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SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER
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BY L. HOYLE DEPUT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE, CENTRAL JUSTICE CENTER

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, vs. MANUEL RAMOS JAY CICINELLI, Defendants.	Case No.: 11CF2575 NOTICE OF MOTION AND MOTION FOR DISCOVERY OF POLICE PERSONNEL RECORDS (PITCHESS); MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF Date: 12/20/13 Time: 9:00 a.m. Dept: C-40 Time Est: 30 min.

TO: THE HONORABLE JUDGE FROEBERG; AND TO THE ATTORNEYS FOR THE DEFENDANTS AND THE CITY OF FULLERTON POLICE DEPARTMENT.

PLEASE TAKE NOTICE that on December 20, 2013 in Department C-40 of the above entitled court, the People, through counsel, will move the Court for an order discovering information from the administrative files of the Fullerton Police Department as it relates to Jay Cicinelli and Manuel Ramos both former officers and presently defendants in the above-captioned matter. The People make this motion pursuant to Evidence Code Section 1043 *et seq*, on the grounds that the records sought are relevant and material to the trial of this action and that the Fullerton Police Department is in possession of the sought after records. The People have a good faith belief that the administrative records will contain evidence of violations of

departmental policy with regard to the conduct of each defendant on July 5, 2011 and any subsequent discipline which may have been imposed. This evidence would be relevant and material to the trial in this action in light of the defense testimony of Fullerton Police Department Corporal Stephen Rubio in which he testified there had been no violation of departmental policy by defendant Cicinelli and only a "slight" violation of departmental policy, if at all, by defendant Ramos.

DATED: December 17, 2013.

Respectfully submitted,

KEITH BOGARDUS
Senior Deputy District Attorney

ITEMS SOUGHT TO BE DISCOVERED:

The results of any internal affairs investigation by or on behalf of the Fullerton Police Department into the July 5, 2011 conduct of Manuel Anthony Ramos and Jay Patrick Cicinelli as it relates to the death of Kelly James Thomas. In particular, the People request all relevant reports and records regarding the determination of any violation of departmental policy by Manuel Anthony Ramos or Jay Patrick Cicinelli by their July 5, 2011 conduct as it relates to Kelly James Thomas, as well as any discipline imposed as a result of any determinations of policy violation by either individual as a result of this incident. The People request that all relevant reports be provided no matter where they are kept or catalogued or what they are called by the Fullerton Police Department.

POINTS, AUTHORITIES, ARGUMENT

I.

THE PEOPLE HAVE DEMONSTRATED GOOD CAUSE TO DISCOVER THE REQUESTED PEACE OFFICER PERSONNEL RECORDS.

A. Evolution of the Law Relating to Discovery of Peace Officer Personnel Records.

In *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (hereafter *Pitchess*) the California Supreme Court articulated several rules to guide practitioners and trial courts regarding discovery of police personnel records. *Pitchess* made it clear that an accused may compel discovery by demonstrating that the requested information will facilitate the ascertainment of the facts and a fair trial. "The requisite showing may be satisfied by general allegations which establish some cause for discovery other than 'a mere desire for the benefit of all information which has been obtained by the People in their investigation of the crime.' . . ." (*Id.* at pp. 536-537, citations omitted.)

Pitchess involved an arrestee who asserted self-defense to a charge of battery on a police officer. The accused sought discovery of statements by complainants against the officers and disciplinary records in the police department's possession concerning the officers' propensity to commit acts of violence. (*Id.* at p. 537.) The court held both types of information were discoverable. The statements were held necessary to effectively cross-examine the officers at trial and to refresh the complainants' recollection of events that had transpired "some time ago." The disciplinary records were held "unquestionably relevant and admissible" as character evidence of the deputies' tendency to engage in violence. (*Ibid.*)

The court also determined the request was sufficient given that the information sought was relevant to the defense and was "not 'readily [obtainable] . . . through his own efforts.'" (*Id.* at p. 537.) The documents had been requested "with adequate specificity to preclude the possibility that defendant [was] engaging in a 'fishing expedition.'" (*Id.* at p. 538.)

