] April 29, 2014 arrest and many other incidents. [redacted] also claimed he had a

[9] He did not cite the DICVS by name, but as the "videotape."
[10] He referred to [redacted] as "Officer [redacted]" but the investigation confirmed his identity.
[11] DPD [redacted] introduced photographs at the preliminary hearing (Addendum 5).

screen shot from the video on his cell phone, which depicted [redacted] as the arresting officer. However, [redacted] could not locate his cell phone.

TRANSCRIPTS

I/O Katsumata obtained and reviewed a copy of transcripts from Gaines' June 3, 2014 testimony at the preliminary hearing. She noted the following:
Direct Examination [of Gaines]:

- [redacted] was sitting down on a curb with other male blacks outside of a basketball gymnasium. The officers approached within 10 feet, [redacted] stood up and looked in the officers' direction. [redacted] looked extremely nervous, immediately grabbed his front waistband with his right hand, and proceeded to back away from the group (Page 6; 8-25).
- [redacted] "eyes lit up" as soon as he made eye contact with the police vehicle. As the officers continued their approach, [redacted] stood up and walked backwards "looking in his left and right direction." He reached for his waistband. The officers formed the opinion that [redacted] may have a gun or drugs, they exited their vehicle and [redacted] immediately began to run into the gymnasium (Page 7; 1-19).
- "My partner and myself" engaged in a foot pursuit of [redacted] "We entered the gymnasium" and observed [redacted] run down the side line of the basketball court, continuously looking in all directions (Page 7; 22-28).
- [redacted] was still holding his front waistband with his right hand the entire time while he was running down the left side of the court. When [redacted] came upon a break in the wall, "he removed a silver revolver that my partner and myself observed." [redacted] threw it inside that storage area, proceeded to run a little further, about six feet, and stopped and put his hands up (Page 8; 2-10).
- Gaines said he was a few feet away when he observed [redacted] throw the revolver into the storage area. Gaines ultimately recovered the loaded silver .38 special revolver (Page 8; 11-24)

Cross Examination [of Gaines]:

- As they drove up, Gaines observed approximately six to seven males sitting/loitering outside the gymnasium (Page 10; 7-15).
- Gaines said he could not confirm or deny if he had ever seen any of the individuals that night in the area before. Gaines could not recall who all was in the group. Gaines' attention was directed toward [redacted] Gaines said he did not interview the individuals sitting outside, as they remained outside when he and his partner chased after [redacted] (Page 11; 1-24).
- Gaines claimed to call for back up (Page 11; 25-26).
- Gaines was asked if he identified additional gang members at the time of this incident. He claimed he "Didn't have time to talk to anybody else at that point" (Page 15; 16-17).

DICVS

I/O Katsumata reviewed Gaines and [redacted] DICVS, which was time/date stamped. She noted the following in elapsed time utilizing the video timer in the bottom left corner:

- 00:48 [redacted] stands from a seated position on a concrete curb abutting a planter and turns counter-clockwise away from Gaines and [redacted]
- 00:49 [redacted] disappears momentarily behind a tree and a bush.
- 00:52 [redacted] reappears, still facing away from the officers.
- 00:53 [redacted] raises his left arm toward his face/upper torso, not toward his waistband. His right arm remains at his side.
- 00:54 [redacted] raises his right arm and walks into the recreation center. He does not appear to run.
- 00:55 [redacted] is out of view.
- 00:56 [redacted] enters the camera view from the passenger side, with his back toward the camera. He runs toward the gym's door.
- 00:59 Gaines enters camera view from the driver's side. [redacted] has entered the gym and is out of view.
- 01:02 Gaines goes Code 6 via his radio microphone. Gaines walks up to four unknown male blacks sitting on the above concrete curb where [redacted] was sitting. Gaines asks "No guns, right?" Gaines tells them to stand up and searches them, but does not search the unknown male black directly behind him seated on a bench near the flag pole wearing a white shirt with black ¾ length sleeves and a backpack.
- 01:50 Gaines walks away from the males in front of gym and walks into the gym.
- 03:33 [redacted] walks a handcuffed [redacted] by his left arm, out of the gym as [redacted] carries [redacted] mini iPad in his left hand. Gaines walks behind them and out of camera view.
- 03:54 [redacted] tries to pull from [redacted] and tries not to walk toward the police vehicle. [redacted] attempts to get the attention of the unknown male black wearing the backpack still seated on the bench. [redacted] is seen wearing a blue baseball cap turned backwards with a "T" on the front, indicating "83 Trey Gangster Crip."
- 03:58 [redacted] attempts to get the attention of the male wearing the backpack, who was still seated on the bench in front of the recreation center. This unknown male was not searched by Gaines during his initial contact.
- 04:00 Gaines is still out of camera view, but can be heard telling arriving units that [redacted] ran from them and had a gun. Gaines asks them to search the unknown male black on the bike.
- 04:02 [redacted] says something while he is walking past the unknown male black wearing the backpack, who begins to use his phone to video [redacted] [redacted] continues to struggle with [redacted] who uses a wrist lock on [redacted]
- 04:11 The male wearing the backpack walks toward the center of the camera and still appears to be recording the incident. [redacted] is out of the camera view.

- 04:20 [redacted] tells [redacted] to relax and act like an adult. The male wearing the backpack walks toward the passenger side of the black and white vehicle with his hands extended, he then walks out of the camera view.
- 04:28 The male wearing the backpack walks back into camera view and is holding in his right hand what appears to be [redacted] blue baseball cap.
- 04:34 Gaines stated, "Backpack. Backpack." The male wearing the backpack voluntarily places it on the ground and backs away and out of camera view. He tells an officer, later identified as Police Officer [redacted] that he can search the backpack.
- 04:42 [redacted] searches the backpack and leaves it on the ground in front of the black and white vehicle.
- 05:05 The male who was once wearing the backpack, walks back into the camera view now wearing what appeared to be [redacted] blue baseball cap turned backwards with a "T" on the front.
- 06:30 [redacted] instructs Gaines to give his mini iPad to the male wearing the backpack.
- 06:46 Gaines gives [redacted] mini iPad to the male black wearing the backpack in front of the black and white vehicle.

  Note: [redacted] later told I/O Katsumata that he instructed the male black wearing the backpack to return the iPad to his girlfriend who was inside the gym. [redacted] later claimed he did not know the male black wearing the backpack.

- 07:10 [redacted] tells Gaines which items he wishes to keep on his person and the rest of his belongings be given to the male [who had been] wearing the backpack. The items were given to the male [who had been] wearing the backpack, [who] is seen on camera carrying a black plastic bag [at 08:35].

The DICVS rear seat camera recording was 11:07 minutes long and it was not time/date stamped. During [redacted] transportation to 77th Street Community Police Station, [redacted] sat in [the] rear seat with [redacted] There was no partition between the front and rear seats. [redacted] asked [redacted] when he was last arrested. [redacted] told [redacted] he was arrested on August 31, 2012 for the same kind of [charge]. He told [redacted] that he fought the charge and the jury acquitted him. [redacted] continued to complete a Field Interview (FI) card for [redacted]

INVESTIGATOR'S NOTES:

1. I/O Katsumata and Sergeant Harris showed [redacted] a screen capture from Gaines and [redacted] DICVS, but he could not identify any additional witnesses. He [redacted] told them [Katsumata and Harris] that his girlfriend, [redacted] was present at the gym, but [redacted] could not provide her new cell phone number. [redacted] also viewed the DICVS screen capture to identify the aforementioned male black in the "T" cap and backpack. [redacted] asked Gaines to give [redacted] mini iPad to the male for safe keeping. [redacted] claimed he did not know the male and he only told him to return the mini iPad to [redacted]

2. On December 21, 2015, I/O Katsumata responded to 77th Street Property and photographed the revolver and ammunition booked into custody by [redacted] She took 15 photographs of the revolver and ammunition, DR No.1412-11343 (Addendum 6).

3. On December 23, 2015, I/O Katsumata reviewed the Communications Division broadcast recording of the incident and she identified units at scene: 12G22W6, Gaines and [redacted] 12A3W2, [redacted] and Police Officer [redacted] 12G23W6, Police Officer [redacted] and Police Officer II [redacted] 12G110W6, Sergeant II [redacted] and 12G20, Sergeant I [redacted] who was not listed on the incident recall report but was at scene. Additionally, it was [redacted] who made the additional unit request not Gaines.

4. I/O Katsumata also reviewed DICVS footage for the above additional units from the incident. The primary unit, Gaines and [redacted] was the only unit that activated their DICVS.

5. On December 29, 2015, I/O Katsumata spoke to Detective II [redacted] Firearms Analysis Unit, Gang and Narcotics Division, regarding a gun trace of ownership for the revolver Gaines and [redacted] booked on April 29, 2014. [redacted] found:

   - The revolver was older than 1968, which precluded it from record keeping requirements that exist today. [redacted] forwarded the subsequent report, Department of Justice Bureau of ATF National Tracing Center, Trace No. T20140145072 (Addendum 7).
   - [redacted] was also listed in two other traces. On August 31, 2012, [redacted] was arrested for ex-convict with a gun by Officer [redacted] and Police Officer II [redacted] 77th Street GED. The second trace, on October 17, 2013, listed [redacted] as an associate not an arrestee, which was not relevant to this case (Addendum 8).

6. On December 29, 2015, I/O Katsumata and Sergeant Harris responded to the St. Andrews Recreation Center. They met [redacted] a park employee, who allowed them inside the gym. A camera posted above the eastside entrance door was noted, but [redacted] advised that it had not worked for years. I/O Katsumata took 18 photographs of the inside and outside the gym (Addendum 9).

