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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE, Plaintiff and Respondent, v. AKANINYENE WILLIAM ETUK, Defendant and Appellant.	B269520 (Los Angeles County Super. Ct. No. LA080975)

APPEAL from a judgment of the Superior Court of Los Angeles County. Michael V. Jesic, Judge. Affirmed.

Eric Cioffi, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, and Zee Rodriguez, Deputy Attorney General, for Plaintiff and Respondent.

* * * * * * * *

Defendant Akaninyene William Etuk appeals from the judgment entered following a trial in which the jury found him guilty of assault with a deadly weapon (baseball bat; Pen. Code, § 245, subd. (a)(1)). He was sentenced to prison to the two-year low term.

Defendant contends the judgment must be reversed, because the trial court revoked his in propria persona status in violation of his constitutional right to self-representation and, alternatively, because the court denied his *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*)).

We affirm the judgment. Revocation of defendant's in propria persona status was not an abuse of discretion. Substantial evidence supports the trial court's finding that defendant's repeated refusal to adhere to the court's orders threatened to compromise the court's ability to conduct a fair trial. Denial of defendant's *Pitchess* motion also was not an abuse of discretion. Substantial evidence supports the trial court's finding that defendant failed to carry his initial burden to show good cause for an in camera inspection of the requested documents.

BACKGROUND

Anthony Calhoun was the victim in two violent encounters with defendant at the North Hollywood Park, which was frequented by transients. This case arose from the second incident only. The first occurred on October 25, 2014, about 8:40 p.m. Mr. Calhoun and April Gutierrez, his girlfriend, noticed defendant threatening others in the park. He then threatened to kill them and grabbed his metal golf club. Holding the club above his head, he swung it downward and struck unarmed Mr. Calhoun's back, causing the club's head to break

off. As Mr. Calhoun lay on the ground, defendant resumed hitting him with the club.

Shortly, in response to an assault with a deadly weapon call, Los Angeles Police Department (LAPD) Officer Theodore Jacobson arrived at the scene. He saw defendant, who matched the assaulter's description, sitting on a picnic bench. A walking stick and a headless, metal golf club lay next to him. Mr. Calhoun had contusions in the shape of a golf club head to his lower and mid-back and to his left shoulder.

The second incident, which is the subject of this appeal occurred, about six months later, on May 12, 2015, about 11:15 a.m., at the same park. While approaching Mr. Calhoun, Ms. Gutierrez, and others present, defendant stated he wanted to finish "the job" and that he intended to kill them all. Someone flagged down Officers Joshua Fillinger and Brent Lamoureux, who were on vehicle patrol, and reported the impending assault. At the scene, defendant held a wooden baseball bat above his head and swung it, as if he "was going to hit a baseball," four or five times at Mr. Calhoun. With each swing, defendant approached closer to Mr. Calhoun, who was about a foot or two away. Mr. Calhoun, who was unarmed, tried to protect himself and backed away to avoid the bat. The two officers ordered defendant to drop the bat repeatedly before he complied. They then arrested him.

At trial, defendant admitted he struck Mr. Calhoun with the golf club but explained he did so only after Mr. Calhoun had swung a black metal pole/pipe at him, which grazed his shoulder and struck his neck. He denied he had threatened anyone and asserted he cooperated with the police. As for the subject incident, defendant testified that while walking through the

park, he saw Mr. Calhoun draw his index finger across his neck, which he interpreted to mean Mr. Calhoun intended to kill him. After retrieving a bat from his sleeping spot, defendant raised it over his head and told Mr. Calhoun, who was approaching with a "silver object" in his hand, not to "come any closer"; "I will hit you"; and "you need to stop threatening me." Confronted with the bat, Mr. Calhoun retreated. Defendant told police "I did not do anything" and "he has a knife." He did not see the officers search anyone.

On rebuttal, Officer Fillinger testified defendant never yelled out Mr. Calhoun had a knife or anything about a knife. No knife was recovered. The officers would have looked for one had a knife been mentioned.

DISCUSSION

1. In Propria Persona Status Revocation Not Abuse of Discretion

Defendant contends the trial court abused its discretion by revoking his in propria persona status, because his misunderstanding regarding the inadmissibility of police reports "did not constitute an act that was so 'flagrant and inconsistent with the integrity and fairness of the trial that immediate termination [was] appropriate.' (*People v. Carson* (2005) 35 Cal.4th 1, 10 (*Carson*).)" Further, "the record shows the court used the issue of the inadmissibility of the police report as a pretext to revoke [his] *pro per* status." The court also "failed to consider many of the critical factors essential in any determination to usurp an individual's right of self-representation." We find no abuse of discretion.

a. Pertinent proceedings

On July 16, 2015, the trial court granted defendant's motion to represent himself (*Faretta v. California* (1975) 422 U.S. 806 (*Faretta*)).