These guidelines were announced in the absence of legislation and for several years guided the Courts of Appeal in passing upon similar issues. In 1978, the California Legislature codified the privileges and procedures surrounding what had come to be known as "*Pitchess* motions" through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045. The Penal Code provisions define "personnel records" (Pen. Code § 832.8) and provide that such records are "confidential" and only subject to discovery pursuant to the procedures set forth in the Evidence Code. (Pen. Code § 832.7.) Evidence Code sections 1043 and 1045 set out the procedures for discovery in detail.

In *People v. Memro* (1985) 38 Cal.3d 658, 679 fn. 19, 680 (hereafter *Memro*), the first Supreme Court "*Pitchess*" case following the legislative action, the court concluded the statutory scheme "not only reaffirmed but expanded" the principles of criminal discovery articulated by *Pitchess.*

The Supreme Court next addressed the discovery of police personnel records in *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74. There, the court held counsel's declaration based upon information and belief was sufficient and reiterated that the threshold for discovery is "relatively low". (*Id.* at p.83.) The Court explained "[t]he relatively relaxed standards for a showing of good cause under section 1043, subdivision (b) – "materiality" to the subject matter of the pending litigation and a "reasonable belief" that the agency has the type of information sought -- insure the production for inspection of all potentially relevant documents. The in camera review procedure and disclosure guidelines set forth in section 1045 guarantee, in turn, a balancing of the officer's privacy interests against the defendant's need for disclosure." (*Id.* at p. 84.)

The results of internal police investigations, such as any disciplinary action that was taken as a result of departmental policy violations, are discoverable under *Pitchess* and Evidence Code section 1045. Evidence Code section 1045, subdivision (a), expressly provides that:

> **[n]othing in this article shall be construed to affect the right of access to** records of complaints, or investigations of complaints, or **discipline imposed** as a result of such investigations, concerning an event or transaction in which the peace officer participated, or which he perceived, and pertaining to the manner in which he performed his duties, provided that such information is relevant to the subject matter involved in the pending litigation.

(Cal. Evidence Code §1045, subd. (a) [emphasis added]). The Supreme Court in *City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, affirmed this plain reading of the section 1045 holding that "the statutory scheme reveals a legislative intent to allow disclosure of the outcome of an investigation, i.e., the discipline imposed…" (*City of San Jose v. Superior Court* (1993) 5 Cal.4th 47, 54-56).

Evidence Code sections 1043 and 1045 also "do not limit discovery of confidential information from police officer personnel files to altercations between police officers and arrestees. [Citation]. Motions made pursuant to Evidence Code sections 1043 and 1045 may also be used to discover information to impeach an officer's credibility. [Citation]." (*Garden Grove Police Dept. v. Superior Court* (2001) 89 Cal.App.4th 430, 433).

Although most of the decisional authority addressing *Pitchess* has arisen in the context of a defendant seeking discovery, the People may pursue discovery of peace officer administrative files pursuant to *Pitchess* as well. (See *Alford v. Superior Court* (2003) 29 Cal.4th 1033 1046 ["Of course, the prosecution itself remains free to seek *Pitchess* disclosure by complying with the procedure set forth in Evidence Code sections 1043 and 1045. Absent such compliance…peace officer personnel records retain their confidentiality vis-a-vis the prosecution."].)

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B. The Requested Records are Material.

The Supreme Court explained the materiality required for discovery of peace officer personnel records in *Memro*. (*People v. Memro, supra*, 38 Cal.3d at pp. 682-684; *City of Santa Cruz v. Municipal Court, supra*, 49 Cal. 3d at p. 85.) *Memro* involved an arrestee who alleged that his confession to a murder had been coerced. Counsel's declaration asserted that the confession had been coerced by promises of leniency and threats of violence. (*Id.* at p. 682.) He sought discovery of records of prior complaints of violence against the interrogating officers, alleging the officers had a habit or custom of coercing confessions.

