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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE, Plaintiff and Respondent, v. EDDIE LEE HARRIS, Defendant and Appellant.	B253973 (Los Angeles County Super. Ct. No. YA085820)

APPEAL from a judgment of the Superior Court of Los Angeles County. Mark S. Arnold and David Sotelo, Judges. Affirmed.

Melissa J. Kim, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

An information, filed on November 26, 2012, charged Eddie Lee Harris with possession of a controlled substance (Health & Saf. Code, § 11350, subd. (a)) and battery on a peace officer (Pen. Code, § 243, subd. (b)). A jury found Harris guilty of the possession charge but not guilty of the battery charge. The trial court (Hon. David Sotelo) suspended execution of sentence and placed Harris on formal probation for three years.[1] Harris appealed. He contends the court committed prejudicial error by admitting one of his felony convictions for impeachment. He also asks us to independently review the record based on his motion under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We affirm the judgment.

DISCUSSION

1. *Admission of a Third Felony Conviction Did Not Prejudice Harris's Case*

Subject to the trial court's discretion in Evidence Code section 352, "[u]nder Evidence Code [section] 788, a defendant who testifies may be impeached with a prior conviction of any felony evincing moral turpitude, defined as the 'general readiness to do evil.' [Citation.]" (*People v. Campbell* (1994) 23 Cal.App.4th 1488, 1492, 1496; see *People v. Castro* (1985) 38 Cal.3d 301, 306.) Such definition may, but does not necessarily, involve dishonesty. (*People v. Gray* (2007) 158 Cal.App.4th 635, 640.) If the least adjudicated elements of the conviction involve moral turpitude, meaning that "'from the elements of the offense alone—without regard to the facts of the particular violation—*one can reasonably infer the presence of moral turpitude*,'" then the conviction is admissible for impeachment. (*Campbell*, at p. 1492.) We review the admission of a felony conviction as impeachment for an abuse of discretion and, even if error, reverse only on a showing of prejudice, i.e., a reasonable probability that, absent

[1] The information specially alleged two prior serious or violent felony convictions as strikes under the "Three Strikes" law (Pen. Code, §§ 667, subds. (b)-(i), 1170.12, subds. (a)-(d)) and three prior prison terms within the meaning of Penal Code section 667.5, subdivision (b). After the jury found Harris guilty of the possession charge, he admitted the two prior strike convictions. In sentencing, the trial court dismissed them under Penal Code section 1385. The People dismissed the three prior-prison-term allegations.

the error, the defendant would have obtained a more favorable result. (*People v. Valdez* (1986) 177 Cal.App.3d 680, 697; see *Castro*, at p. 319 [applying *People v. Watson* (1956) 46 Cal.2d 818, 836 standard of prejudice to error involving admission of felony conviction for impeachment].)

In this case, the trial court and counsel reviewed Harris's felony convictions to determine which, if any, would be permissible impeachment under Evidence Code section 788 if Harris chose to testify. Defense counsel sought to preclude impeachment under Evidence Code section 352 of convictions in 1982 for kidnapping under Penal Code section 207, subdivision (a), and robbery under Penal Code section 211. The court agreed, finding them "very remote," and precluded use of those convictions for impeachment. The court then addressed Harris's convictions, one in 2006 and another in 2010, for petty theft with a prior under Penal Code section 666 and found them "clearly relevant," thereby permitting them to be used for impeachment. Finally, the court determined that Harris's 2012 conviction for possession of a controlled substance in a custodial facility under Penal Code section 4573.6 was a crime of moral turpitude and admissible for impeachment purposes. It, however, sanitized that conviction, precluding reference to the name of the crime. Based on those rulings, during direct examination, Harris admitted that he had "three felony convictions."

Harris contends that the trial court erred by permitting impeachment with the conviction for possession of a controlled substance in a custodial facility because it is not a crime of moral turpitude and that the error prejudiced his case. We need not decide whether the court erred by concluding the crime of possession of a controlled substance in a custodial facility is one evincing moral turpitude because permitting impeachment with it in the manner sanitized by the court did not prejudice Harris's case.

Based on the trial court's ruling, the jury heard only that Harris had three felony convictions. He did not object to reference to two of those convictions—the two convictions for petty theft with a prior. Harris contends knowledge of three, as opposed to two, felony convictions made a difference for the jury. According to Harris, if the court had admitted only the two convictions for petty theft with a prior, his counsel may

have allowed the jury to hear the name of those crimes, which connotes "low level, theft crimes," and the jury would not have contemplated that he was a violent offender. His assertion is speculative. Moreover, hearing that Harris had two felony convictions for petty theft with a prior would have signified to the jury that Harris had committed additional offenses to support those convictions. In addition, the jury's verdict finding him not guilty of the battery charge but guilty of the possession charge demonstrates that it carefully considered the evidence and that knowledge of a third felony conviction apparently did not impact its determinations. Although the evidence regarding the battery charge was weakened by video surveillance that captured some of the incident, the evidence on the possession charge was supported by testimony from Los Angeles County Sheriff Deputies Samuel Gomez and Joshua Kelley-Eklund, who detained Harris, particularly that of Deputy Kelley-Eklund, who said that he had retrieved a balloon containing a substance appearing, and later determined, to be cocaine from a cigarette carton in Harris's pants pocket. That evidence was contradicted by only Harris's denial that he had possessed cocaine. Under these circumstances, it is not reasonably probable that Harris would have obtained a more favorable result had the court precluded a sanitized reference to a third felony conviction.

