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CORRECTIONAL SHERIFF'S DEPUTIES ENTITLED TO CARRY CONCEALED WEAPONS OFF DUTY >BACK

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In a significant decision affecting every correctional sheriff's deputy in California, the Court of Appeal for the Fifth Appellate District (Case No. F071257) ruled on August 11 that custodial deputies under Penal Code Section 830.1(c) "are exempt from the law prohibiting the carrying of concealed firearms, and need not obtain a permit from the sheriff to carry a concealed firearm while off duty."

Richard P. Fisher of Goyette & Associates handled the appeal for the Stanislaus County Deputy Sheriff's Association and noted that the victory was the culmination of a long and impassioned legal battle spanning some five years: "Goyette & Associates has worked closely with the Stanislaus DSA and its President Matt Pettus over the years in advocating for the equal treatment of custodial deputies under the concealed carry laws of California. We have steadfastly maintained that no legitimate ground exists for requiring custodial deputies to obtain a CCW permit when the statutory scheme clearly exempts these peace officers from the law prohibiting the carrying of concealed firearms. We are gratified that the court of appeal has clarified and upheld this important right for our members and for all Section 830.1(c) custodial deputies throughout California."

The Court of Appeal rejected the Stanislaus County Sheriff's assertion that custodial deputies lose their status as peace officers exempt from criminal prosecution under Penal Code Section 25450 simply because Section 830.1(c) places certain limitations on their authority when off duty. The court framed the interplay of Sections 25450 and 830.1(c) as follows: "The core issue before us is whether the peace officer exemption in section 25450, which by its terms applies to custodial deputies described in section 830.1, subdivision (c), ceases to apply to such deputies when they are off duty." The court concluded that the Section 25450 exemption continues to apply to custodial deputies when off duty and that, perforce, such deputies have the right to carry concealed weapons while off duty. The court emphasized that the legislative history clearly establishes that custodial deputies are understood to be peace officers and that, as such, they have the right to "carry a concealed weapon while off duty without the necessity of obtaining a separate permit from the sheriff." The court rejected the Sheriff's assertion that Section 830.1(c)'s limitation of off-duty authority undermined the ongoing status of custodial deputies as peace officers. The court explained, "Section 830.1, subdivision (c), declares without any qualification that a custodial deputy is a peace officer, and then goes on to delineate a custodial deputy's scope or extent of authority. Nothing in that section's description (including limitations) of custodial deputies' scope of authority as peace officers indicates an entire loss of their status as peace officers while they are off duty" (original italics).

Indeed, maintaining the status as peace officer under the concealed carry laws may be more critical for custodial deputies than for noncustodial deputies. According to DSA President Pettus, "Custodial

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deputies are exposed to inmates for hours, days, months and even years. Over time these inmates become familiar with the custodial deputies. Even the inmates' family members become familiar with staff through visitation and court appearances. Due to the high recidivism rate, the local inmate population is very transient, thus increasing custodial deputies' exposure to the same inmates over a long period of time. This increases the chance of custodial deputies having potentially dangerous contact with these inmates out of custody. This legal victory is very important to our members, as it reinforces the commonsense notion that custodial deputies should be able to protect themselves from former inmates known to them, while simultaneously providing an extra layer of protection for the community at large."

Given the unprecedented transfer into our communities of dangerous criminals via their early release from state prison or their transfer to county correctional facilities, it is comforting to know that the court's ruling will undoubtedly increase the number of professionally trained peace officers in our midst who are carrying a concealed weapon — a most salutary consequence in our age of increased violence and random mass shootings.

The Stanislaus County DSA wishes to thank the attorneys at Goyette & Associates for their fine work on this case over the years, and also thanks PORAC/LDF for graciously funding this important appeal. The decision by the Fifth DCA was the culmination of many years of hard work and dedication by all involved.

About the Author

Richard P. Fisher, senior labor and employment counsel at Goyette & Associates, defends peace officers statewide in administrative hearings and in the trial courts. His emphasis is on civil writs and appellate law.

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