Applying the relaxed materiality standard of Evidence Code section 1043 and informed by the principles set forth in *Pitchess*,[1] the *Memro* Court held the defendant had demonstrated good cause for the information requested. (*Id.* at p. 684.) The court explained: "[C]ounsel's allegations were sufficient to put the court on notice that the voluntariness of the confession would be in issue. The declaration articulated a theory as to how the information would be used in litigating that question. While undoubtedly the factual allegations could have been more specific, they went far beyond expressing "a mere desire for the benefit of all information" which was in the prosecution's hands." (*Id.* at p.682; citations omitted.)

Thus, according to the Supreme Court, all that is required to satisfy the relatively low standard of materiality contained in Evidence Code section 1043(b), are allegations which inform the court what issue the personnel records are relevant to and a valid legal theory as to how the information would be used in litigating that issue.

Illustrative of this point are the cases of *People v. Hustead* (1999) 74 Cal.App.4th 410, 416-417 and *People v. Gill* (1997) 60 Cal.App.4th 743, 750. Mr. Hustead was charged with

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[1] Cases decided prior to the enactment of Evidence Code § 1043 et. seq., are still valid in determining whether good cause for discovery is shown. (*People v. Memro, supra*, 38 Cal.3d at p. 678 fn.19.)

Cicinelli presented the testimony of Corporal Stephen Rubio, a representative of the Fullerton Police Department. On direct examination of Corporal Rubio, counsel for defendant Cicinelli elicited Corporal Rubio's conclusion that all of the conduct of defendant Cicinelli depicted on the incident video[2] **was within departmental policy**. Corporal Rubio also testified that the conduct of defendant Ramos depicted on the incident video amounted to nothing more than a "slight" violation of policy, if a violation at all. Therefore, evidence that the conduct of the defendants did, in fact, violate departmental policy is both relevant and admissible in light of the defense testimony of Corporal Rubio. Such evidence is relevant and material to both rebut the opinion testimony of Corporal Rubio and to impeach his credibility[3].

C. Counsel's Declaration Establishes a Reasonable Belief that the Fullerton Police Department Possesses the Type of Information or Records Sought.

An Internal Affairs investigation was conducted by the Fullerton Police Department into the July 5, 2011 conduct of defendants Ramos and Cicinelli. That investigation examined the prospect of departmental policy violations in the July 5, 2011 conduct of the defendants and resulted in conclusions regarding any departmental policy violations by the defendants. The declaration of Assistant District Attorney Michael Lubinski, attached hereto, provides the adequate factual basis to demonstrate a reasonable belief that the Fullerton Police Department possesses the information or records sought. This declaration alone is sufficient to satisfy the requirements of Evidence Code section 1043(b). (*City of Santa Cruz v. Municipal Court, supra,* 49 Cal.3d at p. 93.)

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[2] Defendant Cicinelli's Trial Exhibit No. 501.

CONCLUSION

For all of the reasons stated above, the People respectfully request this court grant an order permitting the disclosure of the requested information from the administrative files of the Fullerton Police Department.

Dated: December 17, 2013

TONY RACKAUCKAS, DISTRICT ATTORNEY
COUNTY OR ORANGE, STATE OF CALIFORNIA

Keith Bogardus
Senior Deputy District Attorney

[3] In assessing the believability of a witness, a jury may consider whether "other evidence prove[d] or disprove[d] any fact about which the witness testified." (CALCRIM 226).

DECLARATION OF KEITH BOGARDUS

I, KEITH BOGARDUS, hereby declare:

1. That I am an attorney licensed to practice law in the State of California.

2. That I am one of the attorneys assigned to represent the People in the matter of *People v. Ramos & Cicinelli* (Orange County Superior Court case 11CF2575).

3. That on December 17, 2013, in the criminal jury trial of this matter, the attorneys for defendants Manuel Ramos and Jay Cicinelli presented the testimony of a representative of the Fullerton Police Department, Police Corporal Stephen Rubio.