7. I/O Katsumata and Sergeant Harris also evaluated the recreation center's north/south parking lot. Gaines' report and testimony stated his and [redacted] police vehicle were approximately 10 feet away from [redacted] when [redacted] ran into the recreation center. I/O Katsumata compared Gaines' estimate with the DICVS footage and with a *Google maps* aerial view of the recreation center. There were two entrances to the parking lot, one toward the north and one toward the south. Gaines specified he drove N/B

St Andrews Place and passed 88th Street then W/B turn into the recreation parking lot, which concurred with the DICVS footage that indicated the officers entered the parking lot through the southern entrance. The actual distance between Gaines and [redacted] police vehicle and [redacted] was approximately 97 feet (Addendum 10).

8. I/O Katsumata and Sergeant Harris checked the park's picnic tables just south of the gym, where [redacted] mentioned an unknown male black who video-recorded when police were in the park. I/O Katsumata and Sergeant Harris spoke to [redacted] who told them he possibly had video footage of [redacted] arrest on April 29, 2014, but he needed to review his "video library" at his home. I/O Katsumata obtained [redacted] identification information and cell phone number. She gave him a business card and requested he call her when he reviewed his videos. However, [redacted] later called I/O Katsumata and told her he did not record the incident.

9. On December 30, 2015, I/O Katsumata obtained a copy of the aforementioned arrest report from August 31, 2012, when [redacted] was arrested as an ex-convict with a gun. Review of the report and case disposition revealed that the jury found [redacted] not guilty and he was acquitted on December 26, 2012 (Addendum 11).

10. Although DDA [redacted], JSID, approved a compelled interview with [redacted] I/O Katsumata submitted the investigation to JSID beforehand to avoid exposure to any compelled information. I/O Katsumata will compel [redacted] afterward and submit a revision upon JSID's request.

ADDENDA

1. Arrest Report/Property Report, DR No. 1412-11343, dated April 29, 2014.
2. Three DICVS disks from April 29, 2014; dash and rear seat cameras.
3. Court transcripts, numbered pages 1-35, plus two cover sheets, Case No. BA424247.
4. Memorandum from JSID, Case BA424247.
5. Photographs introduced by DPD [redacted] at the June 3, 2014 preliminary hearing.
6. Photographs of the booked revolver and ammunition, DR No.1412-11343.
7. Department of Justice Bureau of ATF National Tracing Center, Trace No. T20140145072.
8. Department of Justice Bureau of ATF National Tracing Center, Trace No. T20120255725.
9. Photographs of the inside and the outside the St. Andrews Recreation Center.
10. *Google maps* of an aerial view of the St. Andrews Recreation Center.
11. Arrest/Property Report, DR No. 1212-20865, dated August 31, 2012.

On March 23, 2016, the above investigation was submitted to JSID for filing consideration and assigned to DDA [redacted] Prior to making a filing determination, [redacted] requested that [redacted] be compelled and his paraphrased statement be provided for review. [redacted] statement was submitted to [redacted] on July 8, 2016, as a Supplemental Investigation.

For purposes of the Administrative investigation, it will be added here. What was initially listed as Investigator's Note 1 on the Supplemental Investigation will now be referred to as Investigator's Note 11.

SUPPLEMENTAL INVESTIGATION (Presented to JSID)

[redacted][12] was partnered with Gaines when they arrested [redacted]. Though [redacted] had more seniority with the Department, Gaines had more time in 77th Street GED by approximately eight months.

[redacted] was the passenger officer as Gaines drove northbound through the parking lot of St Andrews Park. From approximately 30 yards away, [redacted] observed a male, later identified as [redacted] in a white tank/undershirt, [stand] up and distance himself from the rest of a group in front [of] the St Andrews Recreation Center as Gaines and [redacted] approached in their police vehicle. [redacted] walked briskly toward the entrance of the gym portion of the recreation center. [redacted] quickly exited the police vehicle and ran after [redacted]

[redacted] learned from training and experience in the gang unit to attempt to detain similar persons based upon the person's actions and the circumstances, i.e., [redacted] standing up and distancing himself from the rest of the group. [redacted] also knew the park and recreation center was a known gang location with multiple shootings. Additionally, [redacted] was aware handguns were recovered from the location by other units on prior occasions.

> **Note:** [redacted] described a foot pursuit as chasing after someone while maintaining a constant line of sight. [redacted] did not consider himself in foot pursuit of [redacted] because he lost sight of him when [redacted] went inside the gym. After [redacted] reviewed the DICVS, he acknowledged he was in foot pursuit after [redacted]

[redacted] did not recall if he told Gaines that he was going to follow [redacted] into the gym. He only assumed Gaines watched him run after [redacted] into the gym and assumed Gaines would follow.

[redacted] ran into the lobby of the gym where he heard the sound of [basketballs bouncing] from inside the gym, which then stopped. [redacted] recalled, "It's quiet inside, so it sounded funny to me. I go inside to the basketball courts of the gym and see [redacted] trying every door of the interior perimeter to exit. I verbally ordered him to come towards me. People are standing around, holding basketballs, and watching both of us."

As [redacted] walked back toward [redacted], [redacted] ducked into a cut-out storage area. [redacted] distinctly recalled [redacted] turned perpendicular to [redacted] and removed a handgun from his

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[12] I/O Katsumata and Sergeant II Don Byeon, Serial No. 30929, [CID South Section], conducted the interview. Katsumata later uploaded the interview recording to CMS under [redacted] and [redacted]

waistband area. [redacted] believed he drew and exhibited his handgun at [redacted] but he was not sure.

[redacted] believed [redacted] was present when [redacted] removed the handgun from his waistband area, but [redacted] was not sure as his attention was focused in front and not behind him. [redacted] put the handgun down on the floor, underneath some stacked mats within the storage area, and walked toward [redacted]

[redacted] gave commands to [redacted] but he did not remember the specific commands. [redacted] handcuffed [redacted] but he did not recall if he placed [redacted] into a prone, standing, or kneeling position. [redacted] first noticed Gaines was inside the gym when he took [redacted] into custody and placed handcuffs on [redacted]

[redacted] told Gaines to recover the handgun that was a few feet away from where [redacted] was handcuffed. [redacted] saw Gaines recover the handgun, but he did not see Gaines render it safe. [redacted] was busy dealing with [redacted] and he did not see what Gaines did with the handgun, but he assumed Gaines placed it in one of his uniform's back pockets.[13] [redacted] walked [redacted] out of the gym as Gaines followed behind him. They placed [redacted] in the back of their police vehicle. [redacted] presumed Gaines put the handgun in the trunk of their police vehicle, but he did not see Gaines do so.

Gaines and [redacted] transported [redacted] to 77th Street Community Police Station (CPS). [redacted] did not recall how they divided their responsibility for processing [redacted] arrest.

Note: During the interview, I/O Katsumata showed [redacted] a completed copy of [redacted] arrest report. [redacted] reviewed the report and refreshed his memory.

[redacted] completed the face sheet of the arrest report, as he recognized in his own penmanship. He also completed the Property Report, Property Receipt, Investigative Action/Statement Form, the Booking Approval, and queried [redacted] criminal history as well as the gun's records.

[redacted] was certain he only completed the face sheet portion of the arrest report and Gaines wrote the arrest report narrative. [redacted] did not recall if he completed the Probable Cause Disclosure (PCD) Declaration. He theorized that Gaines might have typed [redacted] last name on the PCD and also cut and pasted the arrest narrative on to the PCD.

[redacted] was not sure how he and Gaines decided who would write the arrest report. Though [redacted] made the majority of the observations that led to [redacted] arrest, he did not write the arrest report. Also, [redacted] did not recall if he went end of watch (EOW) earlier than Gaines

[13] It was common practice in the gang unit to render a gun safe and to place it in one of their uniform's back pockets, to have both hands free.

on the date of incident.[14] Further, [redacted] could not explain why he did not review the arrest report before it was submitted to the watch commander:

> I didn't review this (arrest report) because I didn't feel I needed to. I mean my partner had more time in the gang unit and I was one of the newer officers in the gang unit. So, I trusted him (Gaines) to write a complete narrative. So, I didn't read it.
>
> I am learning from this now, but working with peers as a P2 (Police Officer II) in the gang unit and special problems unit (SPU) it was not done regularly; and it's probably not the best practice and I've learned from it. But, unless I am working with someone who has a lot to learn, a lot of times I don't review their report and vice versa, but that is just from my experience. I don't do this anymore.[15]

[redacted] read the arrest report for the first time when the I/O emailed him a copy.[16] [redacted] did not read the report before he received the email. He also only first reviewed the DICVS as instructed in the I/O's email. After [redacted] reviewed the DICVS, he believed it was consistent with what he independently recalled of the incident. [redacted] did not know if Gaines reviewed the DICVS and Gaines did not tell [redacted] if he reviewed it.

Before [redacted] reviewed the DICVS he did know he was alone while in foot pursuit after [redacted] [redacted] recollection was that Gaines was not as far behind him as the DICVS indicated. After [redacted] watched the DICVS, he was surprised to see Gaines took so much time talking to and searching the unidentified males outside the gym.[17]

[redacted] assumed that if Gaines saw him run, Gaines would run too, "I thought Gaines was behind me the whole time, but obviously, he wasn't." [redacted] did not know if Gaines saw [redacted] throw" the gun into a recessed/cut out storage area where mats were stored. [redacted] recalled it was the first time he was inside that gym and the west doors were either locked or did not work because he saw [redacted] try unsuccessfully to open them (Investigator's Note 11).

Before Gaines wrote the arrest report, [redacted] and Gaines' common practice was to discuss what they observed. In [redacted] case, they specifically talked about when [redacted] removed a handgun from his waistband area. [redacted] and Gaines specifically talked about where

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[14] According to the Daily Worksheet for the incident date, Gaines and [redacted] were scheduled to work from 1200 hours to an EOW of 2200 hours. According to their log, they went EOW at 2232 hours. The I/O verified via Fiscal Operations Division that neither [redacted] nor Gaines submitted an overtime report on the incident date.

