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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 EIGHT

THE PEOPLE, Plaintiff and Respondent, v. ANGEL OCTAVION GARCIA, Defendant and Appellant.	B271445 (Los Angeles County Super. Ct. Nos. GA095071 & GA095189)

APPEAL from judgments of the Superior Court of Los Angeles County, Jared D. Moses, Judge. Case No. GA095071 is affirmed. Case No. GA095189 is affirmed in part and remanded.

Allen G. Weinberg, 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, Victoria B. Wilson and Idan Ivri, Deputy Attorneys General, for Plaintiff and Respondent.

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INTRODUCTION

1. Appeals From Two Separate Cases Consolidated

In Los Angeles Superior Court case No. GA095071, the jury convicted defendant Angel Octavion Garcia of second degree murder (Pen. Code, §187, subd. (a)) during which he personally used a deadly and dangerous weapon (knife; § 12022, subd. (b)(1)). He was sentenced to prison to 15 years to life for murder, plus the one year use enhancement.

In Los Angeles Superior Court case No. GA095189, an unrelated case, defendant pled guilty to making criminal threats (Pen. Code, § 422, subd. (a); count 2) and the remaining counts (1, 3-5) were dismissed pursuant to a plea agreement. He was sentenced to prison to the two-year middle term, which sentence was concurrent with the GA095071 sentence.

He filed a notice of appeal from the judgment in GA095071. This court granted his motion to amend the notice to include the judgment in GA095189. These appeals are consolidated for argument and disposition.

2. Defendant's Contentions

In the GA095071 appeal, defendant challenges the trial court's finding that the personnel record of Los Angeles County Deputy Sheriff Dylan Navarro does not contain information subject to discovery under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). He argues such information is relevant to his defense, because he purportedly confessed to Navarro, an undercover officer, and thus, "Navarro's veracity and methods were at issue in this case." He requests that this court review the sealed reporter's transcript of the *in camera* proceedings to determine whether the trial court followed the proper procedures and "if there was any additional discoverable information

concerning excessive force, fabrication of evidence or charges, false arrests, illegal search and seizure, improper charging, and/or dishonesty that was improperly withheld from [defendant]." He urges "[i]f this court finds undisclosed, discoverable information that could lead to admissible evidence helpful to . . . his defense, this court should reverse the judgment, order the information be disclosed, and remand the case for a new trial."

Defendant's challenge is unsuccessful. Initially, we note on July 22, 2016, this court denied his motion to augment the record with all documents produced for the *in camera* proceedings. This court was satisfied that the sealed reporter's transcript is sufficient for appellate review (*People v. Mooc* (2001) 26 Cal.4th 1216). Having independently reviewed that transcript, we conclude the trial court complied with the procedural mandate of *Pitchess* and its progeny and that substantial evidence supports its finding there was nothing in Deputy Navarro's personnel record to disclose.

In the GA095189 appeal, defendant's sole claim of error is the April 8, 2016 minute order in the clerk's transcript improperly recites: "The court signs a protective order this date." Respondent concedes error. We agree. The appropriate disposition is for the trial court on remand to prepare an amended minute order, nunc pro tunc, deleting the erroneous clerical recital.

BACKGROUND

1. GA095071 (Murder Using Knife)

Viewed in accordance with the usual rules on appeal (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206), the evidence established on October 14, 2014, at 9:09 p.m., Eddie Mendoza

reported to a 911 dispatcher that he had just been stabbed and gave his location. Within minutes, Mendoza was found lying in a parking lot. There were no weapons on or around Mendoza's body. He died from a single stab wound to the chest. He had no blunt force injuries consistent with a fistfight or other struggle. His hands, wrists, and forearms had no defensive wounds.

The next day, Stephen Brogie noticed defendant, whom he knew, pacing back and forth and asked if anything was amiss. Defendant replied, "I stabbed someone," a stranger, at 9:11 p.m. the night before. Defendant was not injured and did not appear to have been in a fight. Brogie called the police.

On October 17, 2014, defendant told Kathleen Reyes, his aunt, that he had "killed someone."

