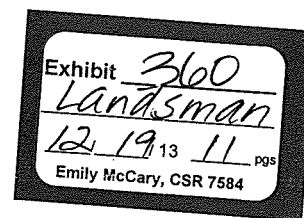


November 15, 2013



Louis R. Miller, Attorney at Law
Miller Barondess, LLP
1999 Avenue of the Stars, Suite 1000
Los Angeles, CA 90067

Re: *Brian Mulligan v. James Nichols, et al.*
U.S.D.C., Central District of California, Case No. 2:13-cv-00836-
RGK (VBKx)

Dear Mr. Miller:

A. Experience

This is my Rule 26 response report and includes my opinions in the case listed above. My opinions are based on almost 24 years of service with the Los Angeles Police Department both as a police officer and as a supervisor. I spent a substantial portion of my career working specialized units including the Physical Training and Self-Defense unit at the Elysian Park Academy, Metropolitan Division and SWAT. Included in my Metropolitan Division assignments was a loan to Robbery Homicide Division, RHD, on two occasions for serial killer task forces and to the Newton Area homicide unit. While on loan to RHD, my partner and I investigated hundreds of clues some of which led to arrests. While on loan to the Newton Area homicide unit, I assisted with the investigation of cold cases, ongoing homicide investigations, and acted as the lead detective on approximately 5 homicide cases. As a supervisor, Sgt. I and Sgt. II, I worked two patrol divisions, was the officer in charge of a patrol special enforcement group, the assistant officer in charge of the Human Relations unit, and the officer in charge of the Physical Training and Self-Defense unit at the Ahmanson Recruit Training Center.

As a police officer, a sergeant and as a civilian, I trained thousands (in excess of 20,000) police officers of all ranks, and civilians, in areas ranging from sexual harassment to use-of-force and self-defense. I was the Department's original PR-24 side-handle baton expert beginning in 1980 when the baton was adopted for use by the LAPD. Another responsibility I had was teaching in-service officers First Aid and CPR. I was considered one of the top use-of-force experts in the LAPD as

a member of the Department's Use-of-Force Committee. I was also a member of the Civilian Martial Arts Panel that helped develop the current arrest and control program to aid officers in the arrest of combative individuals. One of my responsibilities as the OIC of the Physical Training and Self-Defense unit was to teach injury prevention to the new recruit classes. I had also received physical training certifications, from POST and NASM, National Academy of Sports Medicine. I developed training programs and techniques as well as training equipment for police use. I also wrote the proposal for a Department-wide training unit and developed the ground tactics for riot and crowd control that were integrated into the Mobile Field Force tactical program. As a supervisor, my responsibilities included advising on arrests, approving arrest reports and investigating uses of force, vehicle pursuits and personnel complaints.

I began martial arts training in 1972 and fought in numerous tournaments before becoming a police officer with the LAPD in 1975. I then trained thousands of police officers in self-defense and continued to participate in police Black Belt tournaments around the country. Through many hours of practice, numerous tournaments and altercations in the field, I saw many different types of injuries. Among the injuries I witnessed were impact lacerations to the face. In some of those instances, I rendered first aid to the victim.

In 2005, I qualified in the Superior Court of California, San Diego County, as a Use-of-Force expert and as an expert in human behaviors, specifically stress, conflict and confrontation. Since then, I have qualified as an expert in the Superior Court of California, Los Angeles County and Federal Court as an expert in Use-of-Force, tactics, police procedures and training methods. I am unaware if any documents or articles I have written have been published or used in any part of a published article, but I have been used as an expert advisor for a book and several magazine articles. My fees are \$150.00 an hour for consultation, \$750.00 for expert reports, \$750.00 for a half day and \$1,500.00 for a full day of testimony. I have received payment for services rendered in this matter.

In the mid-1990s I reviewed statistical data involving the average number of police contacts per year, the number of arrests resulting from those contacts, and the altercations and/or complaints that arose from those contacts. The data showed that on the average LAPD officers had 1.7 million official citizen contacts per year. It is important to understand that with such a large number of contacts, situations will occur that are out of the ordinary.