[15] [redacted] was aware Department policy required officers to review their DICVS when practicable before they prepared reports to refresh their recollection.

[16] On June 21, 2016, the I/O emailed [redacted] and told him to review the DICVS and the email's attached documents, the arrest report and incident recall printout prior to our scheduled interview.

[17] [redacted] exited the police vehicle and ran after [redacted] at 00:56 inside the gym alone. Gaines walked away from the males in front of the gym and into the gym at 01:50.

inside the gym it occurred. They did not talk about specific distances as they approached the front of the gym.

> **Note:** In the arrest report, Gaines wrote that the gun was approximately 10 feet away. Attorney Quan interjected that the distance was Gaines' perspective and what he saw. [redacted] and Quan acknowledged there were discrepancies with the DICVS and the arrest report.

[redacted] cited the specific inconsistencies he noted between the DICVS and the arrest report narrative:

- Suspect walking backwards
- Appearing startled with a nervous gait on his face
- Suspect looking left and right
- Turning his head to look behind him
- Reaching for the front of his waistband

> **Note:** The above reflect the similar discrepancies as noted in a memo by DDA [redacted] which prompted the IAG investigation.

[redacted] did not recall if he or Gaines activated the DICVS in their police vehicle, but he speculated either one of them could have activated it by pressing the microphone button, or activating the vehicle's overhead light bar switch. The DICVS microphone for Gaines was clearly activated as the DICVS displayed as "M1" on the screen. However, [redacted] did not know why his DICVs microphone, "M2," was not activated at the beginning of the incident, but it began to record toward the end as [redacted] was placed in the back seat of their police vehicle.

> **Note:** The video timer in the bottom left corner of the DICVS screen indicated approximately 04:35 minutes elapsed during the incident before [redacted] microphone activated.

[redacted] was not present in court during any testimony for [redacted] case. He did not recall why he was not present and speculated he may have been out of town or on vacation. [redacted] did not recall why he did not have to testify for [redacted] case. [redacted] did not hear any portion of Gaines' testimony, nor did he know what Gaines testified to on [redacted] case.

[redacted] did not testify at [the] preliminary hearing, but recalled "I was subpoenaed by the DA (district attorney) for a follow-up meeting and that is when [redacted] took a deal."[18] [redacted] was asked similar questions by DDA [redacted] regarding his observations and his

[18] DDA [redacted] subpoenaed [redacted] in preparation for a motion to suppress evidence filed by the defense. The motion challenged the probable cause for [redacted]'s arrest. [redacted] confirmed [redacted] case was disposed for a lesser misdemeanor charge.

recollection of [redacted] arrest.[19] Before his meeting with DDA [redacted] did not review the arrest report and DICVS.

INVESTIGATOR'S NOTE

11. The I/O accompanied DDA [redacted] for a site visit to St Andrews Recreation Center on May 19, 2016. During their site visit they identified park employees [redacted] and [redacted] who advised that the west and north facing gym doors are unlocked when the gym is in use to allow emergency exits only. Gym patrons cannot use the doors as entrances as they are locked on the outside. Access into the gym is through the east facing door, the front entrance into the recreation center. [redacted] noted numerous exit points before entering the basketball courts inside the gym

Deputy DA [redacted] completed the final review of the criminal allegations against Gaines. On February 14, 2017, [redacted] declined to file charges against [redacted] and Gaines stating Code B, Insufficient Evidence (Addendum 12).[20] Below is the Administrative investigation.

During a review of the DICVS, Detective Moulton observed that Gaines drove through three posted stop signs, failing to come to a full and complete stop.[21] Two of the stop signs were directly in front of the recreation center; West 88th Street and St Andrews Place, and West 87th Street and St. Andrews Place. The other stop sign was at West 89th Street and St. Andrews Place. All three the stop signs were in a residential area.[22]

[redacted]

Note: Although Katsumata allowed Gaines to view the DICVS prior to his interview, she did not play it *during* the interview and ask specific questions or address discrepancies noted between the video and Gaines' responses to some of her questions. In addition, some discrepancies noted by [redacted] were not appropriately addressed and the vehicle code violations were not addressed. Moulton re-interviewed Gaines for clarification. The interviews were combined and paraphrased below.

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[19] [redacted] did not identify [redacted] by name but the investigation identified her.
[20] The investigation was submitted with CF No. 14-003455. As such the declination combined information from both cases. The information specific to CF No. 14-003455 was redacted.
[21] Violations of California Vehicle Code 22450(a).
[22] [redacted] separated from the Department by the time Allegation 6 was discovered. [redacted] was not an accused officer for Allegation 6. He was not contacted for an interview as he would be a witness only and the allegation was captured on the DICVS footage.

Gaines[23] had some recollection of [redacted] arrest on April 29, 2014. He worked as a gang officer with 77th Street GED and his partner that day was [redacted]. Although they were not assigned partners, Gaines worked with [redacted] before on prior occasions. Gaines wrote the arrest report and testified in the preliminary hearing. Gaines did not review the DICVS prior to writing the arrest report as he could not gain access to the DICVS. He could speak for 77th Street Area, but the DICVS was not downloaded and it was not accessible when the report was written/finalized.[24] He was aware the DICVS could be accessed from inside the police vehicle once the buffering process was completed. It was common practice for him to review the DICVS before he wrote his reports, as it assisted his recollection. However, in the past Gaines experienced difficulties with the DICVS uploading into the system.

> **Note:** A request was submitted to Information Technology Bureau (ITB) Tactical Technology Section, to determine if [redacted] or Gaines accessed/viewed the DICVS on the date of the arrest. The ITB advised they were only able to track major outages within their systems, including DICVS. The outage could occur at the main server, which could affect the system City-wide or at a divisional level. The outage could create issues with uploading and accessing DICVS. There was no major system-wide outage on April 29, 2014, but ITB could not definitively state the officers could or could not watch their videos at a divisional level.
>
> The video logs revealed that [redacted] accessed the video on **April 29, 2014 at 10:15:22 PM; May 1, 2014 at 11:13:00 PM; and May 1, 2014 at 11:16:05 PM.** Gaines accessed the video on **April 29, 2014 at 10:07:31 PM** (Addendum 13). A follow-up call to ITB by Moulton affirmed the above entries could indicate *attempts* to access the system and not necessarily indicate full access.
>
> The officers' vehicle, Shop No. 87994, was equipped with first-generation equipment that recorded a limited amount of information on the log. It was unknown if the accesses were made from the vehicle or on a Department computer, how much video was played, if the video was accessed, or an attempted access was made. Per the officers' DFAR, they were end of watch at (EOW) 2233 hours (Addenda 14-15).[25]

Gaines authored the report approximately two to four hours after the arrest. He wrote it from memory per his perception of the incident at the time he authored the report.

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[23] Katsumata and Sergeant II Peter Harris, Serial No. 27304, CID South Section, interviewed Gaines on March 28, 2017; Moulton re-interviewed Gaines on July 10, 2017. Both interviews were uploaded to CMS under Gaines, Kevin 1&2.

[24] During his interview with Moulton, Gaines advised he did not have an independent recollection of attempting to gain access to the video as it was over three years prior. His interview with Katsumata was three and one-half months prior.

[25] The Communications Division broadcast mentioned in Investigator's Note 3 was downloaded to a disk and attached to the investigation upon its final submission (Addendum 16).

Note: Moulton reviewed the DICVS with Gaines. He addressed the issues in chronological order as they occurred on the video. The observations were compared to what he documented in the arrest report. The elapsed time from the counter clock in the left corner of the DICVS was referenced during the interview to indicate specific actions observed.

Gaines and [redacted] discussed driving to the recreation (rec) center prior to pulling up to it. The conversation was not captured on DICVS. At approximately 00:19 into the video, Gaines drove through the first stop sign at West 89th Street and St. Andrews Place without stopping. He also drove through the stop sign at St. Andrews Place and West 88th Street (00:33) without stopping.

Gaines knew the area and the local gang, the Eight Trey Gangster Crips. His training and experience taught him the gang would have lookouts on the street (indicating St. Andrews Place between West Manchester Avenue and West 89th Street). The lookouts would warn of oncoming police presence. Gaines cleared the intersections at both stop signs before driving through them, checking for oncoming vehicles, pedestrians, etc. His goal was to reach the rec center as quickly as possible without being noticed by the gang members to gain the upper hand by surprising them and possibly see them engaged in any type of (illegal) activity.

Gaines drove in to the south end of the rec center parking lot (00:43). The police vehicle faced forward and [redacted] and other persons were directly ahead of Gaines and [redacted] At approximately 00:45 to 00:48 seconds, Gaines first observed [redacted] and a group of men seated on concrete slabs in front of the rec center.[26] The officers were about four to five car lengths from the curb in front of the rec center.

There were two men sitting next to [redacted] on the concrete border, south of [redacted] and to his right. It was difficult to see on the DICVS, but as [redacted] sat on the concrete border, he looked behind the other two men in the direction of the officers. This action occurred before [redacted] came into focus on the DICVS recording.

Although Gaines wrote that [redacted] then stood up and "began to walk backwards," the action did not appear on the DICVS. [redacted] stood up, turned to his left and then walked westbound into the gymnasium. Gaines' perception at the time [redacted] stood up was there was a backwards motion. After he reviewed the DICVS, it appeared [redacted] turned and walked behind the area from where he was seated. Gaines' perception at the time he wrote the report, several hours later, was that [redacted] had walked backwards.

