

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.111.5.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

LACHRE JOHNSON,

Defendant and Appellant.

2d Crim. No. B235787
(Super. Ct. No. BA373087)
(Los Angeles County)

Lachre Johnson appeals her conviction by jury for forgery (count 1; Pen. Code, § 470, subd. (d))¹, second degree burglary (count 2; § 459), identity theft (count 4; § 530.5, subd. (a)), two counts of possession of a forged driver's license (counts 6 & 8; § 470b), two counts of forgery by possessing a blank check with intent to defraud (counts 7 & 9; § 475, subd. (b)), forgery by possession of a counterfeit traveler's check (count 10; § 475, subd. (c)), and three misdemeanor counts of identity theft (counts 11-13; § 530.5, subd. (c)(1).) The trial court sentenced appellant to five years state prison. Appellant appeals contending that the convictions are not supported by substantial evidence, that the trial court committed judicial misconduct, and that a *Pitchess* motion was erroneously denied. We affirm.

¹ All statutory references are to the Penal Code unless otherwise stated.

Facts

On June 29, 2010, Loss Prevention Officer Johnny Roldan saw appellant and Warren Sapp in the liquor section of Albertsons store pushing a shopping cart. Roldan recognized appellant from a May 14, 2010 incident in which appellant bought liquor with a forged check and left in a Toyota 4-Runner. A mall security guard wrote down the license plate number.

When Roldan saw appellant on June 29, 2010, he confirmed the Toyota 4-Runner was in the parking lot and called the police. The store manager, Terrie Wilkins, delayed appellant and Sapp at the checkstand. As they waited for Wilkins to ring up the items, appellant filled out an Alberstons rewards card in the name of Jean Jackson.

The groceries (ribs, beer, detergent, soda, and a pack of cigarettes), all with the Albertson's reward card discount, totaled \$205.81. Appellant asked Wilkins to remove the cigarettes and keep the purchase under \$200. Sapp wrote a check for the purchase and signed it Allen Trummel, but the electronic check service rejected the check.

Wilkins asked if they wanted to pay another way. Appellant and Sapp looked at each other, said "No" and left the store.

Los Angeles Police Department Officers Smith and Williams detained appellant in the parking lot. Appellant identified herself as "Pat Jackson" and gave a false date of birth. When Officer Smith asked her real name, appellant insisted it was Pat Jackson.

Officer Smith determined that the Toyota was registered in appellant's name and saw a large purse in the rear passenger area. Appellant said it was her purse. In the purse were counterfeit American Express traveler's checks, a set of checks bearing the names of Gary A. Pope and Juanita A. Pope with the bank account number for Attorney David Shaby, and a set of checks bearing the names Clayton Mathews and Laquita Mathews with a Cinema Make-Up School bank account number. The purse also had an identification card bearing the name Juanita Pope and the driver's license number of Mark Shurlock, an identification card bearing the name Laquita Matthews and the

driver's license number of Alexander Guterrez, and three California driver's licenses bearing three different numbers.

It was uncontroverted that the checks, traveler's checks, driver's licenses, and identification cards were false. The check Sapp signed in the store had a Scorpion Services bank account number and bore the names Allen and Rochelle Trammel.

Substantial Evidence

Appellant argues that the evidence does not support the finding that she aided and abetted Sapp or that the purse was hers. As in any substantial evidence case, we review the evidence and draw all reasonable inferences in favor of the judgment to determine whether a rational trier of fact could find appellant guilty as an aider and abettor. (*People v. Rodriguez* (1999) 20 Cal.4th 1, 11.)

Appellant contends there is no direct evidence that she acted with knowledge of Sapp's criminal purpose or with the intent of committing or facilitating the forgery, commercial burglary, and identity theft (counts 1, 2, and 4). Mere presence at the scene of a crime is not sufficient to constitute aiding and abetting, but it is a factor the jury may consider in assessing a defendant's criminal responsibility. (CALCRIM 401; *People v. Nguyen* (1993) 21 Cal.App.4th 518, 529-530.) Other factors include companionship and conduct before and after the crime. (*People v. Campbell* (1994) 25 Cal.App.4th 402, 409.)

Here the evidence was overwhelming. (See *People v. Beeman* (1984) 35 Cal.3d 547, 558-559 [accomplice liability proven by circumstantial evidence]; *People v. Falck* (1997) 52 Cal.App.4th 287, 299 [trier of fact may infer intent from circumstantial evidence].) Appellant pushed the shopping cart through the store with Sapp and helped put groceries in the cart. Appellant and Sapp walked up to the checkstand, taking things out of their pockets, wallets and purses to pay for the groceries. As they waited for the store manager to ring up the items, they took turns pretending to shop and appellant filled out an Albertsons reward card with a false name.

After the groceries were rung up with the Albertsons reward card discount, appellant asked Wilkins to remove a pack of cigarettes and keep the purchase below \$200. When Sapp's check was rejected, appellant and Sapp declined to pay and left.

Outside the store, appellant gave the officers a false name and date of birth. After Officer Smith confirmed that appellant was the registered owner of the Toyota 4-Runner, appellant admitted the purse in the rear passenger area was hers. Inside the purse were false checks and traveler's checks, two sets of false identification, and false driver's licenses bearing appellant's photo. The false checks bore the names of couples, as did the check that Sapp used in the store, supporting the inference that appellant and Sapp posed as a couple to pass off bad checks.