4. That Corporal Stephen Rubio testified that he had reviewed a video recording depicting the July 5, 2011 encounter between Kelly James Thomas and defendants Manuel Ramos and Jay Cicinelli.

5. That Corporal Stephen Rubio testified that he did not witness any conduct by Defendant Cicinelli depicted on the video that constituted a violation of Fullerton Police Department policy.

6. That to the best of my recollection and belief Corporal Stephen Rubio testified that the conduct of Defendant Ramos that he witnessed on the video may have only constituted a "slight" violation of Fullerton Police Department policy, if at all.

7. That the People have no other means of rebutting the testimony of a representative of the Fullerton Police Department that the conduct of the defendants did not violate departmental policy (or was only a "slight" violation with regard to defendant Ramos) than with the testimony of a representative of the Fullerton Police Department that the conduct of the defendants did, in fact, violate departmental policy.

8. That the People have no other means of impeaching the credibility of Corporal Stephen Rubio that the conduct of the defendants did not violate departmental policy or only constituted a "slight" violation of policy than with evidence that their conduct did, in fact, violate departmental policy.

evading a peace officer in violation of Vehicle Code section 2800.2. Counsel for Mr. Hustead filed a "*Pitchess*" motion and asserted in the declaration that the officer made material misstatements with respect to his observations, including fabricating the alleged dangerous driving maneuvers. Counsel also stated that Mr. Hustead asserted he did not drive in the manner described by the report and his driving route was different from that found in the report. In addition, he claimed a material and substantial issue in the trial would be the character, habits, customs and credibility of the officer. The *Hustead* court held these allegations were sufficient to establish a plausible factual foundation for an allegation that the officer made false accusations in his report since it demonstrated the defense would be he did not drive in the manner suggested by the police report and therefore the charges against him were not justified. (*People v. Hustead, supra,* 74 Cal.App.4th at pp. 416-417.)

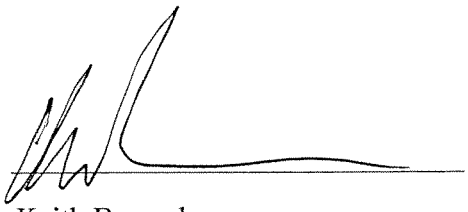
Likewise in *Gill*, counsel filed a "*Pitchess*" motion for Mr. Gill who was charged with possession of cocaine. (Health & Safety Code § 11350.) In the declaration, counsel asserted "[i]t will be a defense in this matter that the alleged contraband was placed on [appellant] by [Officer Hunt] to cover up for his use of excessive force and that the officer has [a] pattern of fabricating probable cause in dope cases." Mr. Gill's discovery request sought prior complaints against Officer Hunt regarding fabrication of probable cause and planting of evidence to cover up his use of excessive force. The *Gill* court held good cause for the requested discovery existed because the declaration demonstrated the materiality of the information Mr. Gill requested and because any history of complaints of similar misconduct in Officer Hunt's personnel file could lead to admissible evidence of "habit or custom," which could aid in the defense to the charge. (*People v. Gill, supra*, 60 Cal.App.4th at p. 750.)

In the instant case, there is far more than simply a plausible theory as to how the administrative files of the Fullerton Police Department could contain relevant, material evidence. Instead, the court has received testimonial evidence demonstrating the very materiality of the information sought. On December 17, 2013, during the trial of this matter, defendant Jay

9. That if evidence exists that the Fullerton Police Department determined the conduct of the defendants during their July 5, 2011 encounter with Kelly James Thomas did, in fact, violate departmental policy, the People would seek to admit evidence of those determinations of policy violations to specifically rebut the testimony of Corporal Stephen Rubio and to impeach the credibility of this witness with evidence that disproved facts and opinions about which he testified.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matter stated upon my information and belief and as to those matters I believe them be true.

Executed on this 17th day of December, 2013, at Santa Ana, California.



Keith Bogardus

DECLARATION OF MICHAEL LUBINSKI

I, MICHAEL LUBINSKI, hereby declare:

1. That I am an attorney licensed to practice law in the State of California.

2. That I am currently employed as a prosecutor for the Orange County District Attorney's Office, and have been so for the past 29 years.