The report stated [redacted] appeared startled and had a "very nervous gait (sic) appearing on his face." By "gait," Gaines meant when [redacted] looked in the officers' direction, before

[26] There was a raised, concrete border around a greens area in front of the rec center. The area was depicted in previously referenced Addenda 5a.

he stood up, [redacted] had a heightened sense in his eyes; they became more enlarged. [redacted] looked shocked, surprised.[27]

The reported stated as the officers were approximately 10 feet from the group, [redacted] began to look left and right and then turned his head to look behind him. The action was not visible on the DICVS. The 10 feet was Gaines' perception at the time he wrote the report. However, upon viewing the DICVS, Gaines realized they were much farther away. The 10 feet was an estimate, Gaines did not intend to write a misleading distance in the report. It was a fluid motion and the police vehicle moved continuously forward. The 10 feet was the distance Gaines' remembered/perceieved when he wrote the report.

The report stated [redacted] began to look left and right and turn his head behind him. The actions were not apparent on the DICVS. Gaines explained per the DICVS, when [redacted] stood up and turned, [redacted] looked eastbound. As [redacted] continued his turn, [redacted] body was "bladed," facing northbound and Gaines could see [redacted] looking straight (northbound) then [redacted] turned and looked westbound where he made his entry into the gymnasium. Gaines described [redacted] made his turn as a fluid motion; it was grainy on the DICVS, but Gaines' perception was [redacted] looked eastbound and then northbound which Gaines opined that [redacted] looked for possible avenues of escape. Gaines advised it was very difficult to see on the DICVS.

The report stated [redacted] reached for the front waistband of his shorts with his right hand and immediately turned around. The action was not visible on the DICVS. Gaines explained when [redacted] initially stood up, his right hand favored his waistband. The officers saw the action as they drove up (north towards [redacted]).

> **Note**: The forward-facing camera was stationary and focused toward the center of the windshield. Gaines drove up and stopped directly to the south of [redacted] and his group. There was a tree in the walkway directly in sight of the camera. Gaines explained that his and [redacted] viewing angles were different than what was captured by the forward-facing camera. From where Gaines sat, he was at an angle where he could see [redacted] hand favor the waistband as [redacted] stood up.

Although the audio portion of the DICVS did not start until Gaines exited the vehicle, he and [redacted] spoke to each other about their observations as they pulled into the rec center parking lot. Gaines did not recall the exact conversation they had, three years prior, but it would have been something like, "white shirt, right hand, waistband." Gaines and [redacted] used cues between partners to notify each other.

The report continued and stated [redacted] '...immediately turned around and began to run N/B and then quickly into the gymnasium building." [redacted] *walked* into the gymnasium on the DICVS. [redacted] was depicted as he ran into the view of the camera from the

[27] In his preliminary hearing testimony, Gaines used the term "gaze" instead of "gait."

passenger side of the police vehicle. [redacted] entered the gym and went out of camera view. Gaines' perception at the time was [redacted] moved at a faster pace than depicted in the DICVS. Per the DICVS, as [redacted] entered the rec center doorway threshold, [redacted] leaned forward with his upper body. What was not on the DICVS and Gaines remembered distinctively, when [redacted] reached the threshold of the door, he leaned forward in a motion to engage in a sprint.

Gaines wrote that he and [redacted] engaged [redacted] in a foot pursuit. However, [redacted] was the only officer depicted in foot pursuit on the DICVS. Gaines walked out of the vehicle and approached the group of men [redacted] had been with. Gaines explained that as soon as he entered the gymnasium, [redacted] informed Gaines via the radio that he was in the basketball court. Gaines quickly made his way into the gymnasium and observed [redacted] as he ran after [redacted] down the basketball court.

Gaines omitted from the report the part where he stopped the group of men outside the gymnasium. It did not change the events or actions that occurred. The timeline of events did shift from what he observed on the DICVS. When he wrote the report, Gaines recalled he stopped the men "out front" for officer safety. His perception was the stop was short and brief. Gaines then immediately went inside (the gym) and assisted [redacted] who actively searched for the suspect. As soon as Gaines entered the gymnasium, he met with [redacted] and they both engaged in a foot pursuit after [redacted]. When Gaines wrote the report, he did not think about the brief stop with the other men at all.

Among the individuals outside the gym was a man with a backpack. Gaines did not search the man during his preliminary stop and pat-down search for weapons. As Gaines' response for separating from [redacted] was for tactical reasons, Gaines explained he engaged the man with the backpack quickly in a verbal conversation. Gaines sized him up very quickly. The man with the backpack wore loose basketball shorts. He was sitting down in a t-shirt that exposed parts of his waistband as well as his underwear. With exception of the backpack, Gaines did not perceive the man as an immediate threat as Gaines visually cleared any of the man's pockets or waistband. At the time, Gaines did not check the backpack; it was a fluid motion. To take something out of the backpack, the man would have to remove it from his back. That motion alone would definitely draw Gaines' attention. Gaines wanted to minimalize the time he was separated from [redacted] who was inside the gym with a possibly armed suspect.

While Gaines was outside speaking to the individuals, approximately 48 to 50 seconds elapsed before Gaines entered the gym. The basketball court was roughly 80 feet long and 48-50 seconds was a long time for [redacted] to be in foot pursuit of [redacted] down an 80-foot sideline. Gaines explained that once he crossed the threshold to the gym, [redacted] relayed he was inside the lobby and lost sight of [redacted] [redacted] observed some doors and briefly checked both the men's and women's restrooms and a storage closet off the main lobby.

[redacted] then went inside the basketball court area where he saw [redacted][28] [redacted] notified Gaines of his position via radio and Gaines entered and proceeded to the basketball courts. When he entered the courts, Gaines observed [redacted] as he chased [redacted] at approximately mid-court. Gaines immediately went in foot pursuit to close the distance. Gaines did not intend to omit from the report [redacted] clearing of the lobby area before he entered the basketball court. By the time Gaines entered the basketball court, [redacted] just began his foot pursuit. In Gaines' mind, the foot pursuit was a continuous, fluid motion from when [redacted] first exited the police vehicle.

Gaines further wrote that [redacted] removed a silver revolver. During his interview with Katsumata, Gaines advised he did not know what the object was at the time [redacted] removed it. When Gaines wrote the report, he knew what the object was, so he referred to it as the "silver revolver." During [redacted] interview, [redacted] stated [redacted] tossed the gun *under* some mats. Gaines recovered the gun and he strongly recalled he recovered it from *on the top* of the mats. [redacted] was within a few feet of Gaines when he recovered the gun, but was actively engaged in handcuffing [redacted] at the time. The mats were approximately three feet high from the ground, no more than four feet high.

Gaines did not view the DICVS before he wrote the report. He had no idea if [redacted] viewed the DICVS, although it was common practice for Gaines and his partner to try to access the DICVS. Regarding the transcripts of the preliminary hearing, Gaines did not view the DICVS before he testified. He had his police report with him and reviewed it before he testified. It did not occur to Gaines to view the DICVS before he testified.

> **Note**: Gaines addressed his testimony at the preliminary hearing. For reference, the transcript page and line numbers were listed below.

<u>Direct</u>
Page 6, Line 8. Gaines testified to what he wrote in the report, that he was 10 feet away when he first observed [redacted] He addressed the discrepancy earlier in his statement. Gaines had no intent to provide false testimony regarding this issue.

Page 7, line 1. Gaines testified observed a nervous *gaze* on [redacted]s face as soon as [redacted] made eye contact with the police vehicle. Gaines wrote *"gait"* in the report, but his testimony referred to the same action by [redacted]

Line 4. Gaines testified that [redacted] immediately stood up and began to walk *backwards* looking in his left and right direction. Gaines testified to what he wrote in his report and what his perception was when he wrote the report a few hours later. He explained the discrepancy earlier in his statement.

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[28] Gaines used the term "gymnasium" to describe both the lobby and basketball court area of the gymnasium. For clarity, Moulton distinguished between the three in his paraphrased statement.

Line 9. Gaines testified as soon as [redacted] reached for his waistband, the looking in all directions continued. Gaines addressed the discrepancy earlier in his statement. He and [redacted] had different views of [redacted] and the surrounding area, other than what was visible on the DICVS' forward-facing camera. Gaines explained the discrepancy earlier in his statement. He advised the testimony of his observations was accurate.

Line 17. Gaines testified as soon as he and [redacted] exited their vehicle, [redacted] began to run from the location and ran into the gymnasium. Gaines testified to his arrest report which was his perception at the time [redacted] ran from the onset. The discrepancy was explained earlier in his statement; that [redacted] ran once inside the gymnasium. Gaines had no intent to provide false testimony regarding the issue.

Line 22. Gaines and [redacted] engaged in a foot pursuit of [redacted] Gaines testified to what he wrote in his arrest report, based on his perception at the time he wrote it. The discrepancy was explained earlier in Gaines' statement. There was no intent to provide false testimony.

Line 25. Gaines testified as he and [redacted] entered the gymnasium, [redacted] ran to the basketball court and proceeded to run down the sideline, continuously looking in all directions. The discrepancy was explained earlier in Gaines' statement; there was a "lull" when [redacted] searched the lobby area for [redacted] It was not Gaines' intent to provide false testimony regarding the issue.

Page 8, Line 5. Gaines testified [redacted] ran to a gap in the wall, at which time he removed a silver revolver that both he and [redacted] observed. During his prior statement with Katsumata, Gaines stated he did not know the object was a gun at the time [redacted] threw it. Gaines clarified that at the time he wrote the report and later testified, he knew the object was a gun and referred to it as a "gun" rather than an "unknown object." The discrepancy was explained earlier in his statement. If Gaines was specifically asked during his testimony at what point he knew the object was a revolver, Gaines would have indicated when he observed it on the mats.

