



# LEGAL DEFENSE TRUST

*MICHAEL P. STONE, GENERAL COUNSEL*

21800 Cactus Avenue, Riverside, CA 92518

Phone (951) 653-0130 Fax (951) 656-0854

## LEARNING POINTS



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### ***JURY CLEARS SANTA CLARA COUNTY CORRECTIONAL DEPUTIES OF ASSAULT UNDER COLOR OF LAW***

*People v. Tuan Le, et al., Santa Clara County No. C163184*

*By Michael P. Stone, Esq.*

Santa Clara County Sheriff's Correctional Deputy Tuan Le and another deputy were charged with assault under color of authority in violation of Penal Code § 149. It was alleged that the two deputies assaulted inmate Ruben Garcia in retaliation for him calling them "bitches". The assault was alleged to have taken place on July 23, 2015, about one month before another inmate was allegedly beaten to death by three other deputies.

Garcia, a gang member with a long criminal history, including convictions for armed robbery and child molestation, did not promptly report the assault to anyone in authority. The allegations came to light when Garcia was questioned about what he may have witnessed in the inmate beating death case. Garcia, who was being treated for a dental abscess, had his head wrapped in gauze. When asked by the investigator what had happened to his face, Garcia told him that he had been beaten by two deputies shortly after he arrived at the main jail.

Garcia claimed that it was the deputies who had been involved in the homicide. Later, Garcia identified Deputy Le, and the other deputy who was charged, as the ones who had beaten him. Investigators went unannounced to the homes of the two deputies. Each deputy agreed to speak to Department investigators and were then interrogated about their interaction with Garcia. There were discrepancies between what the deputies were able to recall, and department records, surveillance video, and the statements of other inmates. These discrepancies became the foundation for the prosecution case. It was argued by the prosecutor to the jury, that the "lies" told by the deputies when they were questioned demonstrated a consciousness of guilt.

According to Deputy Le, not long after Garcia arrived at the main jail, Le had to break up a fight between Garcia and another inmate. Garcia was injured during the fight and was taken to the hospital. There, he received sutures for a laceration above his

left eye, and was diagnosed with a hairline fracture to his jaw. Garcia reported to medical personnel that he had received his injuries during a fight with another inmate.

At trial, the prosecution relied heavily on previous "consistent" statements made by Garcia to a courtroom bailiff, nurse, paralegal and his mother, concerning who was responsible for his injuries. The testimony of these witnesses was discredited through effective cross-examination. The prosecution also relied on inmate witnesses. One of these inmate witnesses recanted his earlier statement to investigators and testified that Garcia's allegations were false and made to support a lawsuit he intended to file. The inmate recounted how he had initially agreed to assist Garcia by providing false testimony in exchange for a portion of his lawsuit proceeds. (Relatives of the inmate who was murdered settled their lawsuit for \$3.6 million.)

After six weeks of trial, the jury returned verdicts of not guilty in less than four hours. Correctional Deputy Tuan Le was represented by Michael Williamson of Stone Busailah, LLP. Williamson, a retired LAPD police sergeant, is an accomplished litigator with many years' experience in police practice litigation. He specializes in criminal and family law for LDF members.

Deputies and officers must "look out for themselves" whenever they are questioned by a supervisor or investigator. An officer should always consult with a knowledgeable representative before responding to questions concerning an investigation which could possibly lead to punitive action or, as in this case, criminal charges.

The Firm has created a card to assist members who are about to be questioned. That card is reprinted below. If in doubt, it is always good practice to demand the right to have a representative present before answering any questions.

Judith Odbert, Esq., of Mastagni Holstedt, APC, whose effective advocacy in representing the other involved deputy, was fully instrumental in the successful outcome in this case.

Stay Safe and Free!

**Michael P. Stone** is the founder and principal partner of Stone Busailah, LLP. His career in police and the law spans 51 years. He has been defending law enforcement for 38 years in federal and state, criminal, civil, administrative and appellate litigation.

**LOOKING OUT FOR YOURSELF...**

**WHENEVER YOU ARE TO BE QUESTIONED BY A SUPERVISOR:**

1. ASK IF YOUR ANSWERS COULD LEAD TO DISCIPLINE?
2. ASK WHAT IS THE NATURE OF THE QUESTIONING ABOUT?
3. IF THE MATTERS ARE POSSIBLY CRIMINAL, ASSERT YOUR CONSTITUTIONAL RIGHT TO SILENCE AND TO THE ASSISTANCE OF COUNSEL (MIRANDA).
4. DEMAND THE RIGHT TO HAVE A REPRESENTATIVE BEFORE AND DURING QUESTIONING.

Always consult with a knowledgeable representative/lawyer before responding to any report, letter, memo and/or questions concerning an investigation which could possibly lead to punitive action. If ordered to proceed in the absence, record or memorialize the following:

**NON-WAIVER STATEMENT**

“I have been refused the right to have a representative of my choice. I understand that I am being ordered to make a report and answer questions and that if I do not comply with the order, I may be disciplined for insubordination.

Therefore, I have no alternative but to obey. However, by so doing, I do not waive my constitutional rights to remain silent or the protections under state law.”