



Stone Busailah, LLP

A Partnership of Professional Law Corporations

1055 East Colorado Blvd., Suite 320, Pasadena, California 91106 Tel (626) 683-5600 Fax (626) 683-5656

TRAINING BULLETIN

SUPREME COURT RULES PROSECUTION DOES NOT HAVE UNFETTERED ACCESS TO POLICE PERSONNEL RECORDS

By: Muna Busailah, Esq.

On July 6, 2015, the California Supreme Court issued its opinion in the case of *People v. Superior Court (Johnson)* (Case No. S221296). The case raised two important issues: (1) whether the prosecution itself may examine confidential police personnel records to determine whether or not those records contain exculpatory information favorable to the defense; or (2) whether the prosecution must follow the procedures outlined in the case of *People v. Pitchess* codified in Penal Code §832.7, §832.8 and Evidence Code §§1043 through 1045. *Pitchess* gives a criminal defendant the right to petition the trial court for the discovery of potentially exculpatory information located in confidential police personnel records. Examples include prior reports of excessive force, criminal convictions, etc. If a criminal defendant can show good cause for the disclosure of such information, then the court will review the records *in camera*

and disclose any information determined to be material to the underlying criminal case. The Supreme Court also decided what the prosecution must do when provided with notice that police personnel records may contain exculpatory information favorable to the defense, in order to fulfill its *Brady* obligation to turn over such information to the defense.

The underlying criminal case involved a defendant charged with domestic violence in San Francisco. According to policy, the SFPD informed the District Attorney that two of the witnesses in the case, both San Francisco police officers, had information in their personnel files that may be subject to disclosure under *Brady*. As such, in December 2013, the prosecution filed a *Pitchess* motion requesting the trial court to review the officers' personnel files *in camera* in order to determine whether those files contained

“Defending Those Who Protect Others”

exculpatory information favorable to the defense. On January 7, 2014, the trial court concluded that (1) the prosecution had not made a sufficient showing for an *in camera* review of the confidential police personnel records, (2) *Pitchess* procedures do not apply to motions seeking review of police personnel records to determine whether or not those records have exculpatory information favorable to the defense, and (3) Penal Code §832.7 (the statute outlining the procedure for the discovery of confidential police personnel records) is unconstitutional to the extent it prevents the prosecution from reviewing confidential police personnel records in order to determine whether the records contain exculpatory information favorable to the defense.

Both the District Attorney and San Francisco Police Department appealed the trial court's order. The Court of Appeal decided that the District Attorney itself may review the confidential police personnel files of witnesses in a case in order to determine whether those files contain exculpatory information favorable to the defense. As such, the Court of Appeal directed the trial court to modify its order to provide that if the District Attorney could identify exculpatory information in the confidential police personnel files, then the District Attorney must file a motion requesting disclosure of such information.

The case was appealed to the California Supreme Court, which concluded that **“the prosecution does not have unfettered access to**

confidential personnel records of police officers who are potential witnesses in criminal cases.”

The Court clarified that the prosecution must follow the same procedures that apply to criminal defendants in seeking the discovery of confidential police personnel records, namely making a *Pitchess* motion. In addition, the Supreme Court decided that the prosecution fulfills its *Brady* obligation to disclose exculpatory information when it simply informs the defense of the police department's notice that the confidential police personnel records may contain exculpatory information favorable to the defense.

People v. Superior Court (Johnson) is important because it reaffirmed the procedures established to protect a police officer's confidential personnel records from disclosure. Pursuant to *Pitchess*, Penal Code §§832.7, 832.8, and Evidence Code §§1043 through 1045, a police officer is entitled to a showing of good cause and independent court review before his records are disclosed.

Muna Busailah is a partner in the firm since 1995 and has represented members in police law and litigation cases in administrative, state and federal venues.

“Defending Those Who Protect Others”