3. On December 17, 2013, I requested the Fullerton Police Department make available to me for my review pursuant to Penal Code section 832.7, administrative files of the department which include statements and information concerning use of force as it related to the events of July 5, 2011 and the death of Kelly Thomas. I specifically requested that I not be provided with any ordered statements taken pursuant to any administrative investigation.

4. On December 17, 2013, I performed a review of the requested materials at the Fullerton Police Department.

5. That as a result of that review I have personal knowledge that the administrative files of the Fullerton Police Department contain statements, analyses and conclusions regarding potential policy violations by Manuel Ramos and Jay Cicinelli as it relates to the conduct of these individuals during the events of July 5, 2011 and the death of Kelly Thomas.

I declare under penalty of perjury that the foregoing is true and correct, except as to those matter stated upon my information and belief and as to those matters I believe them be true.

Executed on this 17th day of December, 2013, at Santa Ana, California.

Michael Lubinski

Michael Lubinski

Related text page(s)

Document: 03 OFFICER SUPPLEMENTAL
Author: 1187 - CICINELLI
Related date/time: Jul-06-2011 0102

On 7-5-11 at 2054 hours, I was dispatched emergency lights and sirens to 120 S. Pomona in Fullerton. Officers Wolfe and Ramos were on scene conducting an investigation. Officer Wolfe broadcast on the radio that he needed help. I could hear sounds of what appeared to be a struggle in the background. I began responding from Euclid and Valencia in Fullerton. While en route to 120 S. Pomona, Officer Wolfe again broadcast on the radio that he needed help. I continued my emergency response.

Upon arrival, I saw both Officer Wolfe and Officer Ramos on the ground by the curb. They were near an exit and entry to the bus station. I could see that Officer Wolfe and Officer Ramos were struggling with this subject who was later identified as Kelly Thomas. Officers Wolfe, Ramos, and Kelly Thomas were all entangled with one another and I immediately heard yelling coming from Thomas. I did not hear any specific words, but almost like a loud growl. I also noticed that Officers Wolfe and Ramos were breathing very heavy and appeared to be exhausted. I parked approximately 10-15 feet from where they were fighting on the ground. I exited my police car and ran to assist the officers. I first tried to pull Thomas to his left side and roll him over, but this was causing pain to Officer Ramos' arm. As I pulled on Thomas, Officer Ramos would yell out in pain, and he said his arm was hurting and that it was stuck in the hold. I stopped pulling on Thomas due to the pain it was causing to Officer Ramos.

Thomas continued to resist the officers commands to stop resisting and his body was becoming more rigid, and then he would move his arms around in what I thought was an attempt to strike one of us. Officers Wolfe and Ramos had to let their hold on Thomas loose because I believed it was about to break Officer Ramos' arm. This allowed Thomas more freedom to his arms and legs and we were having a hard time controlling Thomas and keeping him on the ground. I was near his head and I saw that it was exposed. I used my knee and struck Thomas in his head with two strikes to the head. I believed this would cause Thomas to begin focusing on the knee strike, thus allowing us to overcome the resistance by Thomas and take him into custody. This was not successful and I discontinued the strikes to Thomas. Thomas appeared to now be fighting back harder than he was when I arrived. We were not having any success or gaining any control over Thomas.

We were not having any success in controlling Thomas so I yelled to the other officers that I was going to attempt to use my taser on Thomas. I removed the dart cartridge from my taser in an attempt to apply a drive stun. I saw an open area on Thomas' back. I applied my taser to his skin and administered an approximate 3-5 second burst. This caused Thomas to become more agitated and he was able to twist his body and kick his arms enough to pull away from the taser and move about more violently. Since this was unsuccessful, I told the officers that I would try to use the taser with the cartridge in and apply the darts. I backed away several feet and applied the taser into the back of Thomas. I believe that only one of the two darts impacted Thomas. The taser application did not have an effect on Thomas and he continued to fight back and he was yelling more violently. I moved closer to Thomas to apply the taser in a drive stun mode to complete