On August 28, 2015, the court and defendant engaged in the following colloquy regarding the inadmissibility of police reports. When defendant stated he had "a police report that supports [his] point[,]" the court responded: "No. The police reports are hearsay. What I'm saying is that in trial if the officer testifies and he testifies inconsistent[ly], differently than what's on [the report], then you can say, 'well, didn't you write something different in this report?' But you can't just introduce police reports." Defendant stated he "was going to introduce it into evidence." The court explained it "[d]oesn't work" that way, because "[w]e don't introduce police reports into evidence. They're hearsay. If the officer testifies to something different there's a process how you can –I can't tell you what that process is. You're going to have to figure it out. But you're not going to be able to introduce police reports. The jury is not going to get police reports." Defendant replied, "Well, I don't know. I need to actually do follow-up research so I will object to that." For clarification, the court reiterated: "I'm telling you now, police reports are hearsay. There's a procedure where you can impeach witnesses, police officers, if their statement on the stand is different than what's in the police report. But the jury is not going to get the actual report. They'll hear the testimony, but they're not going to get the reports."

Subsequently, at the same hearing, the trial court explained to defendant that his in propria persona status, which was his choice, did not entitle him to special dispensation from

the need to follow the court's rules, particularly those concerning evidence and theories of defense that he wanted to present to the jury. The court reminded him that it "already told" him that "doing this as pro per is a horrible mistake" and admonished him that "it's not going to be a free for all where you just put in every bit of evidence that you want to bring in because you think it's relevant. It doesn't work that way. Or because you believe it's admissible. There [are] rules of court."

On October 20, 2015, the court reminded defendant that the court had "ke[pt] telling you on every single one of these motions the exact same thing. There's a procedure that needs to be followed for these motions. And just because you're pro per doesn't mean that we're going to bend the procedures. And I told you that. And you continually do stuff that goes against the way that you're supposed to do them causing [the court] to have to deny your motions."

Defendant later told the court that he "was going to actually, you know, bring it to authenticate the police report." When asked why he needed to authenticate the police report, since "[i]t's not evidence in this case[,]" defendant replied "it has to be," because "[i]t's part of the pleading." The court reiterated, "[P]olice reports are hearsay. They are not evidence in this case." The court added, "If there's something in the police report that you want to impeach someone with, like if they said something to the police officers in the report and now they're saying something different, you can ask them. 'Didn't you tell the police officers this?' But the police report itself is . . . [¶] . . . [¶] . . . [h]earsay. It doesn't come in."

Rather than acquiesce in the court's ruling, defendant announced, "[L]et's just bring the jury so that the jury can

actually help me decide because we can actually have this discussion again in front of them." The court explained, "We don't have discussions in front of the jury. I make my rulings, you abide by my rulings." Defendant responded, "Your Honor, we all abide by the rulings of the Constitution." He added, "I don't care if you are sitting there as a judge, I am sorry. I don't want to offend you. I respect you. You need to respect me."

Seeking clarification, the trial court asked defendant, "[L]et me just understand, are you going to follow my orders in this case or not?" Defendant replied, "Your Honor, I am." The court asked if he meant "Yes or No?" Defendant responded, "I'm following you already. I am already following you. I'm saying is that I have seen cases that the police report has been authenticated and actually has been accepted as evidence. And that's what I want. That's what I want. I want the same fairness that everybody has."

After reminding him it already had told him "the police reports do not come into evidence," the court asked, "Are you going to follow my orders or not? You're not going to bring up the police reports in front of the jury. We're not going to have these discussions in front of the jury. Do you understand that?" Defendant responded, "I am the attorney of fact. I'm defending myself." The court next asked, "So I'm taking this as a no, you're not going to follow my orders; is that correct?" He replied, "I am going to follow the law." To further clarify his position, the court asked, "And your law, if it contravenes my orders, you're going to follow the law, is that correct?" He responded, "I'm going to follow the law and abide[] by the law."

The court interpreted defendant's statements to mean he was "going to introduce those police reports" against the court's

order and announced: "It's clear to [me] that [defendant] has no intention of following the court's orders in this case. He has already stated that he's going to follow the law and not my orders. By his actions pro per status is revoked. Take him back. We're going to get him counsel." Defendant responded, "Objection." After noting the objection, the court stated "it is absolutely clear to me that since the beginning of this you have no intention of following my orders; that you're going to do things the way you want to do it. That you want the jury to come in. You want to be able to argue whatever you want to argue and not listen to a thing I'm saying."

b. Applicable legal principles

"The right of self-representation is not a license to abuse the dignity of the courtroom. Neither is it a license not to comply with relevant rules of procedural and substantive law." (*Faretta, supra,* 422 U.S. at p. 834, fn. 46.)

