No. A1455701
(Humboldt County Super. Ct. No. JV140252)
(The Honorable Christopher G. Wilson)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPEALLATE DISTRICT
DIVISION FIVE

CITY OF EUREKA,
Plaintiff and Appellant,

v.

SUPERIOR COURT IN AND FOR THE COUNTY OF HUMBOLDT,
Defendant and Respondent

THADEUS GREENSON, *et. al.*
Real Party in Interest and Respondent.

RESPONDENT (REAL PARTY IN INTEREST THADEUS GREENSON)'S BRIEF

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STATEMENT OF THE FACTS AND CASE

Respondent Superior Court ordered a segment of a video depicting possible police brutality be released to Real Party in Interest Thadeus Greenson ("Mr. Greenson"), a journalist. (Clerk's Transcript on Appeal (CT) 75:10-18.) Appellant City of Eureka ("City") argues Respondent Superior Court erred because Mr. Greenson failed to demonstrate the good cause necessary to satisfy the *Pitches* statutes. In other words, Appellant argues that Respondent Superior Court's findings/order was not supported by substantial evidence.

As will be demonstrated in this brief through a few references to the record on appeal, substantial evidence supports the Superior Court's findings/order and, as a consequence, this appeal should be denied.

STANDARD FOR REVIEW

Even though this dispute involves statutory interpretation and *de novo* review, Appellants did not request a statement of decision, nor did the Superior Court issue a statement of decision. In the absence of a statement of decision, this Court must presume that the trial court made all findings necessary to support the order for which there is substantial evidence, and this Court's review is limited to examining the record for any substantial evidence that will support the courts findings, implied findings and

determination. (*In re Marriage of Arceneaux* (1990) 51 Cal.3d 1130, 1133-1134.)

ARGUMENT

A. INADEQUATE RECORDS ON APPEAL.

It is well established that a reviewing court starts with the presumption that the record contains evidence to sustain every finding of fact. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) An appellant challenging an order has the burden of providing an adequate record to assess error. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295-1296.) Where an appealing party fails to furnish an adequate record of the challenged proceedings, his claim on appeal must be resolved against him. (*Ibid.*)

Appellant City failed to provide an adequate record. First, Appellant did not provide a transcript of the January 29, 2015, hearing. (Reporter's Transcript on Appeal (RT), 1:11-14.) Consequently, this Court cannot determine what happened at the January 29th hearing and must presume evidence sufficient to support the Superior Court's good cause finding was presented.

Second, Appellant failed to provide this Court with perhaps the most important piece of evidence Respondent Superior Court reviewed and considered – i.e., the video itself. Without both a complete Reporter's

Transcript and the video at issue, this appeal must be resolved against Appellant City.

B. INADEQUATE REFERENCE TO EVIDENCE IN RECORD.

Even if Appellant had provided a complete record, Appellant City nevertheless fails to present sufficient evidence to support its appeal. Appellant argues that the trial court erred when it found good cause to release the video. Appellant's argument requires Appellant to demonstrate that there is *no* substantial evidence to support the challenged findings. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881.) A recitation of only Appellant's evidence is not the demonstration contemplated under the above rule. (*Id.)* Appellant is required to set forth in its brief *all* the material evidence on the point and not merely their own evidence. (*Id*.) Unless this is done the errors Appellant alleges are deemed to be waived. (*Id*.)

Appellant fails utterly to make reference to all material evidence on point, including evidence supporting any finding that the public should gain access to the video. There is a good reason for this omission: there is no evidence in the record whatsoever supporting any argument that the video should remain secret. Instead, Appellants rely solely on their argument that there is no evidence to support the Superior Court's finding of good cause.

And, as will be demonstrated below, substantial evidence within the record supports the Superior Court's findings and order.

