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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

ANTICE JONES,

Defendant and Appellant.

B283584

(Los Angeles County
Super. Ct. No. BA452260)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Leslie A. Swain and Karla D. Kerlin, Judges. Affirmed.

Mona D. Miller, 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, Senior Assistant Attorney General, Paul
M. Roadarmel, Supervising Deputy Attorney General, William N. Frank,
Deputy Attorney General, for Plaintiff and Respondent.

Prior to a trial that resulted in her conviction for selling cocaine base, defendant and appellant Antice Jones (defendant) sought *Pitchess*¹ discovery regarding the two officers involved in her arrest. Pursuant to well-established law and procedure, the trial court held an in camera hearing and concluded there was no discoverable information in the officers' personnel files. The sole contention we are asked to decide is whether the trial court's *Pitchess* determination constitutes an abuse of discretion.

I. BACKGROUND

A. *The Offense Conduct*

On November 22, 2016, Los Angeles Police Department (LAPD) Officer Israel Lopez observed defendant engage in activity consistent with hand-to-hand drug transactions in front of a mini-mart in the Skid Row area of Los Angeles. During one of these transactions, Officer Lopez saw defendant hand suspected narcotics to a man with a bicycle and the man then handed money to defendant.

The bicyclist rode off, the police detained him not far from defendant's location, and another officer informed Officer Lopez they recovered narcotics in a small plastic bag from the man.² The police then arrested defendant and recovered \$271 in cash during a search of her person.

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

² According to later lab analysis, the substance recovered was 0.13 grams of cocaine base.

B. Procedural History

Defendant was charged with one count of selling a controlled substance in violation of Health and Safety Code section 11352, subdivision (a). During the pre-trial proceedings, defendant filed a “Notice of Motion and Motion for Pretrial Discovery (*Pitchess* and *Brady*)” (the Motion) that sought, among other things, production of “[a]ll complaints” and any records of disciplinary action concerning the arresting officers. The Motion specifically sought information about complaints “relating to acts of racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, violation of constitutional rights, fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal search/seizure; false arrest, perjury, dishonesty, writing of false police reports, writing of false police reports to cover up the use of excessive force, planting of evidence, false or misleading internal reports . . . , and any other evidence of misconduct amounting to moral turpitude”

A declaration from defense counsel accompanying the Motion proffered what it contended was a plausible defense scenario: defendant was working at the liquor store and not engaging in narcotics transactions with anyone, including the man on the bicycle. The proffered defense was that the police “planted evidence as well as fabricated the police report describing their observations of defendant”

The trial court granted defendant’s *Pitchess* motion insofar as it sought records concerning complaints of false report writing and false testimony by the arresting officers within five years of the date of the charged offense. After an in camera hearing to review any such records in the possession of the LAPD, the trial

court found there was no discovery that should be produced to the defense.

II. DISCUSSION

“In *Pitchess*[, *supra*,] 11 Cal. 3d 531[], [our Supreme Court] recognized that a criminal defendant may, in some circumstances, compel the discovery of evidence in the arresting law enforcement officer’s personnel file that is relevant to the defendant’s ability to defend against a criminal charge.” (*People v. Mooc* (2001) 26 Cal.4th 1216, 1219 (*Mooc*).) “The statutory scheme [governing *Pitchess* motions] is set forth in Evidence Code sections 1043 through 1047 and Penal Code sections 832.5, 832.7 and 832.8. When a defendant seeks discovery from a peace officer’s personnel records, he or she must ‘file a written motion with the appropriate court’ (Evid. Code, § 1043, subd. (a)) and identify the proceeding, the party seeking disclosure, the peace officer, the governmental agency having custody of the records, and the time and place where the motion for disclosure will be heard (*id.*, subd. (b)(1)). In addition, the *Pitchess* motion must describe ‘the type of records or information sought’ (Evid. Code, § 1043, subd. (b)(2)) and include ‘[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’ (*id.*, subd. (b)(3)).” (*Mooc, supra*, at p. 1226.)

“When a trial court concludes a defendant’s *Pitchess* motion shows good cause for discovery of relevant evidence contained in a law enforcement officer’s personnel files, the custodian of the records is obligated to bring to the trial court all ‘potentially

relevant' documents to permit the trial court to examine them for itself. [Citation.]" (*Mooc, supra*, 26 Cal.4th at pp. 1228-1229.) The examination of documents and questioning of the custodian is done in camera, and the trial court must make an adequate record of its examination to permit appellate review. (*Id.* at p. 1229 ["[T]he [trial] court can prepare a list of the documents it considered, or simply state for the record what documents it examined".]) An appellate court reviews a trial court's ruling on whether discovery must be produced for abuse of discretion. (*People v. Jackson* (1996) 13 Cal.4th 1164, 1220.)

Here, based on the defense proffer, the trial court appropriately granted defendant's *Pitchess* motion, as limited to review for discoverable information concerning false report writing or false testimony by the arresting officers (which we understand to incorporate any allegations concerning the officers' planting of evidence). At defendant's request, we have reviewed the record of the in camera *Pitchess* proceedings. The record made by the trial court suffices to permit review, and the trial court did not abuse its discretion in concluding there was no material that should be turned over to the defense.

DISPOSITION

The judgment is affirmed.

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BAKER, J.

We concur:

KRIEGLER, Acting P.J.

DUNNING, J.*

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