B. Case Facts

Mr. Mulligan set out on the evening of May 15, 2012 to fill a doctor's prescription for THC pills at a legal licensed medical marijuana dispensary in Eagle Rock. It was around 9:00 p.m. Mr. Mulligan was advised that they were out of THC pills and could not fill his prescription.

On the way back to his car, Mr. Mulligan was contacted by a woman who appeared to be an LAPD police officer. Mr. Mulligan was handcuffed, his car and person were searched, and then he was directed to the apartment building on the corner of Eagle Rock Boulevard and York and told to go up the back stairs to the fourth floor (the roof) and meet with another agency. That summer, federal authorities conducted surveillance and closed several dispensaries in the Eagle Rock area. Mr. Mulligan complied and entered the building. He was apprehensive over the initial contact but became even more so when he saw trash, vomit and drug needles on the steps. It was also poorly illuminated. After making his way up approximately 2 flights of stairs, Mr. Mulligan heard screaming, saw men in an altercation, became concerned for his safety, and fled.

Mr. Mulligan was experiencing the "fear" syndrome. Police officers are trained to listen to this "sixth sense" as a warning mechanism. But here, instead, the police created the fearful situation.

Mr. Mulligan left with the intention of making his way, on foot, to Occidental College and requesting assistance from campus police to help sort out this situation. The distance was longer than he anticipated, and he attempted to get help at a house and a passing car. His level of anxiety and fear caused concern in the people he came into contact with on the way, which generated calls to the LAPD. He made his way to Occidental College, where he encountered, and was detained by, Officers Nichols and Miller.

Mr. Mulligan was described in the officers' depositions as being somewhat disheveled, no doubt from his uphill hike to Occidental. Officer Nichols was an LAPD-trained DRE, Drug Recognition Expert. He monitored and tested Mr. Mulligan for symptoms of being under the influence of drugs or alcohol for approximately 40 minutes at the college. Mr. Mulligan did not display any symptoms of intoxication or being under the influence. The Officers stated that

Mr. Mulligan told them he was going through a divorce. He denies this, and I was not provided with any evidence of a divorce. The officers asked Mr. Mulligan if he was going to hurt himself or others; Mr. Mulligan told them that he had no intention of hurting himself or others.

Mr. Mulligan was kept handcuffed during this period and searched. The officers discovered substantial cash on Mr. Mulligan's person. A wants and warrants check came back negative. The officers then decided to transport Mr. Mulligan back to his vehicle near the medical marijuana dispensary. Mr. Mulligan was seated in the back of the officers' vehicle, still handcuffed, as his car was searched for the second time that night. The officers discovered additional amounts of money and requested a supervisor to the location for a money count.

Sgt. Santos, Northeast Area supervisor, responded and counted approximately \$2,500 cash. The officers determined that they had no reason to arrest or detain Mr. Mulligan any further. After Sgt. Santos left the scene, the officers transported Mr. Mulligan to the Highland Park Motel for the night. According to Mr. Mulligan's deposition testimony, they did so over his protests, and proceeded to register him into the motel and ordered him to stay until morning. The officers gave the desk clerk Mr. Mulligan's car key and ordered the clerk not to give the key to Mr. Mulligan until morning. Mr. Mulligan waited a few minutes and tried to leave but the officers were still in the lobby. He waited another ten to twenty minutes before making another attempt to leave and had to argue with the desk clerk to get his car key back. He then left the motel, scared, thinking he was being set-up to be robbed, harmed or killed, and fled in the direction of Pasadena, an area he knew.