Line 11. Gaines was specifically asked if he saw [redacted] discard the *revolver*. Gaines responded he did. Again, Gaines already knew the item was a revolver at the time he testified. It was not his intent to provide false testimony; he answered the question in the manner it was asked.

Cross

Page 11, Line 12. The defense asked if the males seated with [redacted] were interviewed. Gaines responded they were not interviewed. Gaines did not consider his brief pat-down for weapons as an "interview." It was for officer safety, for weapons only. Gaines considered an interview to involve more lengthy conversation.

Page 13, Line 10. Gaines responded to a question and stated it was [redacted] who stood up and *ran* from the group. He explained the discrepancy earlier in his statement; Gaines testified to what he wrote in the report which was based on his perception at the time. [redacted] did not run from the group until he was inside the lobby threshold. It was not Gaines' intent to provide false testimony.

Page 15, Line 7. Gaines testified that the stop was *continuously fluid*. He meant to articulate that the actions occurred very quickly.

Lines 10-17. Gaines was asked if he identified any other gang members beside [redacted] and he responded he did not have time to talk to anyone. Gaines did not consider the short pat-down search as an interview or an inquiry into gang affiliation, etc. He did not spend that much time with the men. It was not Gaines' intent to provide false testimony.

Page 17, Line 23. Gaines responded to further questions about [redacted] actions and stated [redacted] backed away from the group and continued to look left and right over his shoulder. Gaines addressed the discrepancy earlier in his statement. It was not his intent to provide false testimony. If the defense had asked him to clarify his response, he would have. The defense did not ask Gaines to clarify his response to the question.

Page 33, Line 1. The court asked if [redacted] turned and looked in Gaines' direction. Gaines responded that [redacted] turned and looked in the officers' direction, looked forward again, and that was when the revolver was removed from his [redacted] front waistband with his right hand. Gaines had no recollection of the testimony at the time of his interview with Detective Moulton. Again, Gaines testified the object was a revolver after the fact and he already knew what the object was.[29]

> **Note**: The transcripts contained information that was repetitive. Moulton opted not to address each line with Gaines if the information was already addressed in his interview.

Regarding the DICVS, at 10:13 into the video, [redacted] was already arrested and sat in the rear seat of the police vehicle with Yeh. Gaines drove out of the rec center parking lot and drove through the posted stop sign at South St. Andrews Place and West 87th Street. Gaines did not recall that he ran that stop sign. However, he pointed out that once he pulled out of the parking lot and turned left, north, the stop sign was only a few feet from the subsequent turn. Gaines already cleared the area of traffic and pedestrians when he pulled out of the parking lot. He believed that to stop his vehicle at that point would expose his (police) vehicle to oncoming lanes so Gaines proceeded forward. Gaines did not intend to violate the CVC when he drove through any of the three posted stop signs (Addendum 17).

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[29] During Moulton's interview, she erroneously stated the information was not in the arrest report. The information *was* documented in the arrest report; the first paragraph on Page 3.

Gaines noted in his experience that certain officers get delegated to certain duties. Gaines was a better writer than [redacted] so he wrote the report though [redacted] made most of the observations. Gaines told Sergeant Harris during his first interview that [redacted] got up (off the concrete slab) *because he saw the police*. Gaines meant to say he *thought* [redacted] stood up once he observed the police and then walked into the gym.

ADDENDA

12. A-J DA Charge Evaluation Sheet - Redacted, DA Case No. 37953075.
13. A-C Email Correspondence from ITB, dated April 5, 2017.
14. Incident Recall No. LPD140429003781.
15. CAD/DFAR Summary for Gaines and [redacted] dated April 29, 2014.
16. Broadcast Recording of Incident Recall No. LPD140429003781.
17. Google map page of Rec Center and route driven by Gaines [redacted]

SUBMITTED:

CARRIE A. KATSUMATA, Detective

Date: 7.19.17

APPROVED:

JAMES CUMMINGS, Lieutenant
Officer in Charge
Criminal Investigation Division, South Section
Internal Affairs Group

Date: 07-19-17

INTERNAL AFFAIRS
CRIMINAL INVESTIGATION DIVISION

CONFIDENTIAL

Personnel Complaint Investigation

CF No. 15-001941

Addenda
CF No. 15-001941

CF 15-001941

(1) ORIGINAL INVESTIGATION SUBMITTED TO JSID

(2) SUPPLEMENTAL INVESTIGATION SUBMITTED TO JSID

INVESTIGATIVE RESPONSIBILITY:
The Investigating Officer (I/O) for this case was Detective II Carrie A. Katsumata, Serial No. 30832, Internal Affairs Group (IAG), Criminal Investigation Division (CID), South Section. She can be contacted at (213) 485-9851. Requests for a supplemental investigation must be approved by the CID commanding officer (C/O) via an Intradepartmental Correspondence, Form 15.02.

STATUTE DATE: The statute date is **June 30, 2016**. However, the administrative statute date has been tolled pending completion of the criminal investigation and subsequent filing determination.

BACKGROUND: On April 29, 2014, Police Officer II Kevin Gaines, Serial No. 40210, and Police Officer II [redacted] 77th Street Gang Enforcement Detail (GED), arrested [redacted] for possession of a gun by a felon at the St. Andrews Recreation Center.[1] According to the arrest report Gaines wrote, he and [redacted] were driving northbound on St. Andrews Place passing 88th Street and they conducted a westbound turn into the recreation center's parking lot. As Gaines and [redacted] continued to drive toward a group of male blacks outside the recreation center's gym, [redacted] suddenly stood up, reached for the front waistband of his shorts with his right hand, and then ran into the gym. [redacted] chased after [redacted] into the gym and observed [redacted] throw a gun, which [redacted] subsequently directed Gaines to recover (Addendum 1).[2]

On June 3, 2014, Gaines testified in [redacted] preliminary hearing and [redacted] was held to answer. [redacted] did not testify.[3] Representing the people was Deputy District Attorney (DDA) [redacted] and the defense attorney was Deputy Public Defender (DPD) [redacted] On June 9, 2015, [redacted] pled nolo contendere and he was convicted for a lesser charge of carrying a concealed firearm. He was sentenced to 32 days in Los Angeles County Jail and placed on formal probation for 12 months. The initial charge of a felon with a gun was dismissed due to a plea negotiation.

SUMMARY: On June 12, 2015, DDA [redacted] wrote a memorandum to Head Deputy James Garrison, Justice System Integrity Division (JSID), regarding Gaines' testimony in the above preliminary hearing. DDA [redacted] noted that footage from the officers' Digital-in-Car Video System (DICVS) was inconsistent with the arrest report and with Gaines' testimony (Addenda 2-3).

DDA [redacted] noted that Gaines wrote in the arrest report:

> "As my partner and I continued our approach toward the group while still in our vehicle, we observed a male/black (later ID as susp [redacted]) who was wearing a plain white muscle shirt suddenly stand-up and while facing in our direction began to walk

[1] 8701 South St. Andrews Place.
[2] [redacted] has since promoted to Police Officer III and transferred to Metropolitan Division.
[3] The hearing was held in Los Angeles Superior Court, Department 33.

> backwards. [redacted] appeared startled and had a very nervous gait [sic] on his face. As my partner and I were approx. 10 feet away from the group, [redacted] began looking left and right and then turned his head to look behind him. It was at this point [redacted] reached for the front waistband of his shorts with his right hand and immediately turned around and began to run N/B an then quickly W/B into the gym."

DDA [redacted] additionally noted that Gaines testified as above at the preliminary hearing on June 3, 2014. He also testified that he immediately followed [redacted] into the gym, chasing after [redacted] Gaines further testified that he and [redacted] ran into the gym after [redacted] When asked if Gaines could tell who else was present outside the recreation center, he testified that he could not tell who was out there as his attention was directed to [redacted] and he did not have time to talk to anyone else.

DDA [redacted] wrote that the "problem with the report and the testimony concerning this matter is that it is inconsistent with the police officers' own" DICVS. She listed the following key discrepancies:

1. The officers were far down the parking lot when [redacted] stood up;
2. [redacted] never looks in the officer's direction;
3. [redacted] never grabs his waistband;
4. [redacted] never walks backward;
5. [redacted] did not run prior to entering the gym;
6. Gaines did not immediately follow [redacted] into the gym, instead he stopped to talk to several unidentified men seated outside and checks them for weapons. He remains outside of the recreation center for about 1.5 minutes.

DDA [redacted] believed none of the discrepancies changed "the fact" that [redacted] illegally possessed a gun on the date of incident, but the discrepancies did question Gaines' credibility, which was vital to prove key elements of the incident, which occurred off-camera.

Head Deputy Garrison subsequently forwarded DDA [redacted] memorandum to IAG on June 30, 2015 (Addendum 4).

> **Note:** The above DICVS footage also depicted tactical issues of Department concern, which will be addressed in the IAG investigation. Also, the DICVS footage did not depict the recovered gun, an old Colt "Police Positive" .38 revolver, as it was not visible in either officer's hands.

[redacted]

[redacted]

ALLEGATION 5. The Department alleges that on June 3, 2014, Officer Gaines, while on-duty, made false statements in his testimony in Los Angeles Superior Court, Department 33.

DDA [redacted][4] was the Calendar Deputy for Department 134 on June 17, 2014, when [redacted] case was sent to her for court arraignment. [redacted] was previously held to answer at a preliminary hearing on June 3, 2014.

[redacted] noted several issues delayed prosecution of [redacted] case. In particular, the prosecution requested but was not provided with the DICVS until several months later. When [redacted] reviewed the DICVS, she noted several inconsistencies between Gaines' written report, his testimony, and what the DICVS depicted. Therefore, she notified JSID via her chain of command.

