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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

ALBERT FLORENCIO
CHAGOLLAN,

Defendant and Appellant.

B286678

(Los Angeles County
Super. Ct. No. BA454845

APPEAL from a judgment of the Superior Court of Los Angeles County, Ray G. Jurado, Judge. Affirmed.

Paul Stubb, Jr., 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, Michael C. Keller and Steven E. Mercer, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Albert Florencio Chagollan was charged with and convicted of one count of driving or taking a vehicle without the consent of the owner (Veh. Code, § 10851, subd. (a)) and one count of misdemeanor possession of burglary tools (Pen. Code, § 466).¹ He was sentenced as a second strike offender to four years in state prison. (See §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d).) On appeal, he asks that we review the sealed transcript containing the trial court's review of police officer personnel files performed pursuant to *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). Although it does not appear from the record that appellant joined in the *Pitchess* request made by his co-defendants, we have nonetheless reviewed the transcript. We conclude the court did not abuse its discretion in determining which complaint files were discoverable. We therefore affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On February 21, 2017, at approximately 4:20 a.m., appellant was observed driving a black Audi by Los Angeles Police Department Officers Julio Aguilar and Jorge Gutierrez. When their patrol car pulled up near the Audi to investigate their suspicion that the vehicle was stolen, appellant and his two passengers exited the car and began walking away at a fast pace.² The officers quickly identified the vehicle's identification number

¹ Undesignated statutory references are to the Penal Code.

² The passengers were later identified as Jonathan Vasquez and Keith Geovanny Elias, appellant's co-defendants at trial. Along with appellant, Vasquez was charged with driving or taking a vehicle without consent and misdemeanor possession of burglary tools. Elias was charged with possession of a firearm by a felon (§ 29800, subd. (a)(1)).

as belonging to an automobile reported stolen and ordered the men to stop. Instead, they ran. As they were running, Officer Aguilar saw Elias pull something from his jacket and drop it.

Officer Aguilar arrested Elias, who was found hiding in the backyard of a nearby residence. The officer searched Elias and recovered a pair of gloves. Two other officers located appellant and took him into custody. On his person, they found a flashlight. Another pair of officers took Vasquez into custody. The Audi's key was found in his pocket. Officer Aguilar searched the Audi and found gloves on the floorboard and passenger seat and a set of "shaved" keys in the center console.³ He also searched the area where he had observed Elias drop an object and found a nine-millimeter handgun.

It appears from the sealed transcript that appellant's co-defendants requested discovery of Officer Aguilar's and Officer Gutierrez's personnel files pursuant to *Pitchess*, *supra*, 11 Cal.3d 531. The trial court reviewed the two officers' personnel files in camera.⁴ The custodian of records was present and placed under

³ Shaved key are keys filed in a manner that allows a thief to force open vehicle door locks or activate a car's ignition. The shaved keys, flashlight and gloves were introduced into evidence as burglary tools.

⁴ No copy of the co-defendants' *Pitchess* motion has been provided. Elias's attorney stated at a hearing that he had requested materials pertaining to "acts of dishonesty and false reporting" to support the theory that Officer Aguilar fabricated his statement that he saw Elias drop a firearm. Prior to its review of the officers' personnel records, the trial court stated it was searching for complaints relating to "fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion, false arrest, writing of false police reports, and planting of evidence."

oath. Officer Aguilar's personnel file contained two discoverable complaints. For Officer Gutierrez, the court found two discoverable complaints, including one that involved Officer Aguilar and had been found discoverable during the court's review of that officer's personnel file.⁵ Appellant requests that we review the sealed transcript to determine whether there were additional discoverable materials. Respondent does not object.

DISCUSSION

A criminal defendant is entitled to the discovery of confidential police officer personnel records if the information contained therein is relevant to his ability to defend against the charge. (*Pitchess*, *supra*, 11 Cal.3d at pp. 537-538.) To obtain such records, the defendant must submit an affidavit showing good cause for the discovery. (Evid. Code, § 1043, subd. (b)(3).) A showing of good cause requires a defendant seeking *Pitchess* discovery "to establish . . . a logical link between [a proposed defense] and the pending charge" and "to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events." (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) Discoverable information is "limited to instances of officer misconduct related to the misconduct asserted by the defendant." (*Ibid.*; see

⁵ Prior to trial, Elias's attorney informed the court of her intent to introduce the testimony of two of the complainants uncovered through the *Pitchess* request and requested a ruling on admissibility. The attorneys for Vasquez and appellant joined. The court granted preliminary approval for one of the complainants to testify, but he was not called. Appellant relies on his joinder in that request to support his current request for a *Pitchess* review.

California Highway Patrol v. Superior Court (2000) 84 Cal.App.4th 1010, 1021, italics omitted “[D]ocumentation of past officer misconduct which is similar to the misconduct alleged by defendant in the pending litigation is relevant and therefore subject to discovery.”.)

“When a defendant shows good cause for the discovery of information in an officer’s personnel records, the trial court must examine the records in camera to determine if any information should be disclosed.” (*People v. Anderson* (2018) 5 Cal.5th 372, 391, quoting *People v. Winbush* (2017) 2 Cal.5th 402, 424.) “[T]o protect the officer’s privacy, the examination of documents and questioning of the custodian should be done in camera . . . , and the transcript of the in camera hearing and all copies of the documents should be sealed.” (*Ibid.*, quoting *People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) An appellate court independently examines the record made by the trial court “to determine whether the trial court abused its discretion in denying a defendant’s motion for disclosure of police personnel records.” (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.)

We are not persuaded that review is required here because there is no indication that appellant filed a *Pitchess* request or joined his co-defendants’ *Pitchess* request. Nonetheless, we have reviewed the sealed transcript of the in camera hearing. We conclude that the court complied with the procedural requirements of a *Pitchess* hearing, including an adequate description of the documents provided to it, and that the court did not abuse its discretion. (See *People v. Mooc, supra*, 26 Cal.4th at p. 1231.)

DISPOSITION

The judgment is affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

MICON, J.*

*Judge of the Los Angeles County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.