

In the News...

Law Must Punish Both Good and Bad False Statements

A statute that criminalized making false bad statements about a police officer but did not punish those who made false good statements violates the First Amendment, the Ninth Circuit found.

The court overturned the conviction of Darren Chaker who was sentenced to two days in jail and three years probation after he filed a report against his arresting officers alleging that he was abused.

The California statute made it a crime for a person to file an allegation of misconduct against a peace officer when the person filing the complaint knows it to be false. The court found that knowingly making a false statement regarding a public official is generally unprotected under the First Amendment. "[I]t is clear that the state may prohibit knowingly false speech made in connection with the peace officer complaint process," the court wrote.

However, the First Amendment requires that any regulation be viewpoint neutral even for otherwise unprotected speech. The court found the statute was "under-inclusive" because it was directly only at individuals who were critical of peace officers and not those who are supportive and, as a result, "turns the First Amendment on its head." If it wants to regulate filing false statements about peace officers, California could have made it illegal for all viewpoints. As the court explained:

"At Chaker's criminal trial, the witness who observed Chaker's arrest testified that she saw no signs of excessive force during Chaker's arrest. However, had the witness make this statement to the investigator charged with investigating Chaker's complaint, knowing the statement to be false, the witness would not have faced criminal sanction under section 148.6. Similarly, had Officer Bradberry made a knowingly false statement to the investigator charged with investigating Chaker's complaint, Officer Bradberry would not have faced criminal sanction under section 148.6. It is only Chaker, who filed a complaint of peace officer misconduct complaining that Officer Bradberry mistreated him in the court of an arrest, who faced criminal liability under section 148.6 for his knowing falsehood."

The court said that in order to cure the problem by making "all parties to an investigation of peace officer misconduct subject to sanction for knowingly making false statements. Otherwise, the selective sanction imposed by section 148.6 is impermissibly viewpoint-based."

Chaker v. Crogan, Ninth Cir. No. 03-56885 (Nov. 3, 2005).

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