the circuit on the taser. I tried to get to his back, but he was moving around to much. I tried to get to his stomach and I applied the taser in a drive stun mode. This did not have a subduing effect on Thomas and he continued to fight. I tried once again to apply the taser in a drive stun mode to his back and it did not work. The entire taser application lasted approximately 30 seconds from start to finish. My taser was activated for most of that time, but only making contact periodically due to Thomas fighting and struggling. During the application of the taser, I heard Officer Hampton saying that he was impacted by taser application. I also was effected during the use of the taser when I used the darts because the dart wires were entangled between all of the subjects that were on the ground. I realized that the taser was not going to help control Thomas so I discontinued its use.

As I was preparing to put my taser back into its holster, Thomas reached in my direction and grabbed my taser from my hand. He pulled it towards his body and it began slipping from my hand due to my hand being very sweaty. I was able to pull back in my direction and gain total control over my taser.

I saw that the taser application on Thomas was unsuccessful and I saw that he was willing to attempt to gain control of my police issued taser. We were not overtaking Thomas so I again began to assist the other officers in trying to handcuff Thomas. I yelled for Officer Wolfe to "choke him out." I was referencing the carotid hold. Officer Wolfe could not get his arm around Thomas' neck area. I was becoming more fearful for our safety because all of the previously mentioned non-lethal force applications were unsuccessful on Thomas. Thomas was not slowing down his fight and I believed his effort to resist was just as strong when I first arrived on scene. Thomas' stamina and strength led to me to believe that he was under the influence of some type of illegal narcotic. I saw that his head was exposed and I thought that if I could apply strikes to his head we would possibly be able to gain control of Thomas and get him handcuffed. I had my taser in my right hand and I reached down towards his head and I applied multiple strikes to the face and left side of his head while holding my taser. I saw that blood began to run from Thomas' face area and he began to slowly stop resisting. This was about the same time that other officers were able to began to apply the Rip Hobble to Thomas. I saw Sergeant Craig running towards us and I yelled for him to help us. When I saw the blood coming from Thomas, I advised dispatch that we needed Fullerton Paramedics to respond. He was still not fully contained, but I was able to use my police radio at that time. Officers continued to handcuff Thomas and he stopped fighting.

I placed my knee on top of Thomas as officers gained control. I then got off of Thomas and other officers came in to assist.

My taser was booked in as evidence and photographed. A taser cartridge was located about 40-50 feet away from the scene. We were not sure if that was my taser cartridge or another officers. It was booked as evidence as well. I received a small cut on my right thumb that was photographed and treated on scene. My pants were collected as evidence because they had blood stains throughout.

No further action.

Related text page(s)

Document: 03 OFFICER SUPPLEMENTAL
Author: 1235 - RAMOS M
Related date/time: Jul-05-2011 2023

On the above listed date and time, Officer Wolfe and I were dispatched to the bus depot, located at 123 S. Pomona Ave. in reference to a subject trying to open doors on parked vehicles in the parking lot. The subject was described as wearing no shirt, but was wearing a backpack, and blue jeans. Upon arrival I located a subject matching the listed description in the south west portion of the bus depot. I exited my vehicle and contacted the subject, who was later identified as Kelly Thomas. I began a conversation with Thomas.

Officer Wolf arrived on scene a few moments after I did.

I immediately recognized the subject from several previous contacts, but I could not remember his name. During our conversation Thomas was very agitated and angry, based on his demeanor when I began asking him questions. I asked his name, but he would not provide it to me. He told me he did not speak English, and provided me several different names. I asked Thomas to sit on the curb and he complied. While on the curb he would not follow my directions to keep his feet extended in front of him, and to cross his ankles. Thomas also refused to keep his hands on his knees as I instructed him to do so.

During our conversation, Officer Wolfe asked Thomas for permission to search his backpack ,and Thomas gave him permission to do so.

