Filed 10/23/13 P. v.Watler CA2/2

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. RENALDO DARNELL WATLER, JR., Defendants and Appellants.	B246663 (Los Angeles County Super. Ct. No. TA121536)

APPEAL from a judgment of the Superior Court of Los Angeles County. Kelvin D. Filer, Judge. Affirmed.

Jennifer Hansen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Kenneth C. Byrne and Seth P. McCutcheon, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Renaldo Darnell Watler, Jr. (defendant) appeals from his conviction of attempted pandering, contending the trial court abused its discretion under Evidence Code section 352 by admitting evidence of his prior conviction of attempted pandering, and that the error resulted in a denial of due process. Defendant also seeks a review of the trial court's ruling after an in camera *Pitchess* hearing.[1] Finding no abuse of discretion, we affirm the judgment.

BACKGROUND

Procedural History

Defendant was charged with one count of pandering in violation of Penal Code section 266i, subdivision (a)(2)).[2] The information also alleged that defendant had served five prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). A jury convicted defendant of the lesser included offense of attempted pandering, and in a bifurcated proceeding defendant admitted three of the alleged prior prison terms. The trial court sentenced defendant to the high term of three years in prison, plus one year for each admitted prior prison term, for a total prison term of six years. The trial court ordered defendant to provide a DNA sample, imposed mandatory fines and fees, and awarded 414 days of presentence custody credits. Defendant filed a timely notice of appeal.

Prosecution evidence

Los Angeles Police (LAPD) Officer Felicia Robinson testified that she was an undercover vice officer, sometimes posing as a prostitute to arrest "johns" and "pimps" in

---

[1] See *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*); Penal Code sections 832.7 and 832.8; Evidence Code sections 1043-1045.

[2] Penal Code section 266i, subdivision (a)(2), provides that a person who "[b]y promises, threats, violence, or by any device or scheme, causes, induces, persuades, or encourages another person to become a prostitute," is guilty of pandering.

the Figueroa corridor area of Los Angeles.[3] There were 12 officers and two sergeants in her unit. Several undercover officers provided surveillance for her safety, while other officers roamed the area in a vehicle.

In Officer Robinson's usual experience a john would drive by once or twice on Figueroa Street before approaching the curb with his lights off. After the car window was lowered Officer Robinson would approach and a conversation would ensue regarding sex or oral sex in exchange for money. The usual conversation was: John: "How much?" Officer Robinson: "How much for what?" John: "For head" or "For sex." Once they agreed on a price, Officer Robinson would notify other officers, go sit in an undercover vehicle, and make notes of the encounter. Once back at the station, she would write her report.

Officer Robinson occasionally noticed pimps watch her while she was working undercover. She knew she should not make eye contact with a pimp because that would signal she belonged to him. Officer Robinson explained the meaning of several terms commonly used by pimps and prostitutes: "Track," "blade," or "stroll" all meant the area in which a prostitute worked; a "date" meant performing a sex act for money; "folks" or "family" meant a group of prostitutes working for the same pimp; and a "choose up" fee was money a pimp charged a prostitute to become part his family. Officer Robinson explained that if a prostitute refused to choose up it would be an expression of disrespect for the pimp.

On January 7, 2012, while on a different assignment, Officer Robinson was driving an undercover car when a man drove alongside and began a conversation with her. He suggested they "get together and talk about business," and asked where she would be later. Believing the man was a pimp, Officer Robinson told him she would be near 90th and Figueroa Streets later that night. She notified her sergeant and they put together a prostitution task force for that evening. Officer Robinson dressed as a

---

3 Officer Robinson explained that a "john" is the person paying for sex, while a pimp is the one to whom prostitutes turn over their money earned in exchange for food, shelter, clothes, and usually protection.

prostitute and waited on Figueroa Street, where she dismissed several prospective johns by quoting very high prices or claiming to be waiting for a ride. Finally a brown Cadillac drove by, circled the block, and stopped in the middle of the street opposite Officer Robinson. The driver yelled something and gestured for her to approach his car.

