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Benjamin Joffe

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RECENT DEVELOPMENT

ROBINSON V. BALTIMORE POLICE DEP'T

By: Benjamin Joffe

KNOWINGLY MAKING A FALSE STATEMENT MATERIAL TO AND DURING AN INVESTIGATION OF PRIOR MISCONDUCT HAS A ONE YEAR STATUTE OF LIMITATIONS AND, THEREFORE, CHARGES AGAINST AN OFFICER MUST BE FILED WITHIN ONE YEAR OF THE FALSE STATEMENT COMING TO THE ATTENTION OF THE APPROPRIATE AGENCY.

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RECENT DEVELOPMENT

ROBINSON V. BALTIMORE POLICE DEP'T: KNOWINGLY MAKING A FALSE STATEMENT MATERIAL TO AND DURING AN INVESTIGATION OF PRIOR MISCONDUCT HAS A ONE YEAR STATUTE OF LIMITATIONS AND, THEREFORE, CHARGES AGAINST AN OFFICER MUST BE FILED WITHIN ONE YEAR OF THE FALSE STATEMENT COMING TO THE ATTENTION OF THE APPROPRIATE AGENCY.

By: Benjamin Joffe

The Court of Appeals of Maryland held that when calculating the statute of limitations for knowingly making a false statement material to an investigation of prior misconduct, the period begins to run on the date the agency becomes aware that the officer made the false statement. *Robinson v. Baltimore Police Dep't*, 424 Md. 41, 33 A.3d 972 (2011). The court rejected the argument that the period begins to run on the date of the incident giving rise to the investigation, and as a result, the appropriate law enforcement agency has one year from the date it learns of the false statement to bring administrative charges. *Id.* at 41, 33 A.3d at 972.

On February 22, 2007, a Baltimore Police Department (“BPD”) officer arrested Teressa Houssain (“Houssain”) and charged her with prostitution. During her arrest, Houssain told a member of the BPD that she recently engaged in sexual intercourse with another member of the BPD, Sergeant Steve Robinson (“Robinson”). Three days prior to her arrest, Houssain claimed that she approached a silver SUV and a man introduced himself as “Steve.” This man then showed her a Baltimore City Police Identification Card with the name Robinson printed on it and propositioned her for sex. Houssain accepted Robinson’s proposition, and the two engaged in sexual intercourse in the back of his vehicle in the lot of an empty Park and Ride. This incident was referred to the Internal Investigation Division (“IID”) of the BPD, which served Robinson with a Notification of Complaint for engaging in sexual misconduct while on duty on February 19, 2007.

IID investigators interviewed Robinson on July 11, 2007, and again on August 1, 2007. During both interviews, Robinson denied knowing Houssain and denied having sexual intercourse with her. Robinson claimed that on the date in question he was not driving the vehicle identified by Houssain, and he provided “EZ Pass” receipts for his

personal sedan on that date. In addition, Robinson informed IID investigators that his supervisor instructed him to use his personal vehicle while participating in prostitution sting operations. Robinson also alleged that he was unfamiliar with the Park and Ride and he was not there on the day of the alleged incident. IID investigators retrieved video footage from security cameras located within the Park and Ride lot and discovered that Robinson and Houssain were in a silver SUV on February 19, 2007. Robinson's EZ Pass receipts were found to be fraudulent and Robinson's supervisor informed IID investigators that he never told Robinson to use his own vehicle.

On June 26, 2008, the BPD charged Robinson with six administrative violations of the BPD General Orders. A BPD charging committee, with the recommendation of IID investigators, terminated Robinson's employment on July 11, 2008. Robinson filed a Complaint in conjunction with a Petition to Show Cause in the Circuit Court for Baltimore City, alleging that the one-year statute of limitations period barred all six violations. The Circuit Court for Baltimore City granted the BPD's motion for summary judgment on the false statement charge. Robinson appealed to the Court of Special Appeals of Maryland, which affirmed the circuit court's judgment in an unreported opinion. Robinson then filed a petition for a writ of certiorari, which the Court of Appeals of Maryland granted.