While Officer Wolfe was searching the backpack I walked over to him. Officer Wolfe advised me he possibly located stolen property inside Thomas' backpack.

At this point I decided to walk back to where Thomas was sitting to prepare to take him in to custody for the stolen property.

I walked back to where Thomas was sitting, which was a few feet from where Officer Wolfe was. I again instructed Thomas to keep his hands on his knees. I asked Thomas several time to do so, but he refused. I could see that my instructions made Thomas angry. Based on Thomas' demeanor and his refusal to follow my instructions, I felt that Thomas was now aware that we had located the stolen property in his backpack, and he was going to be arrested. I also felt by his demeanor he was preparing to flee, or take some sort of action to avoid being arrested. Based on Thomas' refusal to follow my instructions, I placed my right hand on the back of Thomas left arm to move his hands and arms towards his knees, so I could have a better tactical position to take custody of him. When I placed my hand on his arm, Thomas turned and swatted my arm away from him with his left hand and arm. Thomas then quickly stood on his feet and began to walk away from me. I drew my baton and ordered him to the ground. As Thomas was walking away he faced me and took a aggressive stance, which caused me to believe he was preparing to assault me. I ordered Thomas to the ground several times and as I got closer to him, he began swatting his left hand and arm at me, but did not strike me. I struck Thomas with my baton on his left lower thigh once. The baton strike did not affect him, and he turned and ran southbound

away from me.

I pursued after Thomas. After running approximately twenty feet, Thomas turned and faced me. He took a fighting stance and attempted to strike (punch) me with his left fist. I was able to avoid the strike and prepared to strike him a second time with my baton. At this point I saw Officer Wolfe attempt to tackle Thomas. Fearing I would strike Officer Wolfe with my baton, I did not complete the swing with my baton. Thomas reached out and grabbed my baton with his left hand, and attempted to pull my baton out of my hand. I pulled back on my baton with both of my hands, and after a few pulls, I was able to get him to release it. At this point Officer Wolfe was still attempting to take Thomas to the ground and had him in a bear style hug around his waist. I then wrapped my arms around Thomas' upper body and with the use of my body weight, I was able to get him on the ground. Thomas landed face down on the ground. I had my upper body on top of Thomas' upper back and was attempting to pull his left arm out from under his body. I ordered him several times to put his hands behind his back as I pulled on his arm. I felt Thomas trying to push himself up off the ground. I felt Thomas lift me up as he pushed himself up off the ground. I struck Thomas several times with my closed right fist on his left side (ribs) in order to get him to comply with my orders. My strikes did not affect him, and I could continue to feel him attempting to push himself up off the ground.

At this point I was in fear that Thomas was going to regain his footing and stand on his feet, so I used my body weight to pin Thomas' upper body to the ground. I also placed my left hand around the side of Thomas' neck to pin him against the ground. I felt Thomas was over powering Officer Wolfe and I, so my focused changed to keeping Thomas from fleeing, and to wait for additional officers to arrive on scene.

A few moments later Corporal Cicinelli arrived on scene. I heard and saw Corporal Cicinelli deployed his taser several times, but it was not effective. Thomas continued to resist. At this point several other officers arrived on scene to assist. I used my hands to hold Thomas' feet to the ground while other officers attempted to handcuff him. Thomas continued to resist, and it took all my strength to try and keep his feet pinned to the ground, and prevent him from kicking. At some point Corporal Blatney arrived and relieved me from my position.

Ultimately Thomas was handcuffed, hobbled, and taken into custody

Paramedics arrived on scene and transported Thomas to the hospital.

During the time Officer Wolfe and I were on the ground with Thomas, I was shocked by his strength, and the amount of resistance he displayed. I was in fear that if I allowed Thomas to regain his footing, or unable to get him handcuffed, he was going to hurt me or Officer Wolfe. Both of our batons had fallen out of our grasp and were rolling on the ground next to us, easily accessible to Thomas.

No further action taken.

My DAR was activated during this contact.

Refer to my DAR recording for my conversation with Thomas.