On his way toward Pasadena, Mr. Mulligan entered the intersection at 54th Street and York and saw Officers Nichols and Miller down the street. The officers were assisting another unit at a traffic collision. Officer Barach was also assisting with the traffic investigation. At this point, either Officer Barach or Miller observed Mr. Mulligan at the next intersection north of their location. Officer Miller recognized Mr. Mulligan and attempted to get Mr. Mulligan to stop by yelling at him. By now, Mulligan was highly fearful and sought to run and hide to escape from Nichols/Miller, who earlier had taken him to the motel and threatened that he would be "dead" if he left before morning.

Officer Miller advised Officer Nichols that Mr. Mulligan was at the next intersection. Officers Nichols and Miller went to their car and began to search for Mr. Mulligan. Mr. Mulligan ran in an attempt to flee from the officers. The officers eventually found Mulligan and chased him on foot. The officers confronted him in front of the residence at 5409 Meridian. Mr. Mulligan was taken into custody by Officers Nichols and Miller with Officer Barach assisting with the handcuffing process. His face was a bloody mess, his nose was shattered and his scapula was broken. The officers testified in deposition that they did not see, and do not know, how his injuries occurred.

Last, despite the officers' arrest of Mr. Mulligan for resisting the police (Penal Code § 69), and despite efforts by the police to have Mr. Mulligan criminally prosecuted, both the District Attorney (felony) and the City Attorney (misdemeanor) declined to prosecute.

C. Opinions

My opinions of the officers' actions and the subsequent actions of the involved supervisors and LAPD personnel are based on:

- The Arrest Report of the Brian Mulligan incident
- The FID Report and Interviews
- Depositions of James Nichols, John Miller, Brian Mulligan, Beatrice Girmala, Richard Webb, Victoria Barach, Jerry Santos, Kirk Kelley, Andrew Smith, Vicky Mulligan, Nolan Mulligan, and Brooke Mulligan
- Daily Field Activity Reports
- Supervisor Logs
- Watch Commander Log
- SID photographs
- Photographs of Brian Mulligan's injuries
- News articles regarding federal government investigation/surveillance of marijuana dispensaries in Eagle Rock attached to this report as Exhibit 1

I will offer opinions as they pertain to the rules, policies and procedures of the LAPD, the officers' professional responsibilities, and their actions in regard to their training and experience:

- The detention at Occidental College
- The detention at the location of Mr. Mulligan's car
- The (second) search of Mr. Mulligan's car
- The decision to transport Mr. Mulligan to the Highland Park Motel
- Taking Mr. Mulligan's car key
- Ordering Mr. Mulligan to stay at the motel until morning
- Ordering the desk clerk at the Highland Park Motel to keep possession of Mr. Mulligan's car key until morning
- The probable cause used by Officers Nichols and Miller to chase Mr. Mulligan after he left the motel
- Mr. Mulligan's right to flee
- The officers' failure to notify a family member on behalf of Mr. Mulligan
- The officers' failure to obtain advice from designated resources for the LAPD
- The officers' failure to notify communications that they were searching for an alleged car jacking suspect, had located the alleged car jacking suspect, or that they were in foot pursuit of the alleged suspect

My opinions are based on my expertise as a certified California Commission on Peace Officers Standards of Training instructor, P.O.S.T., as a member of the LAPD's Use-of-Force Committee, a member of the LAPD's committee on P.O.S.T. compliance, as an assistant OIC of the Human Relations unit and as the OIC of Physical Training and Self-Defense unit tasked with teaching recruits and in-service officers P.O.S.T. certified training programs, my understanding of P.O.S.T.'s total man training concept, as an LAPD representative to P.O.S.T. committee meetings, and as a former instructor at the P.O.S.T. certified training school in San Luis Obispo, CSTI. My opinions are also based on my many years of teaching and developing teaching programs and my objective and subjective knowledge of police officers' behaviors and LAPD's training standards and industry standards of training.

I will be providing my opinions on the events here using the statements made by the officers in their FID interviews, their depositions, Mr. Mulligan's deposition, and the physical evidence.

I will be offering expert opinions that Officers Nichols and Miller acted outside the scope of their authority as Los Angeles Police Department officers as evidenced by the decisions they made and their failure to protect Mr. Mulligan from undue harm.