2. *No Grounds Exist to Conditionally Reverse the Judgment Under Pitchess*

"For approximately a quarter-century our trial courts have entertained what have become known as *Pitchess* motions, screening law enforcement personnel files in camera for evidence that may be relevant to a criminal defendant's defense." (*People v. Mooc* (2001) 26 Cal.4th 1216, 1225, fn. omitted (*Mooc*); see *Pitchess, supra*, 11 Cal.3d 531.) To balance the defendant's right to discovery of records pertinent to his or her defense, and thus to a fair trial, with the peace officer's reasonable expectation that his or her personnel records remain confidential, the Legislature adopted a statutory scheme requiring a defendant to meet certain prerequisites before a trial court considers his or her request. (*People v. Prince* (2007) 40 Cal.4th 1179, 1284-1285; *Mooc,* at p. 1227; see Pen. Code, §§ 832.5, 832.7, 832.8; Evid. Code, §§ 1043-1047.)

A defendant seeking to initiate discovery must file a written motion that includes "[a] description of the type of records or information sought[,]" supported by "[a]ffidavits showing good cause for the discovery or disclosure sought, setting forth the materiality thereof to the subject matter involved in the pending litigation and stating upon reasonable belief that the governmental agency identified has the records or information from the records." (Evid. Code, § 1043, subd. (b)(2) & (3); *California Highway Patrol v. Superior Court* (2000) 84 Cal.App.4th 1010, 1019-1020.) "A showing of good cause is measured by 'relatively relaxed standards' that serve to 'insure the production' for trial court review of 'all potentially relevant documents.' [Citation.]" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1016 (*Warrick*).) To establish good cause, the defendant must present a "plausible scenario of officer misconduct . . . that might or could have occurred." (*Id*. at p. 1026.) A plausible scenario presents "an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges." (*Ibid.*) Assessing credibility or persuasiveness at the *Pitchess* discovery stage is inconsistent with the statutory language. (*Ibid.*) The defendant's factual scenario "may consist of a denial of the facts asserted in the police report." (*Id*. at pp. 1024-1025.) Nevertheless, the defendant must request information with sufficient specificity to preclude the possibility that he or she is "simply casting about for any helpful information . . . ." (*Mooc*, *supra*, 26 Cal.4th at p. 1226.)

If the trial court concludes the defendant has made a good cause showing for discovery, the custodian of records must bring to court all documents "'potentially relevant'" to the defendant's request. (*Mooc*, *supra*, 26 Cal.4th at p. 1226.) The court examines the documents in chambers with only the custodian of records and such other persons he or she is willing to have present. (Evid. Code, §§ 915, subd. (b), 1045, subd. (b).) Subject to certain statutory exceptions and limitations, the court must disclose to the defendant "'such information [that] is relevant to the subject matter involved in the

pending litigation.'"[2] (*Mooc*, at p. 1226; see also *Warrick*, *supra*, 35 Cal.4th at p. 1019.) We review a "trial court's ruling on a motion for access to law enforcement personnel records . . . for abuse of discretion." (*People v. Hughes* (2002) 27 Cal.4th 287, 330.) If we determine that relevant material exists, we conditionally reverse the judgment and remand the matter to give the defendant an opportunity to demonstrate prejudice from the nondisclosure. (*People v. Gaines* (2009) 46 Cal.4th 172, 182-185.)

In his pretrial motion for *Pitchess* discovery, Harris requested personnel records of Deputies Gomez and Kelley-Eklund. According to Harris, the deputies employed excessive force in their contact with him, and the *Pitchess* materials requested were necessary to support an argument that he did not possess cocaine when he encountered the deputies. At the hearing on the *Pitchess* motion, on April 26, 2013, the trial court (Hon. Mark S. Arnold) found good cause for an in camera hearing of personnel records regarding fabrication of police reports as to both deputies as well as excessive force as to Deputy Gomez.[3] In camera, the court reviewed the personnel records of the detectives and found that two complaints, which related to both deputies and one of which was Harris's complaint, were discoverable. At Harris's request, we reviewed the sealed

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[2] The trial court must exclude from disclosure: "(1) Information consisting of complaints concerning conduct occurring more than five years before the event or transaction which is the subject of the litigation in aid of which discovery or disclosure is sought. [¶] (2) In any criminal proceeding the conclusions of any officer investigating a complaint filed pursuant to Section 832.5 of the Penal Code. [¶] (3) Facts sought to be disclosed which are so remote as to make disclosure of little or no practical benefit." (Evid. Code, § 1045, subd. (b); see also *Mooc*, *supra*, 26 Cal.4th at pp. 1226-1227.)

[3] Although Harris requested personnel records of two additional deputies, the trial court found his showing for *Pitchess* discovery as to those deputies insufficient. He also requested a broader review of the subject of complaints related to Deputies Gomez and Kelley-Eklund, but the court limited the *Pitchess* review to excessive force and fabrication of evidence for Deputy Gomez and fabrication of evidence for Deputy Kelley-Eklund. Harris does not contest either of those rulings.

transcript of that hearing.[4] Our review of the transcript reveals that no additional relevant material appropriate for disclosure under *Pitchess* exists.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, P. J.

We concur:

JOHNSON, J.

BENDIX, J.*

[4] Harris did not provide us with the records viewed by the trial court.

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