

EMPLOYMENT LAW UPDATE

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Federal Law

Civil Code Section 47(b) Protects An Employer who Reports An Employee's Perceived Threat to the Police

Kevin Brown v. Department of Corrections, et al. (3rd App. Dist., September 1, 2005) 05 C.D.O.S. 7988

By Jason A. Geller and Beth Trittipo

Plaintiff Kevin Brown was an employee of the Department of Corrections. Brown notified the Office of the Inspector General (OIG), a prison oversight entity, that his supervisors, Briddle and Keating, had assaulted, battered, and harassed him. Kathy, the OIG operator who took Brown's call, asked Brown three times whether he intended to kill Briddle or Keating. Brown repeatedly assured her that he just wanted to be left alone.

Nevertheless, Kathy informed her supervisor at OIG that Brown had threatened his superior officers. This perceived threat was conveyed to the police, who then arrested Brown, although the charges were subsequently dropped. In addition, the warden of the prison where Brown was employed sought a restraining order against Brown. The trial court denied the request for a restraining order on the ground that Brown had not made a "credible threat of violence."

Brown then filed suit against the Department of Corrections, OIG, and the prison where he was employed. Brown alleged that these entities retaliated

against him for reporting Briddle and Keating to the OIG in violation of Labor Code § 1103.5 (which precludes an employer from retaliating against an employee for disclosing to a government or law enforcement agency what the employee reasonably believes is a legal violation) and Government Code § 8547.8 (a whistleblower protection statute.)

Defendants demurred to the Complaint, arguing that their conduct was privileged under Civil Code § 47(b), which creates a privilege for statements made in any legislative, judicial, or other proceeding authorized by law, or in the initiation or course of any mandate-reviewable proceeding authorized by law. The trial court granted the demurrer without leave to amend, and the court of appeal affirmed.

The court of appeal held that the privilege created by Civil Code § 47(b) is "absolute," and bars all tort causes of action based on statements covered by the privilege except a claim for malicious prosecution. Thus, Section 47 gives all persons the right to report crimes to the police, the local prosecutor

or an appropriate regulatory agency, even if the report is made in bad faith.

Brown argued that to apply the privilege in his case would defeat the purpose of Government Code § 8547 *et seq.* (the Whistleblower Act) and Labor Code §1102.5 (the anti-retaliation statute.) In support of his argument, Brown cited *Shoemaker v. Myers* (1992) 2 Cal.App.4th 1407. In that case, a former investigator filed a complaint against the Department of Health Services (DHS) for wrongful termination after the investigator uncovered wrongdoing by the department. DHS demurred to the complaint on the ground that it was immune to claims for malicious prosecution under Government Code § 815.6. The trial court sustained the demurrer, and the court of appeal in *Shoemaker* reversed. Finding that the immunity statute and the whistleblower statute conflicted, the court concluded that the whistleblower statute prevailed. To rule otherwise, the court held, would render the protection afforded by the whistleblower statute largely illusory.

The court of appeal in *Brown* distinguished *Shoemaker*, finding no conflict in Brown's case between the privilege of Civil Code § 47(b) and the Whistleblower Act or Labor Code § 1102.5. "In contrast to the whistleblower in *Shoemaker*, Brown uttered threatening statements suspected to be criminal in themselves and it was these statements that led to the actions taken against him on which he bases his retaliation complaint here."

The threat of violence in the workplace is a serious concern for all employers. *Brown* strengthens Civil Code § 47(b)'s protection for employers who report to the police conduct that could be

remotely perceived as threatening, encouraging employers in such situations to err on the side of caution.

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