[redacted] noted the inconsistences with Gaines in her memorandum and she ordered a stop-action video from the DICVS footage via her organization's sound department, which freeze-framed several of [redacted] actions. None of [redacted] actions that Gaines described in his report and testimony were depicted in the video.

On June 5, 2015, the defense filed a motion to suppress evidence, which was scheduled to be heard on June 9, 2015.[5] The motion challenged the probable cause for [redacted] arrest. [redacted] met and interviewed [redacted] to prepare for the motion to suppress. [redacted] thought [redacted] would "regurgitate" what Gaines wrote in the police report.

[redacted] recollection was that [redacted] separated himself from the group outside the recreation center. [redacted] clarified that [redacted] did not run from him, it was he who ran after [redacted] [redacted] chased [redacted] through the recreation center's doors and once inside, [redacted] followed the sound of running footsteps. All of a sudden, footsteps from the ongoing basketball game stopped as the sound of other running of footsteps continued. [redacted] chased the running footsteps, identified as from [redacted] [redacted] ran past the stage and threw a gun into a closet where mats were stored. [redacted] later told Gaines to retrieve the gun from the closet.

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[4] I/O Katsumata interviewed DDA [redacted] on February 10, 2016 and uploaded it to the complaint management system (CMS) under [redacted]. [redacted] reviewed the memo prior to the recording. The memo's contents were not repeated verbatim in the recorded interview.

[5] Penal Code (PC) Section 1538.5.

believed statement was credible, as he could describe what he heard and how he heard it, compared to what Gaines wrote and what was depicted in the DICVS. told that Gaines carried the gun out of the gym in one of his pants pockets.[6]

confirmed case was disposed for a lesser, misdemeanor, charge of carrying a concealed firearm and informal probation. She could not prove the higher charge of a felon with a gun, due to Gaines' credibility was called into question.

[7] was outside the recreation center's gym as he waited to play in a basketball tournament occurring inside the gym. He estimated there were over 50 people inside. walked into the gym through the double doors and stood to the left of the stage. He was surprised when a police officer, later identified as stopped him inside the gym 20 seconds later. did not see the police before he entered the gym.

ordered to stop and put his hands up and complied as he held a mini iPad in one of his hands. grabbed by one of his arms and escorted him further into the gym to a secluded area toward the back of the gym. escorted away from other people, where could turn his back and no one was behind him. then handcuffed and pat-down searched him three times.[8]

called for an additional officer and when one arrived, did not recognize the officer, who the investigation later identified as Gaines, as he only saw the officer from far away. did not know Gaines until Gaines got on the stand and stated his name for case.

> **Note:** repeatedly misidentified Gaines as "Officer" and misattributed actions as those of Gaines, or ' He described as bald with a muscular build. noted he knew from past contacts and he was familiar with build compared to Gaines.' He further distinctly remembered he looked at the officer's name tag to verify it was and not Gaines who arrested him on the incident date. The investigation confirmed was the first officer that contacted inside the gym. There was no "Officer involved in April 29, 2014 arrest.

During case, he requested a copy of the DICVS, which did not match Gaines' arrest report and testimony.[9] was not aware that officers pursued him into the gym. The officers told him at the station that he was arrested for a gun and he told them he was searched three times and he did not have anything. admitted to a charge of

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[6] He did not specify which pocket.
[7] I/O Katsumata and Sergeant II Peter Harris, Serial No. 27304, IAG, interviewed on December 16, 2015 at Los Angeles County Men's Central Jail. The recording was later uploaded to CMS.
[8] did not use the term "pat-down," but described the action.
[9] He did not cite the DICVS by name, but as the "videotape."

possession of a firearm and took a misdemeanor conviction though he did not have a firearm.

> **Note:** [redacted] also claimed he told his first defense attorney, DPD [redacted] that he wanted to tell the judge that the "real" officer who arrested him was "[redacted]" not Gaines. He claimed it was "a switch off," that [redacted] arrested him and handed him off to Gaines.

[redacted] added that he had been through a similar experience before. He noted that "the weird part" in his April 29, 2014 arrest was that he never saw a photo of the gun Gaines and [redacted] claimed he had in his possession. Therefore, [redacted] believed Gaines and [redacted] made up his arrest.

[redacted] also added that he was arrested as an ex-convict with a gun on August 31, 2012 by Police Officer [redacted][10] [redacted] fought that case and won. However, [redacted] thought it was odd that [redacted] was in the court room on June 3, 2014, observing the preliminary hearing. [redacted] was not involved in the case. [redacted] believed [redacted] attended the preliminary hearing to coach Gaines, who was less experienced and so [redacted] could not attach a Pitchess motion to Gaines. [redacted] believed Gaines was never in the gym, as he kept getting crossed up by DPD [redacted] and Gaines could not recall the bleachers, the stage, or the layout of the gym.[11] [redacted] believed Gaines lied on the stand. [redacted] reasoned that if he had a gun as Gaines stated, he could have easily run out of the gym through the two other doors.

> **Note:** [redacted] claimed an "older" black man, in his 40's, who frequently loitered near the picnic tables at the recreation center, recorded video of [redacted] April 29, 2014 arrest and many other incidents. [redacted] also claimed he had a screen shot from the video on his cell phone, which depicted [redacted] as the arresting officer. However, [redacted] could not locate his cell phone.

TRANSCRIPTS

I/O Katsumata obtained and reviewed a copy of transcripts from Gaines' June 3, 2014 testimony at the preliminary hearing. She noted the following:

Direct Examination:

- [redacted] was sitting down on a curb with other male blacks outside of a basketball gymnasium. The officers approached within 10 feet, [redacted] stood up and looked in the officers' direction. [redacted] looked extremely nervous, immediately grabbed his front

[10] He referred to [redacted] as "Officer [redacted]," but the investigation confirmed his identity.
[11] DPD [redacted] introduced photographs at the preliminary hearing (Addendum 5).

waistband with his right hand, and proceeded to back away from the group (Page 6; 8-25).

- [redacted] "eyes lit up" as soon as he made eye contact with the police vehicle. As the officers continued their approach, [redacted] stood up and walked backwards "looking in his left and right direction." He reached for his waistband. The officers formed the opinion that [redacted] may have a gun or drugs, they exited their vehicle and [redacted] immediately began to run into the gymnasium (Page 7; 1-19).
- "My partner and myself" engaged in a foot pursuit of [redacted] "We entered the gymnasium" and observed [redacted] run down the side line of the basketball court, continuously looking in all directions (Page 7; 22-28).
- [redacted] was still holding his front waistband with his right hand the entire time while he was running down the left side of the court. When [redacted] came upon a break in the wall, "he removed a silver revolver that my partner and myself observed." [redacted] threw it inside that storage area, proceeded to run a little further, about six feet, and stopped and put his hands up (Page 8; 2-10).
- Gaines said he was a few feet away when he observed [redacted] throw the revolver into the storage area. Gaines ultimately recovered the loaded silver .38 special revolver (Page 8; 11-24)

Cross Examination:

- As they drove up, Gaines observed approximately six to seven males sitting/loitering outside the gymnasium (Page 10; 7-15).
- Gaines said he could not confirm or deny if he had ever seen any of the individuals that night in the area before. Gaines could not recall who all was in the group. Gaines' attention was directed toward [redacted] Gaines said he did not interview the individuals sitting outside, as they remained outside when he and his partner chased after [redacted] (Page 11; 1-24).
- Gaines claimed to call for back up (Page 11; 25-26).
- Gaines was asked if he identified additional gang members at the time of this incident. He claimed he "Didn't have time to talk to anybody else at that point" (Page 15; 16-17).

DICVS

I/O Katsumata reviewed Gaines and [redacted] DICVS, which was time/date stamped. She noted the following in elapsed time utilizing the video timer in the bottom left corner:

- 00:48 [redacted] stands from a seated position on a concrete curb abutting a planter and turns counter-clockwise away from Gaines and [redacted]
- 00:49 [redacted] disappears momentarily behind a tree and a bush.
- 00:52 [redacted] reappears, still facing away from the officers.
- 00:53 [redacted] raises his left arm toward his face/upper torso, not toward his waistband. His right arm remains at his side.

- 00:54 [redacted] raises his right arm and walks into the recreation center. He does not appear to run.
- 00:55 [redacted] is out of view.
- 00:56 [redacted] enters the camera view from the passenger side, with his back toward the camera. He runs toward the gym's door.
- 00:59 Gaines enters camera view from the driver's side. [redacted] has entered the gym and is out of view.
- 01:02 Gaines goes Code 6 via his radio microphone. Gaines walks up to four unknown male blacks sitting on the above concrete curb where [redacted] was sitting. Gaines asks "No guns, right?" Gaines tells them to stand up and searches them, but does not search the unknown male black directly behind him seated on a bench near the flag pole wearing a white shirt with black ¾ length sleeves and a backpack.
- 01:50 Gaines walks away from the males in front of gym and walks into the gym.
- 03:33 [redacted] walks a handcuffed [redacted] by his left arm, out of the gym as [redacted] carries [redacted] mini iPad in his left hand. Gaines walks behind them and out of camera view.
- 03:54 [redacted] tries to pull from [redacted] and tries not to walk toward the police vehicle. [redacted] attempts to get the attention of the unknown male black wearing the backpack still seated on the bench. [redacted] is seen wearing a blue baseball cap turned backwards with a "T" on the front, indicating "83 Trey Gangster Crip."
- 03:58 [redacted] attempts to get the attention of the male wearing the backpack, who was still seated on the bench in front of the recreation center. This unknown male was not searched by Gaines during his initial contact.
- 04:00 Gaines is still out of camera view, but can be heard telling arriving units that [redacted] ran from them and had a gun. Gaines asks them to search the unknown male black on the bike.
- 04:02 [redacted] says something while he is walking past the unknown male black wearing the backpack, who begins to use his phone to video [redacted] [redacted] continues to struggle with [redacted] who uses a wrist lock on [redacted]
- 04:11 The male wearing the backpack walks toward the center of the camera and still appears to be recording the incident. [redacted] is out of the camera view.
- 04:20 [redacted] tells [redacted] to relax and act like an adult. The male wearing the backpack walks toward the passenger side of the black and white vehicle with his hands extended, he then walks out of the camera view.
- 04:28 The male wearing the backpack walks back into camera view and is holding in his right hand what appears to be [redacted] blue baseball cap.
- 04:34 Gaines stated, "Backpack. Backpack." The male wearing the backpack voluntarily places it on the ground and backs away and out of camera view. He tells an officer, later identified as Police Officer [redacted] that he can search the backpack.
- 04:42 [redacted] searches the backpack and leaves it on the ground in front of the black and white vehicle.

