

240 Cal.App.4th 874
Court of Appeal,
Second District, Division 2, California.

Thomas **NEGRON**, Plaintiff and Respondent,

v.

LOS ANGELES **COUNTY** CIVIL
SERVICE COMMISSION, Defendant;
County of Los Angeles et al., Real
Parties in Interest and Appellants.

No. B258031 | Filed September 2,
2015 | Certified for Partial Publication. *

Synopsis

Background: Deputy sheriff filed a petition for administrative mandamus challenging **county** civil service commission's final order sustaining deputy's termination. The Superior Court, Los Angeles **County**, No. BS144583, [Luis A. Lavin, J.](#), granted the petition. Sheriff's department, sheriff, and **county** appealed.

[Holding:] The Court of Appeal, Chavez, J., held that **county** sheriff's department could discharge deputy sheriff for misconduct committed while deputy was on unpaid medical leave.

Reversed.

West Headnotes (2)

[1] **Mandamus**

🔑 [Scope and extent in general](#)

Mandamus

🔑 [Questions of fact](#)

In a mandamus proceeding affecting a fundamental vested right, an appellate court must sustain the trial court's factual findings that are supported by substantial evidence, but questions of law are reviewed de novo.

[Cases that cite this headnote](#)

[2] **Sheriffs and Constables**

🔑 [Term and tenure of office](#)

County sheriff's department could discharge deputy sheriff for misconduct committed while deputy was on unpaid medical leave, including driving under the influence (DUI), driving with a suspended license, being uncooperative, evasive, and belligerent toward California Highway Patrol (CHP) officers, and making false statements to his sergeant when she investigated his misconduct, since deputy's conduct reflected adversely upon and was a discredit to the department, and his conduct came squarely within the prohibitions imposed by the department's manual of policies and procedures. [Cal. Veh. Code §§ 14601.2, 23152\(b\)](#).

[See 2 Witkin & Epstein, Cal. Criminal Law \(4th ed. 2012\) Crimes Against Public Peace and Welfare, § 306.](#)

[Cases that cite this headnote](#)

APPEAL from a judgment of the Superior Court of Los Angeles **County**. Luis A. Lavin, Judge. Reversed. (Super. Ct. BS144583)

Attorneys and Law Firms

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No appearance for Defendant.

Opinion

CHAVEZ, J.

The issue presented in this appeal is whether the Los Angeles **County** Sheriff's Department (the Department) can discharge a deputy sheriff for misconduct committed while the deputy was on unpaid, relieved-of-duty status. We conclude that the Department had the authority to do so and that the Supreme Court's decision in *[63 Garvin v. Chambers \(1924\) 195 Cal. 212, 232 P. 696 \(Garvin\)](#) does not compel a different result.

BACKGROUND

Respondent Thomas **Negron** (**Negron**) had been employed as a deputy with the Department for eight years when he became embroiled in a contentious divorce. As a result of the divorce proceedings, **Negron** began experiencing stress, anxiety attacks, and other physical symptoms that caused him to miss work. **Negron's** continuing anxiety issues eventually caused him to take a paid medical leave of absence, during which he was required to report to Sergeant Doris Walker, his superior at the Pitchess Detention Center (PDC). The Department subsequently determined that **Negron's** anxiety problems were not work-related and relieved him of duty in November 2010. After he was relieved of duty, **Negron** stopped receiving a salary and was no longer required to report to work. His benefits terminated at an unspecified time after he was relieved of duty.

Negron's DUI arrest and conviction

On January 26, 2011, California Highway Patrol (CHP) Officer Escalera stopped **Negron** in San Bernardino **County** after observing him driving erratically at an excessive speed. Escalera ran a check on the vehicle **Negron** was driving and learned that it was registered to a sheriff's deputy and that the registration had expired in 2009.

Escalera asked **Negron** to produce identification so that he could confirm whether **Negron** was a law enforcement officer. **Negron** said he was not carrying any form of identification; however, Escalera observed a sheriff's deputy's uniform in the back seat of the car with the name "**Negron**" printed on the nametag. Unsure whether the uniform or the vehicle belonged to **Negron**, Escalera asked **Negron** to exit the vehicle.