1. Officer James Nichols, serial no. 35908, and Officer John Miller, serial no. 39293, were assigned in the Northeast Area and were responding to radio calls in the area of Occidental College. The radio calls provided a description of the subject. On the campus of Occidental College, the officers observed an individual matching the description from the radio calls. They detained the subject, Brian Mulligan, to investigate.

Officer Nichols, a DRE (Drug Recognition Expert), performed an FST (field sobriety test) on Mr. Mulligan. Officer Nichols formed the opinion that Mr. Mulligan was not under the influence of any narcotic drug or alcohol, and described him as "calm, lucid and cooperative." The officers detained Mr. Mulligan at that location for approximately 40 minutes before transporting him to his vehicle near the dispensary on Eagle Rock Boulevard.

A period of 20-25 minutes is adequate to determine if an individual is intoxicated or under the influence. Both a request for further information and a check for warrants and warrants can be completed within that time frame. But here, after the initial 40 minutes, the officers continued the detention, even though they still had no reason to arrest Mr. Mulligan. The officers next drove Mr. Mulligan, still handcuffed, to the location of his car.

Upon arriving at the location of Mr. Mulligan's car at about 11 p.m., the officers entered the vehicle and retrieved Mr. Mulligan's identification. The officers confirmed that the information originally provided by Mr. Mulligan was true and accurate, yet they maintained custody of Mr. Mulligan at that location for an additional 40 plus minutes. Officers Nichols/Miller detained Mr. Mulligan continuously,

handcuffed in their police vehicle, from approximately 10:20 p.m. to 12 a.m. except for when the field sobriety tests were conducted.

2. Officer Nichols and Miller's initial detention of Mr. Mulligan on the campus of Occidental College was lawful as it was in response to radio calls generated by an individual matching Mr. Mulligan's description. However, the 40 minute detention at Occidental College coupled with the 40 minute detention later on at Mr. Mulligan's car was excessive, as the officers had already determined that Mr. Mulligan was not involved in any criminal activity nor was he to be detained for public intoxication or under the influence of a drug or narcotic.
3. Officers Nichols and Miller conducted themselves with disregard for the rights and safety of Mr. Mulligan throughout their encounters on the night of May 15, 2012 and early morning of May 16, 2012. Their excessive detention of Mr. Mulligan on the night of May 15, 2012 contributed to Mr. Mulligan's state of anxiety and fear. He was also fearful due to the verbal threats made by the officers. Mr. Mulligan's fear was greatly heightened when the officers transported him to the Highland Park Motel—a place known to the officers to be frequented by parolees, drug dealers and gang members—registered him there, stuffed thousands of cash in his pocket and ordered him to remain there until morning, or else he would be "dead." This area had a high rate of grand theft auto and burglary per the police logs and the testimony of officers.

There are several factors that support Mr. Mulligan's claim that he was taken to this motel against his will, including attempts to immediately flee the motel when he thought the officers had left, the order by the officers to stay at the motel, and the fact that they took Mr. Mulligan's car key from him and gave it to the front desk clerk with orders not to return the key until morning. This effectively stranded Mr. Mulligan at the motel, frequented by criminals, with approximately \$2,500 cash in his pocket and no viable means of escape. Although the officers say that one of their priorities was Mr. Mulligan's safety, their actions indicate otherwise, leading to

Mr. Mulligan's response to flee. The officers were the direct cause of Mr. Mulligan's response because of their prior actions and statements.