Officer Robinson identified the driver in court as defendant. She had observed the tattoo of a dollar sign over one of his eyes, and testified that most pimps had such tattoos. Officer Robinson approached and peeked inside defendant's car while they spoke through the open passenger window. Defendant said "What's your name," and after she replied "Cocoa," he asked whether she was "ready to get down." When Officer Robinson asked what "get down" meant, defendant replied, "You must not be from around here." Officer Robinson claimed to be from New York and that she was "just out here trying to make some money." Defendant then introduced himself as "Treat Them Like I Pimp Them," to which Officer Robinson replied, "Okay. You're with the pimp gang." Defendant then told her to get into the car to discuss business, and asked how much money she had earned that night. When Officer Robinson claimed she had earned $120, defendant replied, "That's your choose up fee."

Officer Robinson pretended not to know what a choose up fee was and refused defendant's many demands to get into his car to go back to his house to discuss business. Defendant told her: "I rent a whole house. I got plenty of bitches at my crib"; "Come on, get in the car. Let's go because the police is hot"; "I'm going to take care of you. I got you"; "You going to work for me now. You looked at me, you going to work for me now;" and, "I'm going to give you 10 percent of what you make every day. You looked at me, you're mine now. Get in the car, bitch, and stop asking questions." Defendant said he would put her up, make sure she was taken care of, give her clothes, whatever she needed. When defendant appeared to become angry and upset, Officer Robinson ended the conversation, walked away from the car, gave the other officers a prearranged signal meaning she had established a pimping violation, and then entered an unmarked police van.

LAPD Officer James Doull and Sergeant John Jenal both worked on the January 7, 2012 task force with Officer Robinson. They testified that they observed her interaction with defendant. Sergeant Jenal radioed the marked patrol car when he saw Officer Robinson's prearranged signal, and he never lost sight of the Cadillac from that time until defendant's arrest. When defendant was booked, he had $8.81 in his possession, and no condoms or other evidence of pimping.

LAPD Officer Vanessa Rios was also assigned to the task force that evening, working with the arrest team in the marked patrol car parked nearby. Officer Rios identified defendant in court as the driver of the brown Cadillac which they detained after Sergeant Jenal radioed them. She was able to get a good look at defendant and noted the money sign on his eyelid.

The parties stipulated that defendant had been convicted on July 3, 2008, of violating Penal Code section 664/266,[4] attempted pimping and pandering. Defendant did not testify or call witnesses.

DISCUSSION

I. Evidence of uncharged crime

Defendant contends that the trial court abused its discretion in admitting evidence of his prior attempted pimping and pandering conviction. Defendant also contends that the error resulted in a denial of due process and his constitutional right to a fair trial.

The prosecution offered the evidence to show motive and intent. Defendant objected under Evidence Code section 352 on the ground that the evidence would be more prejudicial than probative. The trial court found it admissible to prove motive and intent under Evidence Code section 1101, subdivision (b). The court suggested that evidence of the conduct leading to the prior conviction, rather than the fact of the conviction, would be less prejudicial, but defense counsel disagreed because the charge involved a minor, and then offered to stipulate to the fact of the prior conviction instead.

---

[4] Penal Code section 266 prohibits the enticement of a minor into prostitution.

Defendant acknowledges that pimping is a morally repugnant practice that involves the corruption of others. (See *People v. Jaimez* (1986) 184 Cal.App.3d 146, 150 [pimping is a crime of moral turpitude].) Because of this, defendant reasons, evidence of such conduct would trigger an emotional reaction, leading to the risk that jurors would convict defendant solely because of his "past character flaws."

"Evidence Code section 1101, subdivision (a) generally prohibits the admission of evidence of a prior criminal act against a criminal defendant 'when offered to prove his or her conduct on a specified occasion.' Subdivision (b) of that section, however, provides that such evidence is admissible when relevant to prove some fact in issue, such as motive, intent, knowledge, identity, or the existence of a common design or plan. [¶] 'The admissibility of other crimes evidence depends on (1) the materiality of the facts sought to be proved, (2) the tendency of the uncharged crimes to prove those facts, and (3) the existence of any rule or policy requiring exclusion of the evidence.' [Citation.] Evidence may be excluded under Evidence Code section 352 if its probative value is 'substantially outweighed by the probability that its admission would create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.' [Citation.] 'Because substantial prejudice is inherent in the case of uncharged offenses, such evidence is admissible only if it has substantial probative value.' [Citation.]" (*People v. Lindberg* (2008) 45 Cal.4th 1, 22-23.)