According to Escalera, once **Negron** got out of his car, "things started going downhill." **Negron** became impatient and started raising his hands, complaining that Escalera was keeping him from meeting his girlfriend. Escalera found **Negron's** explanation for his car's expired registration—that he was going through a divorce—to be evasive. Uncomfortable with **Negron's** behavior, Escalera asked **Negron** to step back while he called for backup.

When additional CHP officers arrived, **Negron** began yelling and cursing at them and complaining that they were "holding him up." Escalera again attempted to confirm **Negron's** status

as a deputy sheriff by asking for **Negron's** agency's phone number. **Negron** refused to provide one.

Negron continued to harass the CHP officers and refused to stand away from them while they conferred with one another. As a result, Escalera handcuffed **Negron** and told him that if he did not calm down, he would be taken to jail. During this exchange, Escalera smelled alcohol on **Negron's** breath. Concerned that he might have to arrest a law enforcement officer, Escalera requested a supervisor to respond to the scene.

CHP Sergeant Salvador Suarez responded to Escalera's call. Upon contacting **Negron**, Suarez detected the odor of alcohol and observed that **Negron** appeared intoxicated. **Negron** was uncooperative and refused to answer questions. When **Negron's** girlfriend arrived at the scene, **Negron** became agitated and refused to sit down, despite Suarez's orders to do so. **Negron's** behavior caused Suarez to believe that **Negron** was under the influence of both alcohol and drugs. Suarez then ordered Escalera to transport *64 **Negron** to San Bernadino's Central Detention Center to conduct field sobriety tests.

At the detention center, **Negron** told Escalera that he had consumed no alcohol before he was stopped. **Negron** refused, however, to cooperate during the field sobriety tests, and the results of a chemical breath test indicated that he had a blood alcohol level of 0.20. Escalera placed **Negron** under arrest for driving under the influence, confiscated **Negron's** driver's license, and issued a driver's license suspension notice and a 30-day temporary license that expired on February 26, 2011.

Upon his release, **Negron** telephoned the watch sergeant at the Department's Pitchess Detention Center and notified him of the arrest. On August 8, 2011, **Negron** pled guilty to a violation of [Vehicle Code section 23152, subdivision \(b\)](#) and was placed on probation for three years.

Driving with a suspended license

On March 25, 2011, **Negron** drove from his residence in Santa Clarita to the Newhall CHP office to obtain a copy of his January 26, 2011 arrest report. The CHP officer in the office asked **Negron** if he had his driver's license and whether he had driven to the CHP office. **Negron** responded that his license had been confiscated and that he had a temporary permit in his car. **Negron** then retrieved the temporary permit and presented it, along with a business card identifying him as a deputy sheriff, to the CHP officer. The officer told **Negron**

the temporary permit had expired, that he did not have a valid license, and that he needed to contact someone to drive him home. **Negron** said he did not have anyone to call for assistance.

The CHP officer called Sheriff's Deputy Keith Shaw, who was stationed at PDC, to request that someone from the Department transport **Negron** and his car to **Negron's** home or to one of the Department's stations. Shaw and Deputy Randolph Ortiz responded to the CHP Newhall station, where they saw **Negron** waiting by himself. **Negron** told the deputies he had driven to the Newhall station to obtain a copy of his January 2011 arrest report. Shaw then drove **Negron** to PDC in **Negron's** car while Ortiz returned in a Department vehicle.

When Shaw dropped **Negron** and his car off at PDC, Shaw told **Negron** that he needed to have someone pick him up because he was not allowed to drive on a suspended license. Shaw also instructed **Negron** to report to his supervisor, Sergeant Walker, in person to explain his contact with the CHP at the Newhall station. Approximately 20 minutes later, Ortiz saw **Negron** drive out of the PDC parking lot.

Negron did not report in person to Sergeant Walker but telephoned her later that day. **Negron** told Walker that he had driven to CHP's Newhall station to obtain a copy of his January 26, 2011 arrest report and explained that Shaw had picked him up at the Newhall station after CHP officers told him he could not drive on a suspended license. When Walker asked if anything else had happened, **Negron** responded "no."

