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## **Admissible Statements**

In civil and criminal cases, police reports are inadmissible when they contain improper multiple hearsay. In *Jane IL DOE v. Brightstar Residential Incorporated* (2022) 76 Cal.App.5th 171, the Court of Appeal explained that under proper conditions, statements in a police report can be admissible evidence.

Defendant Brightstar provides residential care to people with developmental disabilities. Plaintiff Doe is a young woman with the mental age of a child who lived at a Brightstar facility. In 2011, Brightstar hired Ruben Alcalá as a part-time handyman. In 2016, Alcalá sexually assaulted Doe. Through her father, Doe sued Brightstar and the Machados (the facility owners) for negligence, negligent supervision, and related claims. Brightstar and the Machados moved for summary judgment and argued that the assault was not foreseeable, that they lacked knowledge of Alcalá's dangerous propensities, and other defenses.

In response, Doe relied on a police report to show Alcalá had a propensity to abuse, he was a risk to Brightstar residents, and was on the property when he had no right to be there. Doe argued Brightstar breached their duty to Doe. The trial court excluded the police report as inadmissible hearsay and granted the motion for summary judgment for Brightstar and the Machados.

The Court of Appeal reversed, finding that two types of police report evidence were admissible. The first type concerned Machado's admissions. Soon after the assault, Machado told responding officers that he knew Alcalá had "a history of loitering around the facility and harassing female employees." One of the officers recorded Machado's admission in a police report, creating double hearsay. The report's account of what Machado told the police officer is first-level hearsay. The officer's written report is second-level hearsay: the written report is an out-of-court statement offered for its truth. (Evid. Code § 1200.)

But double hearsay is admissible if a justification for admitting the evidence rebuts the hearsay objection at each level. (Evid. Code § 1201.) Here, the double-hearsay problem was cured. At level one, Machado's statement to the officer was the admission of a party opponent. (Evid. Code § 1220). Machado's statement to the police also was admissible for its truth against his company Brightstar. (Evid. Code § 1222.)

At level two, the officer's report was admissible as an official record. (Evid. Code, § 1280.) The official records exception to the hearsay rule is based on the presumption that public officers properly perform their official duties, which creates the trustworthiness that justifies accepting the hearsay statement. Machado's admission to the police that Alcalá had a "history" of

harassing women also was relevant to the foreseeability of Alcala's attack. A permissible inference would be that Alcala's conduct had been serious and repeated. Machado's statement to the police that "since his conversation with Alcala, ... Alcala has refrain[ed] from loitering in the facility" raises the inference that Machado was aware Alcala posed a danger and responded ineffectively. The court concluded that Machado's admission regarding Alcala's history of loitering and harassment should have been admitted in the record.

The second type of admissible evidence was a group of statements Brightstar employees made to the police about Alcala. At the first level, Doe offered these employee statements, not for their truth, but for the nonhearsay purpose that Brightstar and its employees were on notice of Alcala's disturbing and unsupervised presence. At the second level, the report was an official record.

A triple hearsay statement to the police was also admissible. Employee Garay told the police she heard Doe tell Alcala "Hi Daddy," and that employee Amparo told Doe "he is not your daddy." This was triple hearsay: (1) Garay heard Doe and Amparo speak about "daddy;" (2) Garay told the officer what she heard; and (3) the officer wrote in the police report what Garay had related. At level one, the words Amparo and Doe spoke about "daddy" were not helpful for their truth—whether Alcala was or was not Doe's daddy—but to show a usage suggesting intimacy between Alcala and Doe, as well as Amparo's concern about this intimacy.

At level two, Garay's statement showed employee Garay had notice of possible intimacy between Alcala and a Brightstar resident. At level three, the police report was an official record. The court concluded that Garay's statement to the police was not an admission, but rather was not hearsay at all. Doe offered these statements to prove Brightstar's corporate knowledge, not the truth. Whether true or not, employee Garay's knowledge was attributable to her employer Brightstar: that Garay had notice Alcala was on the property late at night and knew Doe called Alcala "daddy." (Civ. Code § 2332.) The hearsay rule does not apply when evidence is offered for notice rather than truth.

### **The Takeaway**

Police reports are often inadmissible, but not always. Under proper conditions, statements in a police report can be admissible evidence.