

## **COURT REJECTS POBRA DEFENSE BY LAPD OFFICER CONVICTED OF MURDER**

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Convicted in 2012 of the 1986 murder of her lover's wife, former Los Angeles Police Department detective Stephanie Lazarus asked an appellate court to overturn her conviction on the basis a statement was taken from her in violation of her rights under the Public Safety Officers Procedural Bill of Rights Act (POBRA). (Gov. Code §§ 3300 et seq.) The Second District Court of Appeal rejected Lazarus's argument, ruling that the officer's POBRA rights did not attach because the investigation was concerned solely with criminal activity and had no bearing on her employment.

Lazarus hit, bound, bit and shot Sheri Rasmussen after she learned her lover, John Ruetten, had married Rasmussen. The murder went unsolved until cold-case detectives linked DNA evidence from a bite mark on Rasmussen's body to Lazarus. Detectives determined Rasmussen had been killed by bullets from a firearm of a type issued by LAPD, and sought to question Lazarus about the murder.

Detectives tricked Lazarus into meeting with them at her workplace, then told her they were investigating the Rasmussen murder. They told Lazarus she was not under arrest and was free to leave. Lazarus made statements related to the crime before walking out of the room. She was arrested and charged; at trial, she argued the statements were inadmissible because she feared discipline if she did not answer the investigators' questions. The trial court allowed the statements to be used against her.

### ***Court Finds Garrity Rights Did Not Apply to Questioning***

On appeal from her conviction, Lazarus argued the use of the statements at trial violated her rights under *Garrity v. New Jersey* (1967) 385 U.S. 493. *Garrity* is a U.S. Supreme Court decision in which the court held peace officers could not be compelled under threat of discipline to give statements in a criminal investigation. The same principle has been applied in California through *Lybarger v. City of Los Angeles* (1985) 40 Cal.3d 822, in which the California Supreme Court ruled an officer cannot be questioned administratively about a criminal matter unless she has been advised that any statement made under the threat of discipline cannot be used against her in a subsequent criminal proceeding.

Relying on the warning in Government Code section 3303(e) that a public safety officer who refuses "to respond to questions or submit to interrogations" may suffer punitive action, Lazarus said on appeal that she was compelled to answer the investigators' questions or suffer termination. She said her *Garrity/Lybarger* right against the use of those statements in a criminal proceeding had been violated when the trial court admitted her statements.

The appellate court rejected Lazarus's arguments, however, stating the investigators had not been conducting an administrative investigation but instead had been focused solely on the murder case. Another POBRA provision, Government Code section 3303(i), makes it clear the statute does not apply to "an investigation concerned solely and directly with alleged criminal activities". Since the investigators were outside Lazarus's chain of command, did not give her any

administrative admonishments, and advised her they were conducting a criminal investigation, the court said POBRA's restrictions on the use of compelled statements did not apply.

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