After talking to **Negron**, Walker called Shaw and a Department lieutenant to confirm **Negron's** story. Shaw said that he had instructed **Negron** to speak to Walker in person about the incident at the CHP Newhall station. The lieutenant told Walker that Ortiz had seen **Negron** drive his car out of the PDC parking lot.

Walker then called **Negron** back and asked him how he had gotten home from PDC. **Negron** said that his girlfriend had picked him up. When Walker questioned how **Negron** and his girlfriend could drive *65 both their cars to his home, **Negron** added that his girlfriend had brought a friend. During her telephone conversations with **Negron**, Walker never advised **Negron** that she was conducting an investigation into his conduct or that he had the right to be represented during his conversations with her.

After speaking with **Negron**, Walker learned that **Negron's** girlfriend, who also worked at the Department, had been working throughout the time **Negron** claimed she had driven him home. Concerned that **Negron** had lied to her about driving with a suspended license, Walker reported him to her supervisors and drafted a report outlining **Negron's** conduct on March 25, 2011.

Negron's discharge

On November 20, 2011, the Department issued **Negron** a Notice of Intent to Discharge informing him of the intent to discharge him based on the following allegations of misconduct: on January 26, 2011, **Negron** was stopped by the CHP for driving erratically and was repeatedly uncooperative, evasive, and resistive with the CHP, resulting in a request for backup assistance and **Negron's** arrest. He later produced an alcohol test reading of 0.20 and plead guilty to driving under the influence. On March 25, 2011, after being advised by the CHP that his driver's license had been suspended, **Negron** violated [Vehicle Code section 14601.2](#) by driving. He failed to obey the orders of Deputy Shaw to report to Sergeant Walker to explain his contact with the CHP and then made false statements to Sergeant Walker as to how he had gotten home.

The Department maintained that **Negron's** conduct violated sections 3-01/030.05, 3-01/030.010, and 3-01/040.70 of the Department's Manual of Policy and Procedures. Those sections provide in relevant part as follows:

"3-01/030.05 GENERAL BEHAVIOR

"A member shall not act or behave privately or officially in such a manner as to bring discredit upon himself of the department.

"3-01/030.10 OBEDIENCE TO LAWS, REGULATIONS, AND ORDERS

"a) Members shall not willfully violate any federal statute, state law or local ordinance....

"[¶] ... [¶]

"e) Members who violate any rules, regulations, or policies of the Department or the **County**, shall be subject to disciplinary action. The commission or omission of any other act contrary to good order and discipline shall also be the subject of disciplinary action....

“[¶] ... [¶]

“NOTE: For purposes of this section, any reference to ‘members’ shall include any member of the Department, both sworn and professional staff.”

“3–01/040.70 FALSE STATEMENTS

“Members shall not make false statements when questioned, interviewed or in reports submitted.”

On December 22, 2011, following a *Skelly*¹ meeting, the Department issued a Notice of Discharge, sustaining the allegations of misconduct and terminating **Negron's** employment with the Department.

Negron appealed, and a three-day hearing was conducted before a hearing officer in September and October 2012. At the hearing, **Negron** argued that the Department lacked authority to discipline him for the conduct alleged in the Notice of Discharge because that conduct occurred while **Negron** was on relieved-of-duty status *66 and not receiving pay from the Department. **Negron** also sought to exclude evidence of his statements to Walker on March 25, 2011, arguing that they were obtained in violation of the Public Safety Officers Procedural Bill of Rights Act (POBRA) (*Gov.Code*, § 3300 et seq.).

On January 29, 2013, the hearing officer issued a proposed decision, recommending that the Civil Service Commission (Commission) sustain **Negron's** discharge. The hearing officer found that **Negron's** conduct, including his January 26, 2011 arrest and conviction for driving under the influence, his interaction with the CHP officers, and his driving with a suspended license on March 25, 2011, violated sections 3–01/030.05 and 3–01/030.10 of the Department's Manual of Policy and Procedures. The hearing officer further found that **Negron** violated section 3–01/040.70 of the Department's Manual of Policy and Procedures by making false statements to Sergeant Walker when he told her that a friend had driven him home on March 25, 2011, when in fact he had driven himself home but that **Negron** did not violate section 3–01/030.10 by disobeying an order from Deputy Shaw.

