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WAIVER OF MIRANDA FOR OFF-DUTY CONDUCT

Diaz v. Los Angeles County Civil Service Commission (2019)

In an unpublished decision, the California Appeals Court affirmed a trial court's decision upholding the dismissal of a deputy for an off-duty use of force, based in part on the deputy's own voluntary statements to criminal investigators, where there was "no reasonable possibility" that the deputy's use of deadly force was justified.

1. *The Night Out*

In late 2011, the Plaintiff joined two other female deputies for night out that ended in what the administrative hearing officer described as a "drunken brawl." While driving home after closing time, a heated argument led to one of the deputies striking the Plaintiff in the face and wrestling her to the ground until the third deputy managed to push the deputy off the Plaintiff.

While the second and third deputies wrestled on the ground, the Plaintiff retrieved

her personal firearm from a vehicle and fired twice at the second deputy.

2. *Waiver of Miranda*

About two hours after the incident, the Plaintiff was given a breathalyzer test that showed a blood alcohol level of nearly twice the legal limit for driving. After being treated for facial injuries, the Plaintiff was returned to the sheriff's station where two criminal investigators asked to speak to her. The Plaintiff declined and asserted her right to silence and representation. The Plaintiff was initially told that while she was not being criminally detained, she was nonetheless ordered to remain on duty at the station while the investigation continued.

A short time later, the criminal investigators advised the Plaintiff they were going to arrest her. The Plaintiff requested to speak to her Captain who told her she needed to talk to the criminal investigators if she didn't want to be arrested. Based on this

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conversation, and less than 8-hours after the breathalyzer test, the Plaintiff decided to waive her rights and provide a voluntary statement.

During the interview, the investigators repeated the Miranda warnings and the Plaintiff stated she understood her rights and agreed to provide a statement. The Plaintiff then gave incriminating and conflicting statements regarding why and when she fired the handgun that were inconsistent with her claim of self-defense.

3. The Plaintiff is Discharged for Disorderly Conduct

After the District Attorney declined to prosecute the Plaintiff for the shooting, the Department discharged her. After an evidentiary hearing, the hearing officer concluded, based in part on the Plaintiff's voluntary statements to investigators, that discharge was the appropriate penalty.¹ The hearing officer concluded that although the Plaintiff "may have gotten hurt in the fight, . this was not a deadly attack that would justify using deadly force". Rather, the hearing officer found the Plaintiff shot at the other deputy "[i]n fear and anger rather than self-defense."

4. The Appeals Court Ruling

The Plaintiff filed a petition in superior court to have her discharge overturned arguing that her statements to the investigators were involuntary and should be suppressed because the investigators knew her statements might be used against her in

¹ In the Discharge Letter, the Department also cited other grounds for the discharge that were not addressed in the appeal.

future disciplinary proceedings. The Court held that although the Plaintiff initially asserted her right to remain silent and representation by counsel, she voluntarily waived her rights by initiating a second conversation with criminal investigators after being told she would be arrested if she didn't agree to talk.

5. As Public Safety Officers, You Have Rights – But You Must Exercise Them

Although, as an unpublished decision, other courts are prohibited from citing to or relying on this case, this ruling is a cautionary tale against waiving your right to silence and legal counsel for any conduct which may result in criminal charges. The decision to waive any Constitutional or POBRA right should only be made after a thorough consultation with competent legal counsel.

Stay Safe!

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