The determination whether the probative value of other crimes evidence outweighs its potential for prejudice rests within the discretion of the trial court, which will not be disturbed absent a showing that its ruling "'falls outside the bounds of reason.' [Citation.]" (*People v. Kipp* (1998) 18 Cal.4th 349, 371.) As the party claiming that the trial court abused its discretion, defendant bears the burden of demonstrating that the decision was irrational, arbitrary, or not "'grounded in reasoned judgment and guided by legal principles and policies appropriate to the particular matter at issue.' [Citation.]" (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 977.) In addition, the defendant must show "that the court exercised its discretion in an arbitrary, capricious or

patently absurd manner that resulted in a manifest miscarriage of justice. [Citations.]" (*People v. Jordan* (1986) 42 Cal.3d 308, 316.)

Defendant contends that the evidence of his prior crime was especially prejudicial because the evidence of his guilt was weak, since the only witnesses were police officers, the conversation was not recorded, and the testimony of Officer Robinson was "not without controversy." Defendant points to Officer Robinson's testimony that she was not wearing her prescribed eyeglasses or contact lenses that evening and did not get into the car.[5] He also notes that no money or phone numbers were exchanged and that he was arrested with only $8.81 on his person.[6] Defendant further that since no one else heard his conversation with Officer Robinson there was no corroboration. This was particularly important given that Officer Robinson was motivated to arrest defendant in order to justify the task force activity which she had initiated.

Nowhere in defendant's reasoning do we find any argument regarding the probative value of the prior crime to prove intent or motive. Prior similar acts of pandering have long been considered to be substantially probative of intent and motive in a new case. (See, e.g., *People v. Peters* (1969) 276 Cal.App.2d 71, 79; *People v. Mandell* (1939) 35 Cal.App.2d 368, 375; *People v. Grubb* (1914) 24 Cal.App. 604, 609-610.) Prior pandering convictions can be prejudicial, but prejudice alone does not demonstrate an abuse of discretion in admitting the evidence. (*People v. Peters, supra*, at pp. 79-80.) Here, the trial court properly exercised its discretion by expressly considering both the potential for prejudice and the probative value of the evidence, and defendant has failed to show that its determination exceeded the bounds of reason.

---

5 Officer Robinson said she could see defendant clearly despite not wearing glasses during her conversation with him. She normally wore glasses for driving or when she was tired, and did not use contact lenses. Officer Robinson also testified she had no doubt about her identification of defendant.

6 Defendant contends that Officer Robinson testified that pimps had money. In fact, she testified that most pimps had "money sign" tattoos.

Nor has defendant established that the court's exercise of discretion resulted in a miscarriage of justice. The trial court instructed the jury that to convict defendant of pandering, it must find that he intended to encourage Officer Robinson to become a prostitute, or for attempted pandering that he intended to commit the crime. Defendant spoke to Officer Robinson in slang terms which were not readily understandable and defense counsel argued that Officer Robinson was lying and that defendant was intoxicated. The prior conviction was highly probative of defendant's motive for speaking to Officer Robinson and of his intent that his words be understood as encouragement for her to become a prostitute. Evidence of intent was necessary to establish that defendant's words were not simply misconstrued drunken rambling. "'The prejudice which exclusion of evidence under Evidence Code section 352 is designed to avoid is not the prejudice or damage to a defense that naturally flows from relevant, highly probative evidence.' [Citations.] 'Rather, the statute uses the word in its etymological sense of "prejudging"' a person or cause on the basis of extraneous factors. [Citation.]' [Citation.]" (*People v. Zapien* (1993) 4 Cal.4th 929, 958.)