The hearing officer further found that **Negron's** telephone conversation with Sergeant Walker violated section 3303 of POBRA because it constituted an interrogation and Walker failed to provide **Negron** with the proper procedural safeguards. The hearing officer refused, however, to exclude

Negron's statements made during that phone call, concluding that an administrative hearing officer lacks authority to exclude statements made in violation of POBRA because such a remedy is available only in a trial court.

Negron objected to the hearing officer's proposed decision, again arguing that the Department lacked authority to discipline him and that his statements should have been excluded under POBRA. On June 5, 2013, the Commission overruled **Negron's** objections and adopted the hearing officer's findings and recommendations.

Mandamus proceedings

Negron filed a petition for administrative mandamus challenging the final order of the Commission. He argued that *Garvin*, *supra*, 195 Cal. 212, 232 P. 696, prohibited the Department from disciplining him for misconduct committed while he was not receiving any salary or benefits from the Department, that the Commission should have excluded statements made in violation of his rights under POBRA, and that substantial evidence did not support the termination of his employment.

The trial court granted the petition for writ of mandate and ordered the Commission's final order to be set aside on the ground that the Department lacked authority, under *Garvin*, to discipline **Negron** for misconduct committed while he was on unpaid relieved-of-duty status.

The trial court concluded that **Negron** was not entitled to the protections of POBRA because he was not employed as a sheriff's deputy and that accordingly “he was not a peace officer within POBRA's scope at the time those statements were made and he is not entitled to have those statements excluded from future proceedings on POBRA grounds.” The trial court further concluded that any issue regarding the POBRA violation found by the hearing officer and the remedy for that violation was moot in light of the court's ruling. In a footnote, however, the trial court noted that if it were to address the remedy for the POBRA violation, it would suppress the evidence concerning Walker's discussion with **Negron** and that “[i]f this evidence is suppressed, the weight of the evidence does not support the finding that *67 **Negron** violated the Department's Manual of Policy and Procedures by making false statements to Sergeant Walker, or the penalty of discharge” because the “Department's main concern was that **Negron** lied to his supervisor.”

A judgment was entered granting the petition for peremptory writ of mandate and ordering the Commission to set aside its June 5, 2013 decision sustaining **Negron's** discharge and to reconsider its action in light of the trial court's decision. The Department, Sheriff Leroy Baca, and the **County** of Los Angeles (collectively, appellants), as real parties in interest, appeal from the trial court's order.

DISCUSSION

I. Standard of review

[1] In a mandamus proceeding affecting a fundamental vested right, an appellate court must sustain the trial court's factual findings that are supported by substantial evidence. Questions of law are reviewed de novo. (*Jackson v. City of Los Angeles* (2003) 111 Cal.App.4th 899, 903, 4 Cal.Rptr.3d 325.)

II. Department's authority to discipline **Negron**

Appellants contend the trial court erred by concluding that **Garvin** prohibited the Department from discharging **Negron** for conduct that violated the Department's Manual of Policy and Procedures while he was on unpaid relieved-of-duty status.

A. **Garvin**

In **Garvin**, a city of Oakland police officer named **Garvin** was accused of violating the National Prohibition Act and was suspended without pay pending investigation of the alleged violation. (*Garvin, supra*, 195 Cal. at p. 217, 232 P. 696.) **Garvin** appealed the suspension order to the civil service board and retained an attorney to represent him in the appeal.

While **Garvin's** appeal was pending and his suspension order was still in effect, the chief of police asked to meet with him. **Garvin**, accompanied by his attorney, appeared at the chief's office for the meeting. The chief asked **Garvin** to meet with him alone, and **Garvin** responded that he wanted his attorney to be present. When the chief ordered **Garvin** to meet with him alone, **Garvin** refused and left with his attorney. (*Garvin, supra*, 195 Cal. at p. 218, 232 P. 696.)