"Whenever 'deliberate dilatory or obstructive behavior' threatens to subvert 'the core concept of a trial' [citation] or to compromise the court's ability to conduct a fair trial [citation], the defendant's *Faretta* rights are subject to forfeiture. Each case must be evaluated in its own context, on its own facts, in light of the considerations discussed below.

"When determining whether termination is necessary and appropriate, the trial court should consider several factors in addition to the nature of the misconduct and its impact on the trial proceedings. One consideration is the availability and suitability of alternative sanctions. [Citation.] Misconduct that is more removed from the trial proceedings, more subject to rectification or correction, or otherwise less likely to affect the fairness of the trial may not justify complete withdrawal of the

defendant's right of self-representation. [Citations.] The court should also consider whether the defendant has been warned that particular misconduct will result in termination of in propria persona status. [Citation.] Not every obstructive act will be so flagrant and inconsistent with the integrity and fairness of the trial that immediate termination is appropriate. By the same token, however, the defendant's acts need not result in a disruption of the trial—for example, by successfully dissuading a witness from testifying. The likely, not the actual, effect of the misconduct should be the primary consideration.

"Additionally, the trial court may assess whether the defendant has 'intentionally sought to disrupt and delay his trial.' [Citation.] In many instances, such a purpose will suffice to order termination; but we do not hold that an intent to disrupt is a necessary condition. . . . Ultimately, the relevance inheres in the effect of the misconduct on the trial proceedings, not the defendant's purpose." (*Carson*, *supra*, 35 Cal.4th at pp. 10-11, citations omitted.)

The trial court's decision to terminate a defendant's right of self-representation for serious and obstructionist misconduct is reviewed for abuse of discretion. We "accord due deference to the trial court's assessment of . . . the nature and context of his misconduct and its impact on the integrity of the trial in determining whether termination of *Faretta* rights is necessary to maintain the fairness of the proceedings." (*Carson*, *supra*, 35 Cal.4th at p. 12.) "When a defendant exploits or manipulates his in propria persona status to engage in such acts [of serious and obstructionist misconduct], wherever they may occur, the trial court does not abuse its discretion in determining he has forfeited the right of continued self-representation." (*Id.* at p. 9.)

c. Revocation of in propia persona status not abuse of discretion

Substantial evidence supports the trial court's finding that defendant intended to "go his own way" in the face of any order or ruling of the trial court to the contrary, and thereby, such "obstructive behavior" threatened "to subvert the 'core concept of a trial' " and "to compromise the court's ability to conduct a fair trial." (*Carson*, *supra*, 35 Cal.4th at p. 10.) The court's revocation of defendant's in propria persona status therefore was not an abuse of discretion. (*People v. Ochoa* (1998) 19 Cal.4th 353, 408 [no abuse where evidence substantial].)

The record reflects the trial court patiently and repeatedly admonished defendant to comply with the court's orders and follow the law, e.g., rules of court and evidentiary rulings, which admonitions defendant consistently ignored or disregarded. That defendant intended to flaunt his disobedience is evident in his invitation to have the jury second-guess the court's rulings and to place before the jury matters that could not be admitted as evidence. No potential feasible alternatives to revoking his in propria persona status were available for the trial court to consider. Defendant's continually obstreperous misconduct not only would eviscerate the trial court's ability to conduct a fair trial but transform the trial itself into a farce. Further, the court's admonitions that defendant's in propria persona status would not exempt him from following the law and the court's orders made clear that if he defied the court, his in propria persona status might end.

2. Denial of *Pitchess* Motion Not Abuse of Discretion

Defendant contends the trial court abused its discretion in denying his *Pitchess* motion for discovery of the personnel files of

Officers Jacobson, Fillinger, and Lamoureux. Again, we find no abuse of discretion.

a. Pertinent proceedings

In his *Pitchess* motion, defendant sought disclosure of certain information from the personnel records of Officers Jacobson, Fillinger, Lamoureux, and other law enforcement officers. Specifically, he wanted the records of all complaints of officer misconduct consisting of "coercive conduct, intimidation, verbal abuse, aggressive behavior, or violence, excessive force, aggravated violence, racial bias, gender and ethnic bias, sexual orientation bias, violation of constitutional right[s], destruction of evidence, [and] jury tampering, but not limited to the aforementioned." He also sought disclosure of all complaints pertaining to "false arrest, planting evidence, fabrication of police reports, fabrication of probable cause, false testimony, perjury, using excessive force, intimidating, coercion, taking and receiving bribe[s], and false or misleading [information] in reports including but not limited to false overtime or medical leave." Further, he requested the "names, addresses, date of birth, and telephone number of all persons who filed complaints, who may be witnesses/or were interviewed by investigators[.]"