During the inventory search, appellant was asked about the purse and admitted that it was hers. It was no coincidence that the photos on the identification cards and driver's licenses resembled appellant. Appellant argues that it is illogical for her to have two purses. But a trier of fact could reasonably infer that appellant kept the bundle of fake checks and ID's in a separate purse so they did not get mixed up. Keeping the names and false identities straight was no small task. Appellant used a false name in the store and another false name in the parking lot.

Reviewing the evidence and drawing all reasonable inferences in the light most favorable to the judgment, we conclude the evidence is sufficient to support the jury finding that appellant committed the charged crimes. Due process of law does not require a reviewing court to reweigh evidence or second-guess the jury's assessment of witness credibility. (*People v. Lashley* (1991) 1 Cal.App.4th 938, 946.)

Judicial Misconduct

Appellant claims that the trial court engaged in misconduct when it asked the loss prevention officer (Roldan) and store manager (Wilkins) clarifying questions. Appellant did not object or seek a jury admonition, waiving the alleged error. (Evid. Code § 353; *People v. Fudge* (1994) 7 Cal.4th 1075, 1108.)

On the merits, there was no judicial misconduct. The trial court asked Roldan to explain where he first saw appellant in the store, what she was doing, and whether she was alone or with someone. Evidence Code section 775

" ' ' confers upon the trial judge the power, discretion, and affirmative duty . . . [to] participate in the examination of witnesses whenever he believes that he may fairly aid in eliciting the truth, in preventing misunderstanding, in clarifying the testimony or covering omissions, in allowing a witness his right of explanation, and in eliciting facts material to a just determination of the cause." ' [Citation.]" (*People v. Hawkins* (1995) 10 Cal.4th 920, 948, disapproved on other ground in *People v. Lasko* (2000) 23 Cal.4th 101, 109-110.)

The trial court asked Store Manager Wilkins about appellant's request to keep the purchase under \$200: "Was \$200 a magic number for you at that time?" Based on her training and experience, Wilkins thought it was suspicious and recounted that the check was rejected. The trial court asked, "What was the next thing that happened?" Wilkins stated that when a customer is told the check is no good, "they usually walk away. . . ." The court admonished Wilkins to testify about the incident, not what customers usually or customarily do. None of the questions, considered individually or together, rises to the level of judicial misconduct. (See e.g., *People v. Harbolt* (1988) 206 Cal.App.3d 140, 158; *Duckett v. Godinez* (9th Cir. 1995) 67 F.3d 734, 740.)

Appellant argues that a trial court commits misconduct if it persistently makes discourteous and disparaging remarks to discredit the defense. But that did not happen here. "The mere fact that a judge examines a witness at some length does not establish misconduct, nor does the fact that the testimony elicited by the judge's questions would probably have been elicited by counsel. [Citation.]" (*People v. Pierce* (1970) 11 Cal.App.3d 313, 321, discussing Pen. Code, § 1044.)

At the conclusion of the trial, the court instructed "Do not take anything I said or did during the trial as an indication of what I think about the facts, the witnesses, or what your verdict should be." (CALCRIM 3550.) It is presumed the jury understood and followed the instruction. (*People v. Harris* (2005) 37 Cal.4th 310, 350.) We reject the

argument that the trial court's questions were prejudicial or denied appellant a fair trial, as opposed to a perfect trial. (*People v. Snow* (2003) 30 Cal.4th 43, 78.)

Appellant claims that his trial attorney was ineffective for not objecting. Counsel, however, is not required to make groundless evidentiary objections. (*People v. Sanchez* (1997) 58 Cal.App.4th 1435, 1449-1450) Since judicial misconduct did not occur, appellant's "related claim of ineffective assistance of counsel and h[er] derivative claims of federal constitutional error likewise must fail." (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 83.)

Pitchess Motion

Appellant argues that the trial court abused its discretion in denying her *Pitchess* motion (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531) for the production of Officers William's and Smith's personnel records. Appellant sought discovery of confidential records relating to "accusations and/or evidence" that Officer Williams and Officer Smith have "engaged in discoverable acts of misconduct." The motion averred that the credibility of the officers would be a central issue at trial because appellant "never claimed ownership of the purse in the vehicle and never requested that it be given to her."

The trial court reasonably concluded that the moving papers failed to articulate how the discovery being sought supported such a defense or would impeach the officers' version of events. (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1021.) To establish good cause, "defense counsel's declaration in support of a *Pitchess* motion must propose a defense or defense or defenses ot the pending charges" and articulate how the discovery sought might lead to relevant evidence. (*Id.*, at p. 1024.) The defendant must present "a specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents" such as the police report. (*Id.*, at p. 1025.)

Missing here is a factual scenario of possible police misconduct. Appellant did not deny giving the officers a false name, that the Toyota 4-Runner was registered in her name, or that she was asked about the purse during the inventory search. Nor did appellant explain how or why the purse was in the rear passenger area of the vehicle.

The trial court did not abuse its discretion in denying the motion for the discovery of confidential personnel files. (See e.g., *People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992.) "*Warrick* permits courts to apply common sense in determining what is plausible, and to make determinations based on a reasonable and realistic assessment of the facts and allegations. [¶] We also reject [appellant's] claims that denial of [her] *Pitchess* motion violated [her] federal constitutional right to due process." (*People v. Thompson* (2006) 141 Cal.App.4th 1312, 1318-1319.)

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, J.

We concur:

GILBERT, P.J.

PERREN, J.

Robert J. Perry, Judge
Superior Court County of Los Angeles

Lea R. Geller, 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, Senior Assistant Attorney General, Scott A. Taryle,
Supervising Deputy Attorney General, Pamela C. Hamanaka, Deputy Attorney General,
for Plaintiff and Respondent.