Immediately after the aborted meeting, the chief filed a report recommending **Garvin's** discharge for insubordination, a violation of section 81 of the city charter and of a rule governing “ ‘conduct adverse to good order and discipline of the department.’ ” (*Garvin, supra*, 195 Cal. at p. 219, 232

P. 696.) Although the charge against **Garvin** for violating the National Prohibition Act was subsequently dismissed, he was fired for insubordination. **Garvin** sought writ review of the civil service board's approval of his discharge, and the trial court set aside the discharge order.

The Supreme Court affirmed the order setting aside **Garvin's** discharge, concluding that the civil service board lacked jurisdiction to adjudicate **Garvin's** conduct as insubordination. (*Garvin, supra*, 195 Cal. at p. 226, 232 P. 696.) The court reasoned that “[i]nsubordination can be rightfully predicated only upon a refusal to obey some order which a superior officer is entitled to give and entitled to have obeyed” and that “while the order of indefinite suspension was in force **Garvin's** status as a policeman was suspended to the extent that he could not be called upon to do police duty nor be held amenable for a failure to do such duty.” (*Id.* at p. 224, 232 P. 696.) The court in **Garvin** further *68 noted that **Garvin** had been discharged for refusing to obey an order that did not concern performance of police duty, but that required him to serve as a “witness against himself” in a quasi-criminal investigation of the charges underlying his suspension. (*Ibid.*) Such conduct, the court concluded, could not constitute insubordination in violation of the department's rules and could not serve as a jurisdictional basis for the order discharging **Garvin** from the police department. (*Id.* at p. 226, 232 P. 696.)

B. **Negron's** relieved-of-duty status did not immunize him from discipline

[2] In the instant case, **Negron** was discharged not for insubordination, but for violating state law by driving in a dangerous manner while under the influence of alcohol; for driving with a suspended license; for being uncooperative, evasive, and belligerent toward CHP officers; and for making false statements—conduct for which he could be held accountable even when relieved of his duties as a deputy sheriff.

Until he was discharged by the Department, **Negron** was a classified employee of Los Angeles **County**. (See L.A. **County** Civ. Service Rule 2.24; L.A. **County** Code, § 5.04.030(F).) Though **Negron** contends his relieved-of-duty status takes him outside the classified service, he offers no persuasive authority for that assertion. Instead we find the court's observation in a similar case, *Ballf v. Public Welfare Dep't* (1957) 151 Cal.App.2d 784 at page 788, 312 P.2d 360, to be instructive: “The fact that a person is on leave from his

'employment' makes him no less an employee." Furthermore, **Negron** himself—while relieved-of-duty—held himself out as a deputy sheriff by presenting a business card which identified him as a deputy sheriff to the CHP officer at Newhall station.

Negron's conduct reflected adversely upon and was a discredit to the Department. At the time of his arrest, **Negron's** sheriff's deputy uniform was plainly visible in the back seat of his car, of which CHP Officer Escalera took note. The vehicle registration for **Negron's** car indicated the owner was a deputy sheriff.

Unlike *Garvin*, in which the dismissed officer's refusal to serve as a witness against himself could not constitute insubordination in violation of departmental rules, **Negron's** conduct comes squarely within the prohibitions imposed by the Department's Manual of Policies and Procedures. **Negron's** argument that he was not subject to those prohibitions while relieved of duty is not well taken, especially given that he held himself out as a sheriff's deputy and maintained the accoutrements of a deputy while on relieved-of-duty status. Given these circumstances, we hold

that the Department had authority to discharge **Negron** and that *Garvin* did not preclude the Department from doing so. The trial court's conclusion to the contrary was in error.

III. POBRA violation **

DISPOSITION

The judgment is reversed. Appellants are awarded their costs on appeal.

We concur:

ASHMANN–GERST, Acting P.J.

HOFFSTADT, J.

All Citations

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Footnotes

* Pursuant to [California Rules of Court, rules 8.1105\(b\)](#) and [8.1110](#), this opinion is certified for publication with the exception of part III.

1 [Skelly v. State Personnel Board](#) (1975) 15 Cal.3d 194, 124 Cal.Rptr. 14, 539 P.2d 774.

** See footnote *, *ante*.