In his "Statement and Fact[s] of the Case," defendant asserted with regard to the golf club incident, the police did not "conduct [a] proper investigation which was to include o[b]taining a DNA sampl[e] from those weapon[s] to determine [a] match since [there] existed blood[.]" As to the baseball bat incident, he asserted the police "again fail[ed] to check . . . for the [knife]," and "fail[ed] to obtain information from a nonprejudice[d] witness." He urged these two incidents established the "clear fact that the police department is out to violate [defendant's] constitution[al]

right[s] which include but [are] not limited to [freedom from] illegal seizure, violation of Due Process . . . etc." He further urged that "the police department is encouraging the sacrifice of [defendant,]" because in "two other incidents" unnamed police officers arrested him, took him to the hospital, and "aided the hospital to fabricate records and inject him with foreign substances[.]" Additionally, defendant asserted Officer Fillinger had perjured himself during the preliminary hearing, which "ended up manipulating the outcome of that hearing," and he also "performed a coercive conduct by not producing exculpatory evidence on the sworn affidavit of the probable cause determination evading the totality of the circumstance."

In its opposition, the LAPD custodian of records argued the motion was defective in failing to meet the requirements under *Warrick v. Superior Court* (2005) 35 Cal.4th 1011 (*Warrick*) that there be factual specificity to support an officer misconduct claim and a showing of how the discovery sought would support the proposed defense.

At the hearing, defendant argued the arrest was "pretty much prejudicial," because there was "no investigative background" and that his "consistent contact" with LAPD showed "there's something going on between [him] and LAPD [in] that [defendant was] always actually the victim." Steven Cohen, counsel for LAPD, challenged the defense claim that an incomplete investigation resulted in an inaccurate report by the officers. He pointed out the officers' report was based on their own observations at the scene as well as victim and witness statements. Further, there were no factual allegations of officer misconduct. In denying the motion, the court reasoned: Defendant's "complaint is that the officers were incompetent in

their investigation; that they didn't take DNA; that they didn't search the victim[,]" which matters are "not a basis for a *Pitchess*," and thus, no good cause for an in camera hearing existed.

b. Applicable legal principles

Pursuant to *Pitchess*, a defendant is entitled to information that will "facilitate the ascertainment of the facts and a fair trial." (*Pitchess, supra*, 11 Cal.3d at p. 536.) "[T]he California Legislature 'codified the privileges and procedures surrounding what had come to be known as "*Pitchess* motions" . . . through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045.' [Citation.]" (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 9.) Our Supreme Court has "described the statutory scheme as follows: 'The Penal Code provisions define "personnel records" (Pen. Code, § 832.8) and provide that such records are "confidential" and subject to discovery only pursuant to the procedures set forth in the Evidence Code. (Pen. Code, § 832.7.)' " (*Ibid.*, quoting from *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 81-82.)

Warrick explained how to assess the evidence in support of a *Pitchess* motion to determine whether the defendant has established good cause for in-chambers review of an officer's personnel records. "[T]he trial court looks to whether the defendant has established the materiality of the requested information to the pending litigation. The court does that through the following inquiry: Has the defense shown a logical connection between the charges and the proposed defense? Is the defense request for *Pitchess* discovery factually specific and tailored to support its claim of officer misconduct? Will the requested *Pitchess* discovery support the proposed defense, or is it

likely to lead to information that would support the proposed defense? Under what theory would the requested information be admissible at trial?" (*Warrick*, *supra*, 35 Cal.4th at pp. 1026-1027.)

c. Initial burden not met

"A trial court's ruling on a motion for access to law enforcement personnel records is subject to review for abuse of discretion." (*People v. Hughes* (2002) 27 Cal.4th 287, 330.)

The *Pitchess* motion in this case did not propose a defense to the charge of assault with a deadly weapon nor articulate how the requested discovery would support that proposed defense. Neither did the motion describe a factual scenario indicating there was any officer misconduct, or explaining defendant's own actions in a manner that would have established some type of defense. The declaration here did not describe an alternate version of events in contrast to the police reports. The trial court therefore did not abuse its discretion in finding the information in the personnel records of Officers Jacobson, Fillinger and Lamoureux was immaterial and in denying the *Pitchess* motion without an in camera hearing.

DISPOSITION

The judgment is affirmed.

GRIMES, J.

WE CONCUR:

BIGELOW, P. J.

RUBIN, J.