- 05:05 The male who was once wearing the backpack, walks back into the camera view now wearing what appeared to be [redacted] blue baseball cap turned backwards with a "T" on the front.
- 06:30 [redacted] instructs Gaines to give his mini iPad to the male wearing the backpack.
- 06:46 Gaines gives [redacted] mini iPad to the male black wearing the backpack in front of the black and white vehicle.

> **Note:** [redacted] later told I/O Katsumata that he instructed the male black wearing the backpack to return the iPad to his girlfriend who was inside the gym. [redacted] later claimed he did not know the male black wearing the backpack.

- 07:10 [redacted] tells Gaines which items he wishes to keep on his person and the rest of his belongings be given to the male wearing the backpack. The items were given to the male wearing the backpack, which is seen on camera carrying a black plastic bag.

The DICVS rear seat camera recording was 11:07 minutes long and it was not time/date stamped. During [redacted] transportation to 77th Street Community Police Station, [redacted] sat in rear seat with [redacted] There was no partition between the front and rear seats. [redacted] asked [redacted] when he was last arrested. [redacted] told [redacted] he was arrested on August 31, 2012 for the same kind of arrest. He told [redacted] that he fought the charge and the jury acquitted him. [redacted] continued to complete a Field Interview (FI) card for [redacted]

INVESTIGATOR'S NOTES:

1. I/O Katsumata and Sergeant Harris showed [redacted] a screen capture from Gaines and [redacted] DICVS, but he could not identify any additional witnesses. He told them that his girlfriend, [redacted] was present at the gym, but he could not provide her new cell phone number. [redacted] also viewed the DICVS screen capture to identify the aforementioned male black in the "T" cap and backpack. [redacted] asked Gaines to give [redacted] mini iPad to the male for safe keeping. [redacted] claimed he did not know the male and he only told him to return the mini iPad to [redacted]

2. On December 21, 2015, I/O Katsumata responded to 77th Street Property and photographed the revolver and ammunition booked into custody by [redacted] She took 15 photographs of the revolver and ammunition, DR No.1412-11343 (Addendum 6).

3. On December 23, 2015, I/O Katsumata reviewed the Communications Division broadcast recording of the incident and she identified units at scene: 12G22W6, Gaines and [redacted] 12A3W2, [redacted] and Police Officer [redacted] 12G23W6, Police Officer [redacted] and Police Officer II [redacted]; 12G110W6, Sergeant [redacted] and 12G20, Sergeant [redacted] who was not listed on the incident recall report but was at scene. Additionally, it was [redacted] who made the additional unit request not Gaines.

4. I/O Katsumata also reviewed DICVS footage for the above additional units from the incident. The primary unit, Gaines and [redacted] was the only unit that activated their DICVS.

5. On December 29, 2015, I/O Katsumata spoke to Detective [redacted] Firearms Analysis Unit, Gang and Narcotics Division, regarding a gun trace of ownership for the revolver Gaines and [redacted] booked on April 29, 2014. [redacted] found:

   - The revolver was older than 1968, which precluded it from record keeping requirements that exist today. [redacted] forwarded the subsequent report, Department of Justice Bureau of ATF National Tracing Center, Trace No. T20140145072 (Addendum 7).
   - [redacted] was also listed in two other traces. On August 31, 2012, [redacted] was arrested for ex-convict with a gun by Officer Fernandez and Police Officer II [redacted], 77th Street GED. The second trace, on October 17, 2013, listed [redacted] as an associate not an arrestee, which was not relevant to this case (Addendum 8).

6. On December 29, 2015, I/O Katsumata and Sergeant Harris responded to the St. Andrews Recreation Center. They met [redacted], a park employee, who allowed them inside the gym. A camera posted above the eastside entrance door was noted, but [redacted] advised that it had not worked for years. I/O Katsumata took 18 photographs of the inside and outside the gym (Addendum 9).

7. I/O Katsumata and Sergeant Harris also evaluated the recreation center's north/south parking lot. Gaines' report and testimony stated his and [redacted] police vehicle were approximately 10 feet away from [redacted] when [redacted] ran into the recreation center. I/O Katsumata compared Gaines' estimate with the DICVS footage and with a *Google maps* aerial view of the recreation center. There were two entrances to the parking lot, one toward the north and one toward the south. Gaines specified he drove N/B St Andrews Place and passed 88th Street then W/B turn into the recreation parking lot, which concurred with the DICVS footage that indicated the officers entered the parking lot through the southern entrance. The actual distance between Gaines and [redacted] police vehicle and [redacted] was approximately 97 feet (Addendum 10).

8. I/O Katsumata and Sergeant Harris checked the park's picnic tables just south of the gym, where [redacted] mentioned an unknown male black who video-recorded when police were in the park. I/O Katsumata and Sergeant Harris spoke to [redacted] who told them he possibly had video footage of [redacted] arrest on April 29, 2014, but he needed to review his "video library" at his home. I/O Katsumata obtained [redacted] identification information and cell phone number. She gave him a business card and requested he call her when he reviewed his videos. However, [redacted] later called I/O Katsumata and told her he did not record the incident.

9. On December 30, 2015, I/O Katsumata obtained a copy of the aforementioned arrest report from August 31, 2012, when [redacted] was arrested as an ex-convict with a gun. Review of the report and case disposition revealed that the jury found [redacted] not guilty and he was acquitted on December 26, 2012 (Addendum 11).

10. Although DDA [redacted], JSID, approved a compelled interview with [redacted] I/O Katsumata submitted the investigation to JSID beforehand to avoid exposure to any compelled information. I/O Katsumata will compel [redacted] afterward and submit a revision upon JSID's request.

ADDENDA

1. Arrest Report/Property Report, DR No. 1412-11343, dated April 29, 2014.
2. Three DICVS disks from April 29, 2014; dash and rear seat cameras.
3. Court transcripts, numbered pages 1-35, plus two cover sheets, Case No. BA424247.
4. Memorandum from JSID, Case BA424247.
5. Photographs introduced by DPD [redacted] at the June 3, 2014 preliminary hearing.
6. Photographs of the booked revolver and ammunition, DR No.1412-11343.
7. Department of Justice Bureau of ATF National Tracing Center, Trace No. T20140145072.
8. Department of Justice Bureau of ATF National Tracing Center, Trace No. T20120255725.
9. Photographs of the inside and the outside the St. Andrews Recreation Center.
10. *Google maps* of an aerial view of the St. Andrews Recreation Center.
11. Arrest/Property Report, DR No. 1212-20865, dated August 31, 2012.

SUBMITTED:

CARRIE A. KATSUMATA, Detective

Date: 03/23/16

APPROVED:

JAMES CUMMINGS, Lieutenant
Officer in Charge
Criminal Investigation Division, South Section
Internal Affairs Group

Date: 03-23-16

INTRADEPARTMENTAL CORRESPONDENCE

July 8, 2016
13.5.2

TO: Deputy District Attorney [redacted], Justice System Integrity Division

FROM: Detective II Carrie Katsumata, Serial No. 30832, Internal Affairs Group (IAG)

SUBJECT: SUPPLEMENTAL INVESTIGATION, CF NO. 15-001941

SUMMARY: On March 23, 2015, the above IAG investigation was submitted to the Justice System Integrity Division (JSID) by the I/O, Detective Katsumata, on March 23, 2015. The investigation looked into the actions of Police Officer II Kevin Gaines, Serial No. 40210, and [redacted] regarding their arrest of [redacted] on April 29, 2014.[1] Gaines and [redacted] arrested [redacted] for possession of a gun by a felon. On June 3, 2014, Gaines testified in [redacted] preliminary hearing and [redacted] was held to answer. [redacted] did not testify.

[redacted] was not interviewed by any known Department personnel or before the IAG investigation was submitted to JSID.

Concerns

DDA [redacted] requested that IAG interview [redacted] so that the information could be added to the investigation before JSID made a filing determination. I/O Katsumata conducted a compelled interview of [redacted] on June 28, 2016.[2] Below is a paraphrased statement of [redacted] interview:

> [redacted][3] was partnered with Gaines when they arrested [redacted]. Though [redacted] had more seniority with the Department, Gaines had more time in 77th Street GED by approximately eight months.
>
> [redacted] was the passenger officer as Gaines drove northbound through the parking lot of St Andrews Park. From approximately 30 yards away, [redacted] observed a male, later identified as [redacted], in a white tank/undershirt, stood up and distanced himself from the rest of a group in front the St Andrews Recreation Center as Gaines and [redacted] approached in their police vehicle. [redacted] walked briskly toward the entrance of the gym portion of the recreation center. [redacted] quickly exited the police vehicle and ran after [redacted]

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[1] The officers were assigned to 77th Street Gang Enforcement Detail (GED) at the time. [redacted] since transferred to Metropolitan Division (METRO).
[2] [redacted] was represented by Attorney Randal Quan during the interview.
[3] I/O Katsumata and Sergeant II Don Byeon, Serial No. 30929, IAG, conducted the interview. Katsumata later uploaded the interview recording to CMS under [redacted]

[redacted] learned from training and experience in the gang unit to attempt to detain similar persons based upon the person's actions and the circumstances, i.e., [redacted] standing up and distancing himself from the rest of the group. [redacted] also knew the park and recreation center was a known gang location with multiple shootings. Additionally, [redacted] was aware handguns were recovered from the location by other units on prior occasions.