FAX TRANSMISSION

OFFICE OF THE DISTRICT ATTORNEY
Homicide Unit
401 Civic Center Dr. West
Santa Ana, CA 92701
(714) 347-8482
Fax: (714) 834-3668

TONY RACKAUCKAS
DISTRICT ATTORNEY

FROM: VanTuyen Tran

Phone No.: 714-347-8464 Fax No.: 714-834-3668

TO: Michael D. Schwartz, Esq.
Rains Lucia Stern, PC

800 North Haven Ave., Ste. 360, Ontario, CA 91764

Phone No.: (909) 509-5001 Fax No.: (909) 509-5015

Date: December 18, 2013 Number of pages: Including the cover

Subject: Re: MANUEL ANTHONY RAMOS (Case Numbers 11CF2575)
JAY PATRICK CICINELLI

PROOF OF SERVICE BY FASCIMILE MACHINE

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I am employed within the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is:
401 Civic Center Drive West, Santa Ana, CA 92701.

On 12-18-13, I faxed the EXPARTE APPLICATION FOR ORDER SHORTENING TIME AND **MOTION FOR DISCOVERY OF POLICE PERSONNEL RECORDS (PITCHESS); MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** in the following in said action by facsimile machine. The fax number used was (714) 834-3668. The facsimile machine I used complied with rule 2003(3) and the machine reported no error. I caused the machine to print a transmission record, a copy of which is attached to this declaration.

I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed 12-18-13, at Santa Ana, California.

VanTuyen Tran – Information Processing Specialist

IF THERE ARE ANY QUESTIONS OR PROBLEMS, AND YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL, VanTuyen Tran @ 714-347-8464.

FAX TRANSMISSION

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TONY RACKAUCKAS
DISTRICT ATTORNEY

FROM: VanTuyen Tran

Phone No.: 714-347-8464 Fax No.: 714-834-3668

TO: Michael D. Schwartz, Esq.
Rains Lucia Stern, PC

800 North Haven Ave., Ste. 360, Ontario, CA 91764

Phone No.: (909) 509-5001 Fax No.: (909) 509-5015

Date: December 18, 2013 Number of pages: Including the cover

Subject: Re: MANUEL ANTHONY RAMOS (Case Numbers 11CF2575)
JAY PATRICK CICINELLI

PROOF OF SERVICE BY FASCIMILE MACHINE

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I am employed within the County of Orange, State of California. I am over the age of eighteen years and not a party to the within entitled action; my business address is:
401 Civic Center Drive West, Santa Ana, CA 92701.

On 12-18-13, I faxed the EX PARTE APPLICATION FOR ORDER SHORTENING TIME AND **MOTION FOR DISCOVERY OF POLICE PERSONNEL RECORDS (PITCHESS); MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** in the following in said action by facsimile machine. The fax number used was (714) 834-3668. The facsimile machine I used complied with rule 2003(3) and the machine reported no error. I caused the machine to print a transmission record, a copy of which is attached to this declaration.

I certify (or declare) under penalty of perjury that the foregoing is true and correct. Executed 12-18-13, at Santa Ana, California.

VanTuyen Tran – Information Processing Specialist

IF THERE ARE ANY QUESTIONS OR PROBLEMS, AND YOU DO NOT RECEIVE ALL OF THE PAGES, PLEASE CALL, VanTuyen Tran @ 714-347-8464.

PROOF OF SERVICE BY PERSONAL SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF ORANGE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is: 401 Civic Center Drive West, Santa Ana, CA 92701.

On Wednesday, December 18, 2013, I served the EX PARTE APPLICATION FOR ORDER SHORTENING TIME AND **MOTION FOR DISCOVERY OF POLICE PERSONNEL RECORDS (PITCHESS); MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT THEREOF** regarding People v. Ramos/Cicinelli (Court No. 11CF2575) by personally delivering a true copy of the motion to Captain Lorraine Jones Fullerton Police Department.

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Executed on December 18, 2013, at Santa Ana, California.

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