4. There was no basis for the officers to transport Mr. Mulligan to the Highland Park Motel against his will. There was also no basis for the officers to order Mr. Mulligan to stay at the Highland Park Motel as he was not under arrest and no longer being detained. Last, there was no basis for giving Mr. Mulligan's car keys to the motel clerk and telling him not to give the keys back to Mr. Mulligan until morning.
5. Transporting Mr. Mulligan to a motel known as a place where criminal activity takes place (per Officer Barach's deposition testimony, pp. 20-24) with a significant amount of cash on his person was a violation of LAPD policy. The officers have a professional responsibility to provide for the reasonable safety of any person they encounter. Here, they jeopardized Mr. Mulligan's safety without justification.
6. The officers' failure to notify a family member on behalf of Mr. Mulligan and instead taking him to the motel was a violation of LAPD policy. Not notifying Mr. Mulligan's family could have generated a missing person's report. The officers had several options that could have been chosen instead of taking Mr. Mulligan to the motel. Mr. Mulligan could have been taken home, given his car keys, put in a taxi or the officers could have allowed Mr. Mulligan to call his family to come get him. The officers also could have utilized Department resources such as the Mental Evaluation Unit, MEU.
7. After ordering Mr. Mulligan to stay at the motel until morning, the officers observed Mr. Mulligan back out on the street at 54th Street and York on the morning of May 16, 2012 at approximately 0100 hours. As he attempted to flee, the officers chased Mr. Mulligan. Mr. Mulligan had a right to flee from the officers as he reasonably believed the officers were going to harm him. The officers claim that Mr. Mulligan was car-jacking, but they did not arrest him for carjacking or interview the victim or investigate him for that alleged crime.

8. Mr. Mulligan claims that his facial injuries were caused by an intentional strike to the face with a blunted hard object, similar to the PR-24 side-handle baton. An intentional strike to the head or facial area is only warranted in the event of a deadly force encounter. Mr. Mulligan was not armed and did not have any skills as a martial artist. He posed no deadly threat to the officers, making the intentional strike to the face out of policy and against the rules, policies, procedures and training of the Los Angeles Police Department. LAPD Manual Section 556.10 provides:

“Deadly Force. Law enforcement officers are authorized to use deadly force to: Protect themselves or others from what is reasonably believed to be an **imminent** threat of death or serious bodily injury; or, Prevent a crime where the suspect’s actions place person(s) in **imminent** jeopardy of death or serious bodily injury; or, Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury.”

9. The officers have a professional responsibility to provide for the reasonable safety of any subject they encounter or in their custody. They did not adhere to that responsibility here.

The case involving Officers Nichols and Miller and Brian Mulligan has complexities as it involved separate contacts with multiple issues resulting in a severe injury to Mr. Mulligan. During my review of this case, I provided the officers with the benefit of the doubt. But in that same spirit, I held the officers to a level of conduct consistent with their responsibilities and training as professional law enforcement officers.

Police officers are responsible to maintain a safe environment. The officers here stated that they were concerned for Mr. Mulligan’s safety.

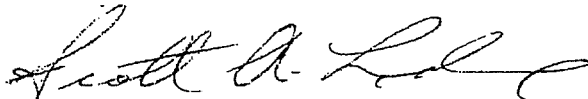
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Police officers determine the course and nature of their investigation, not the subject. The officers here should have called Mr. Mulligan's family to ensure he did not need medical attention or have a medical condition, or utilized Department resources such as the Mental Evaluation Unit, MEU. In the hours the officers had custody of Mr. Mulligan, they had ample time to reach out for assistance in determining their course of action.

Instead, they registered him at a local motel known to the officers to house parolees and criminals without so much as a disclaimer or warning; and when he disobeyed their order and fled the motel, and they encountered him again, they used excessive force and severely harmed him. This is not consistent with looking out for, and maintaining, the safety of the subject—Brian Mulligan—on the night in question.

Detained and handcuffing an individual determined to be not involved in criminal activity for almost 2 hours, then taking him to a motel and telling him to stay there overnight with substantial cash on his person, is not consistent with looking out for the subject's safety. In my opinion, it is just the opposite, creating fear and anxiety, and eventually resulting in severe harm to the person the officers were supposed to protect.

This report is signed under penalty of perjury, under the laws of the United States of America, on this 14th day of November, 2013, at Simi Valley, California.



Scott A. Landsman