Robinson argued that the one-year statute of limitations period for bringing charges related to the false statements had expired on February 22, 2008, which was one year after Houssain's arrest on February 22, 2007, when the BPD learned of his misconduct. *Robinson*, 424 Md. at 47-48, 33 A.3d at 976-78. In support of his argument, Robinson cited section 3-106 of the Law Enforcement Officers' Bill of Rights ("LEOBR") requiring that all charges be brought against an officer within one year after the act that gave rise to the charges came to the attention of the agency. *Id.* at 47-48, 33 A.3d at 976-77.

Alternatively, the BPD claimed the acts that gave rise to the cause of action occurred on the dates that Robinson uttered the false statements during his interviews, which were on July 11 and August 1, 2007. *Robinson*, 424 Md. at 50, 33 A.3d at 978. The BPD argued that prior to those dates no false statements had been made, and there could be no false statement charge prior to the IID interviews. *Id.* Applying this time frame, the one-year limitations period would not expire until July 11, 2008, which was after the June 26, 2008 charging date. *Id.*

In its analysis, the Court of Appeals of Maryland held that the one-year limitations period proffered by the BPD was correct, and affirmed

the judgment of the intermediate appellate court. *Robinson*, 424 Md. at 51, 33 A.3d at 978-79. In reaching its decision the court relied on the basic rules of statutory construction. *Id.* The court proceeded to ascertain the legislative intent by examining the plain language of the statute at issue. *Id.* (citing *State v. Johnson*, 415 Md. 413, 421, 2 A.3d 368, 373 (2010)). The court concluded that the plain meaning of section 3-106 of the LEOBR was unambiguous and did not support Robinson's argument. *Robinson*, 424 Md. at 52, 33 A.3d at 979. If the statute of limitations period was to begin on February 22, 2007, as argued by Robinson, the text of section 3-106 would have to plainly state the period as such. *Id.* at 50-51, 33 A.3d at 978. The court noted that Robinson failed to provide any support through legislation or case law that would indicate a reading of section 3-106 in the manner he requested. *Id.* at 51, 33 A.3d at 979. The court stated that language would have to be added to the text of section 3-106 to create a timeline similar to what Robinson argued. *Id.*

The court further stated that Robinson's interpretation of section 3-106 would lead to illogical results and offered a hypothetical scenario in support of their conclusion. *Robinson*, 424 Md. at 51-52, 33 A.3d at 979. The scenario began with an officer making false statements during an investigation into an incident that occurred eleven months and twenty-eight days prior to the making of the false statements. *Id.* IID investigators would be required to either bring charges for the false statements during the three following days or the action would be time barred. *Id.* at 52, 33 A.3d at 979. The court described this hypothetical situation as an absurdity, and the plain meaning of section 3-106 of the LEOBR could not be read to support this argument. *Id.* at 51-52, 33 A.3d at 979.

The court reached its final determination after reviewing section 3-113(a) of the LEOBR. *Robinson*, 424 Md. at 52, 33 A.3d at 979. This section expressly prohibits BPD officers from knowingly making a false statement material to an investigation. *Id.* The court determined that the Maryland General Assembly would not intend to create an additional statute if the making of a false statement could be charged under section 3-106. *Id.* at 52-53, 33 A.3d at 979. Accordingly, the Court of Appeals of Maryland held that the statute of limitations period within section 3-106 began on the date of the first false statement, which in this case was July 11, 2007. *Id.* at 53, 33 A.3d at 980. The BPD, therefore, filed the charges against Robinson for knowingly making a false statement within the applicable period of limitations. *Id.*

In *Robinson*, the Court of Appeals of Maryland demonstrated its commitment to strict principles of statutory construction by examining the legislative intent of the Maryland General Assembly to determine an appropriate statute of limitations period. The act of knowingly making a false statement material to an investigation constitutes a separate cause of action that cannot be attributed to an earlier act of misconduct even though that conduct was under investigation when the false statement was made. The court's holding in *Robinson* serves as a strong deterrent for similar officer misconduct, as BPD investigators now have additional options to sanction untruthful investigative behavior under the text of section 3-113(a).