> **Note:** [redacted] described a foot pursuit as chasing after someone while maintaining a constant line of sight. [redacted] did not consider himself in foot pursuit of [redacted] because he lost sight of him when he went inside the gym. After he reviewed the DICVS, he acknowledged he was in foot pursuit after [redacted]

[redacted] did not recall if he told Gaines that he was going to follow [redacted] into the gym. He only assumed Gaines watched him run after [redacted] into the gym and assumed Gaines would follow.

[redacted] ran into the lobby of the gym where he heard the sounds of a couple of bounces of basketballs from inside the gym, which then stopped. [redacted] recalled, "It's quiet inside, so it sounded funny to me. I go inside to the basketball courts of the gym and see [redacted] trying every door of the interior perimeter to exit. I verbally ordered him to come towards me. People are standing around, holding basketballs, and watching both of us."

As [redacted] walked back toward [redacted] ducked into a cut-out storage area. [redacted] distinctly recalled [redacted] turned perpendicular to him and removed a handgun from his waistband area. [redacted] believed he drew and exhibited his handgun at [redacted], but he was not sure.

[redacted] believed Gaines was present when [redacted] removed the handgun from his waistband area, but [redacted] was not sure as his attention was focused in front and not behind him. [redacted] put the handgun down on the floor, underneath some stacked mats within the storage area, and walked toward [redacted]

[redacted] gave commands to [redacted] but he did not remember the specific commands. [redacted] handcuffed [redacted], but he did not recall if he placed [redacted] into a prone, standing, or kneeling position. [redacted] first noticed Gaines was inside the gym when he took [redacted] into custody and placed handcuffs on [redacted]

[redacted] told Gaines to recover the handgun that was a few feet away from where [redacted] was handcuffed. [redacted] saw Gaines recover the handgun, but he did not see Gaines render it safe. [redacted] was busy dealing with [redacted] and he did not see what Gaines did with the handgun, but he assumed Gaines placed it in one of his uniform's back pockets.[4]

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[4] It was common practice in the gang unit to render a gun safe and to place it in one of their uniform's back pockets, to have both hands free.

[redacted] walked [redacted] out of the gym as Gaines followed behind him. They placed [redacted] in the back of their police vehicle. [redacted] presumed Gaines put the handgun in the trunk of their police vehicle, but he did not see Gaines do so.

Gaines and [redacted] transported [redacted] to 77th Street Community Police Station (CPS). [redacted] did not recall how they divided their responsibility for processing [redacted] arrest.

> **Note:** During the interview, I/O Katsumata showed [redacted] a completed copy of [redacted] arrest report. [redacted] reviewed the report and refreshed his memory.

[redacted] completed the face sheet of the arrest report, as he recognized in his own penmanship. He also completed the Property Report, Property Receipt, Investigative Action/Statement Form, the Booking Approval, and queried [redacted] criminal history as well as the gun's records.

[redacted] was certain he only completed the face sheet portion of the arrest report and Gaines wrote the arrest report narrative. [redacted] did not recall if he completed the Probable Cause Disclosure (PCD) Declaration. He theorized that Gaines might have typed [redacted] last name on the PCD and also cut and pasted the arrest narrative on to the PCD.

[redacted] was not sure how he and Gaines decided who would write the arrest report. Though [redacted] made the majority of the observations that led to [redacted] arrest, he did not write the arrest report. Also, [redacted] did not recall if he went end of watch (EOW) earlier than Gaines on the date of incident.[5] Further, [redacted] could not explain why he did not review the arrest report before it was submitted to the watch commander:

> I didn't review this (arrest report) because I didn't feel I needed to. I mean my partner had more time in the gang unit and I was one of the newer officers in the gang unit. So, I trusted him (Gaines) to write a complete narrative. So, I didn't read it.
>
> I am learning from this now, but working with peers as a P2 (Police Officer II) in the gang unit and special problems unit (SPU) it was not done regularly; and it's probably not the best practice and I've learned from it. But, unless I am working with someone who has a lot to learn, a lot of times I don't review their report and vice versa, but that is just from my experience. I don't do this anymore.[6]

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[5] According to the Daily Worksheet for the incident date, Gaines and [redacted] were scheduled to work from 1200 hours to an EOW of 2200 hours. According to their log, they went EOW at 2232 hours. The I/O verified via Fiscal Operations Division that neither [redacted] nor Gaines submitted an overtime report on the incident date.

[6] [redacted] was aware Department policy required officers to review their DICVS when practicable before they prepared reports to refresh their recollection.

[redacted] read the arrest report for the first time when the I/O emailed him a copy.[7] [redacted] did not read the report before he received the email. He also only first reviewed the DICVS as instructed in the I/O's email. After [redacted] reviewed the DICVS, he believed it was consistent with what he independently recalled of the incident. [redacted] did not know if Gaines reviewed the DICVS and Gaines did not tell [redacted] if he reviewed it.

Before [redacted] reviewed the DICVS he did know he was alone while in foot pursuit after [redacted]. [redacted] recollection was that Gaines was not as far behind him as the DICVS indicated. After [redacted] watched the DICVS, he was surprised to see Gaines took so much time talking to and searching the unidentified males outside the gym.[8]

[redacted] assumed that if Gaines saw him run, Gaines would run too, "I thought Gaines was behind me the whole time, but obviously he wasn't." [redacted] did not know if Gaines saw [redacted] "throw" the gun into a recessed/cut out storage area where mats were stored. [redacted] recalled it was the first time he was inside that gym and the west doors were either locked, or did not work because he saw [redacted] try unsuccessfully to open them (Investigator's Note 1).

Before Gaines wrote the arrest report, [redacted] and Gaines' common practice was to discuss what they observed. In [redacted] case, they specifically talked about when [redacted] removed a handgun from his waistband area. [redacted] and Gaines specifically talked about where inside the gym it occurred. They did not talk about specific distances as they approached the front of the gym.

> **Note:** In the arrest report, Gaines wrote that the gun was approximately 10 feet away. Attorney Quan interjected that the distance was Gaines' perspective and what he saw. [redacted] and Quan acknowledged there were discrepancies with the DICVS and the arrest report.

[redacted] cited the specific inconsistencies he noted between the DICVS and the arrest report narrative:

- Suspect walking backwards
- Appearing startled with a nervous gait on his face
- Suspect looking left and right
- Turning his head to look behind him
- Reaching for the front of his waistband
- Beginning to run.

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[7] On June 21, 2016, the I/O emailed [redacted] and told him to review the DICVS and the email's attached documents, the arrest report and incident recall printout prior to our scheduled interview.

[8] [redacted] exited police vehicle and ran after [redacted] at 00:56 inside the gym alone. Gaines walked away from the males in front of the gym and into the gym at 01:50.

Note: The above reflect the similar discrepancies as noted in a memo by DDA [redacted] which prompted the IAG investigation.

[redacted] did not recall if he or Gaines activated the DICVS in their police vehicle, but he speculated either one of them could have activated it by pressing the microphone button, or activating the vehicle's overhead light bar switch. The DICVS microphone for Gaines was clearly activated as the DICVS displayed as "M1" on the screen. However, [redacted] did not know why his DICVs microphone, "M2," was not activated at the beginning of the incident, but it began to record toward the end as [redacted] was placed in the back seat of their police vehicle.

Note: The video timer in the bottom left corner of the DICVS screen indicated approximately 04:35 minutes elapsed during the incident before [redacted] microphone activated.

[redacted] was not present in court during any testimony for [redacted] case. He did not recall why he was not present and speculated he may have been out of town or on vacation. [redacted] did not recall why he did not have to testify for [redacted] case. [redacted] did not hear any portion of Gaines' testimony, nor did he know what Gaines testified to on [redacted] case.

[redacted] did not testify at preliminary hearing, but recalled "I was subpoenaed by the DA (district attorney) for a follow-up meeting and that is when [redacted] took a deal."[9] [redacted] was asked similar questions by DDA [redacted] regarding his observations and his recollection of [redacted] arrest.[10] Before his meeting with DDA [redacted] [redacted] did not review the arrest report and DICVS.

INVESTIGATOR'S NOTE

1. The I/O accompanied DDA [redacted] for a site visit to St Andrews Recreation Center on May 19, 2016. During their site visit they identified park employees [redacted] and [redacted], who advised that the west and north facing gym doors are unlocked when the gym is in use to allow emergency exits only. Gym patrons cannot use the doors as entrances as they are locked on the outside. Access into the gym is through the east facing door, the front entrance into the recreation center. [redacted] noted numerous exit points before entering the basketball courts inside the gym.

ADDENDA

(None.)

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[9] DDA [redacted] subpoenaed [redacted] in preparation for a motion to suppress evidence filed by the defense. The motion challenged the probable cause for [redacted] arrest. [redacted] confirmed [redacted] case was disposed for a lesser misdemeanor charge.

[10] [redacted] did not identify [redacted] by name but the investigation identified her.

SUBMITTED:

CARRIE KATSUMATA, Detective

Date: 7/8/16

APPROVED:

JAMES CUMMINGS, Lieutenant
Criminal Investigation Division, South Section
Internal Affairs Group

Date: 07-08-16