C. SUBSTANTIAL EVIDENCE SUPPORTS THE SUPERIOR COURT'S FINDINGS AND ORDERS.

If substantial evidence supports the trial court's determination, then the reviewing court must affirm the trial court's findings and/or order even if it would have made a different finding had it presided over the trial. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 958) "Substantial evidence" includes reasonable and logical inferences derived from other evidence (*Estate of Trikha* (2013) 219 Cal. App. 4th 791, 804) and any conflict in the evidence or inferences drawn from the facts will be resolved in support of the trial court's decision. (*Estate of Young* (2008) 160 Cal. App. 4th 62, 75–76.) .) For evidence to be deemed "substantial" requires only that the evidence be reasonable, credible, and of solid value. (*People v. Bassett* (1968) 69 Cal.2d 122, 139; *Estate of Teed* (1952) 112 Cal.App.2d 638.) A determination that substantial evidence supports a trial court's determination does not require that the evidence in favor of the decision outweigh any contrary showing. (*Ellison v. Ventura Port Dist.* (1978) 80 Cal.App.3d 574, 581.) The "substantial evidence" standard is easily satisfied because the testimony of a single witness, even the party

himself or herself, may be sufficient to meet it. (9 Witkin, Cal. Procedure (5th ed., 2008) Appeal, § 369, pp. 426-427.)

Respondent Superior Courts' first key finding is that the video was and is not a "personnel record" subject to a *Pitchess* determination. The Superior Court expressly found "[t]he Petitioner [Mr. Greenson] is not requesting what might otherwise be the subject of a *Pitchess* type motion…." (CT 75:13-15.)

The *Pitchess* process pertains only to records within a peace officer's personnel file (Penal Code § 832.7) and, by reference, to materials that become part of an internal investigation into a citizen complaint against a peace officer (Penal Code § 832.5). The party asserting the "personnel record" exemption has the burden of proving a record is included in a peace officer's personnel file. (Evidence Code § 500.)

The Appellant asserts the privilege, but failed to provide any evidence whatsoever that the video was or is part of a peace officer personnel file or part of a citizen complaint investigation file. Consequently, Respondent Superior Court affirmatively found that the video isn't a record subject to the *Pitchess* process. Although the video might one day be part of a personnel file or part of an investigation, there is no statutory or case law authority supporting the argument that the *Pitchess*

process applies to evidence that *could* become part of a personnel file or a file related to a complaint.

On the other hand, substantial evidence supports Respondent Superior Court's determination of good cause supporting the video's release. Mr. Greenson's declaration in support of his motion to obtain access to the video is substantial evidence supporting the Superior Court's determination. (CT page 2.) The incident depicted on the video was and is a matter of public interest. (RT 5:20-23.) The minor depicted in the video initially admitted to the charge that he "resisted arrest" but the minor was allowed to withdraw his admission when the existence of the video became know and the video that presumably showed the minor admitted to a crime he did not commit. (CT 9:10-17.) Both the minor depicted in the video, represented by counsel in the trial court, and the minor's guardians did not object to the disclosure and consented to the request. (CT page 2; RT 4:9-12; 4:26-27.) The minor – represented in this appeal by appointed special counsel – did not file a brief supporting the appeal. The Trial Court reviewed the video itself – perhaps the most substantial of all evidence pertaining to this appeal - *in camera* before deciding to release it. (RT 8:2-4; CT 74:2-6.)

"Substantial evidence" is determined by examining the entire record. (*Estate of Young* (2008) 160 Cal. App. 4th 62, 75–76.) As demonstrated

above, the record as a whole contains ample substantial evidence and the inferences necessary to support Respondent Superior Court's finding of good cause and its determination to release an excerpt of the video.

CONCLUSION

For the reasons set forth above, Real Party in Interest Thadeus Greenson respectfully requests that the Respondent Superior Court's decision and order be affirmed.

Dated: December 20, 2015 Respectfully submitted,

Paul Nicholas Boylan
State Bar No. 140098
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Thadeus Greenson

CERTIFICATION OF WORD COUNT

I, Paul Nicholas Boylan, hereby certify in accordance with California Rules of Court, rule 8.360(b)(1), that this brief contains 1,407 words, as calculated by the Microsoft Word for Windows 2008 version 12.0.0 software in which it was written.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Dated: December 20, 2015

Respectfully submitted,

Paul Nicholas Boylan
State Bar No. 140098

PROOF OF SERVICE

I, Grant Scott-Goforth declare:

I am over 18 years of age. I am employed in Humboldt County and my business address is 310 F Street, Eureka California. On December 20, 2015, I mailed a copy of the following document:

RESPONDENT (REAL PARTY IN INTEREST THADEUS GREENSON)'S BRIEF

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed in Eureka, California.

Dated: December 20, 2015

_____
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