In any event, any prejudice was attenuated by the trial court's instructions to the jury with CALCRIM No. 303, to consider evidence admitted for a limited purpose only for that purpose, as well as CALCRIM No. 375, which instructed the jury regarding the limited purpose of the prior conviction.[7] (See *People v. Jones* (2011) 51 Cal.4th 346, 371

---

[7] The court read CALCRIM No. 375 as follows: "The People presented evidence the defendant committed another offense, the offense of attempted pimping and pandering that was not charged in this case. You may, but are not required, to consider that evidence for the limited purpose of deciding whether or not: the defendant acted with the intent to encourage Felicia Robinson to become a prostitute. The defendant had a motive to commit the offense alleged in this case. The defendant's alleged actions were the result of a mistake or accident. In evaluating the evidence, consider the similarity or lack of similarity between the uncharged offenses and the charged offenses. Do not consider the evidence for any other purpose. Do not conclude from this evidence that the defendant has a bad character or is disposed to commit a crime. The defendant's conviction is only one factor to consider, along with all the other evidence. It is not sufficient by itself to prove that the defendant is guilty of pandering or attempted pandering. The People must still prove the charges beyond a reasonable doubt."

[court read substantially similar CALJIC instructions].) Defendant acknowledges the presumption that jurors follow their instructions but contends the prejudice in this case was "so severe that no admonition or instruction could prevent the jury from either consciously or unconsciously considering the evidence for an improper purpose." We disagree. "Jurors are routinely instructed to make similarly fine distinctions concerning the purposes for which evidence may be considered, and we ordinarily presume they are able to understand and follow such instructions. [Citations.]" (*People v. Yeoman* (2003) 31 Cal.4th 93, 139.)

In this case however, we need not presume that the jurors understood and followed CALCRIM No. 375. As respondent observes, the jury found defendant not guilty of the charged offense of pandering and guilty only of the lesser included offense of attempted pandering, showing that the jury did not accept without consideration the prior crime evidence. (Cf. *People v. Williams* (2009) 170 Cal.App.4th 587, 612-613 [gang evidence].) The verdict was thus not an emotional reaction to defendant's prior similar conviction, but rather a reasoned determination that defendant had the intent to commit the crime.

If the trial court had abused its discretion in admitting the other crimes evidence, the error would have been harmless. The defense consisted primarily of arguing that the officers lacked credibility.[8] The jury was fully instructed about resolving conflicts and evaluating eyewitness and expert testimony. Officer Robinson's testimony and her identification of defendant was positive and the other officers' observations provided some corroboration. It is not reasonably probable that the jury would have reached a verdict more favorable to defendant. (See *People v. Watson* (1956) 46 Cal.2d 818, 836.)

Defendant contends that his claims of violation of his due process rights under the federal constitution requires that prejudice be assessed under the standard of *Chapman v.*

---

[8] Defense counsel argued that undercover officers are trained to lie and are motivated to arrest suspects; that Officer Robinson was mistaken or lying and should not be believed in the absence of a recording of the conversation; and that defendant clearly appeared to be intoxicated in his booking photograph.

California (1967) 386 U.S. 18, 24, which requires reversal unless respondent demonstrates that error was harmless beyond a reasonable doubt. Respondent contends that defendant has forfeited his due process claim by failing to object to the evidence on this ground. In general, a decision made under the ordinary rules of evidence does not implicate constitutional rights. (*People v. Dement* (2011) 53 Cal.4th 1, 52.) As defendant did not make a constitutional argument below, and we have concluded that he has not established error under state law, we agree that he has not preserved a due process claim on appeal. (*People v. Thornton* (2007) 41 Cal.4th 391, 443-444; *People v. Partida* (2005) 37 Cal.4th 428, 435-439.)

II. Review of in camera hearing

The trial court granted defendant's pretrial *Pitchess* motion for discovery of evidence relating to dishonesty in the personnel files of Officer Robinson. Defendant seeks review of the sealed transcript of the trial court's in camera review of the files and the trial court's determination that there were no discoverable items in the records produced.

We review the trial court's determination for an abuse of discretion. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220-1221.) The records produced in the trial court were not retained, but the sealed transcript of the in camera hearing demonstrates that the custodian of the records described the records and that the trial judge examined them. We thus find the transcript sufficiently detailed to review the trial court's exercise of discretion. (See *People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229.) Upon review of the sealed record of the in camera proceedings we conclude the trial court properly exercised its discretion in determining that none of the documents considered should be disclosed to the defense.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, P. J.
BOREN

_____, J.*
FERNS

---

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