On October 22, 2014, after his arrest, defendant spoke with an undisclosed officer about the stabbing incident: Defendant was angry after some acquaintances refused to give him what they owed. While walking along the street, he threw a water bottle at a barking dog. Believing he was being confronted, Mendoza, who was drunk, ran up and told defendant to "shut the fuck up." Mendoza swung at him, and defendant stabbed him.

At trial, defendant admitted stabbing Mendoza in the chest with the kitchen knife he had in his pocket and asserted he did not intend to kill Mendoza and stabbed him from fear, not anger. Believing the larger Mendoza would strangle him, defendant tried to push him away but was overpowered. Panicking in fear, he grabbed his knife from his pocket and stabbed Mendoza before running off.

2. GA095189 (Criminal Threats)

In view of defendant's guilty plea, a short recital of the facts based on the preliminary hearing transcript suffices. (See

People v. Caceres (1997) 52 Cal.App.4th 106, 109, fn 4.) On October 1, 2014, Brianna M. and defendant, who had been dating about a year, had an argument during which defendant pushed and kicked her twice. He pulled her towards his house. Once there, he pushed her onto the bed. She later told police defendant pushed and kicked her and threatened to kill her.

DISCUSSION

1. GA095071 (Murder Using Knife)

Defendant requests that this court conduct its own review of the sealed transcript to determine whether the trial court followed the proper procedures and whether that court abused its discretion in finding there was nothing in the personnel file of Deputy Navarro to disclose to the defense. Further, if the trial court erred in this regard, he urges "this court should reverse the judgment, order the information be disclosed, and remand the case for a new trial." Although not opposing this court's review of the sealed transcript, respondent contends "reversal is unwarranted unless material evidence has been suppressed which undermines confidence in the outcome of the trial." Based on our independent review of the relevant proceedings, we conclude the trial court complied with the procedures mandated by *Pitchess* and its progeny and that substantial evidence supports that court's finding there was nothing to disclose in Deputy Navarro's personnel file.

a. Relevant proceedings

In their motion for disclosure of Deputy Navarro's personnel records, the People asserted: "Navarro was terminated from his position as a Deputy Sheriff, and the People do not know why. There may be *Brady* [(*Brady v. Maryland* (1963) 373 U.S. 83 (*Brady*))] information that is discoverable to the People, and

which the People have a duty to turn over to the defense should such information exist[.]" Navarro filed opposition and moved for a protective order.

During the *in camera* proceedings, Deputy Luz Luna of the Los Angeles Sheriff's Department, as custodian of records, testified under oath and produced one potentially responsive document. After examining it, the trial court announced the document should not be disclosed and the transcript of the proceedings would be sealed. In open court, the trial court ruled there was nothing to disclose.

Subsequently, during a pre-trial hearing outside the presence of the jury, the prosecutor argued that if Deputy Navarro were to testify at trial, "the fact that he is on administrative leave is not relevant because I had earlier done a *Pitchess* and the court, I believe, ruled that there is nothing admissible—or nothing that was going to be disclosed over to the defense," and thus, "if there's no reason that it's exculpatory or *Brady*, then it shouldn't be something that should be asked because it's not relevant." Defense counsel argued "to the extent that the reasons for his administrative leave implicate credibility, honesty issues, . . . I should be allowed to go into it."

The trial court noted it "had conducted an [*in camera*] hearing, looked at [the reason for the administrative leave] and . . . concluded – I didn't think it was even a close call – that the information was not discoverable. It's not *Brady* material. And I don't think it's anything that would have any impact on this case or any other case." The court pointed out this information, without describing it, had been discussed in that hearing and ruled "at this point," "the fact that the officer may be on administrative leave . . . is simply not admissible," because that

fact reflects "nothing that would be usable at trial." Over a defense objection, the court reiterated why someone was on administrative leave does not prove anything and the court had "already ruled that it is not coming in."

b. Applicable legal principles

The People's motion for disclosure of Deputy Navarro's personnel records implicates the governing principles of both *Brady* and *Pitchess*. "Under *Brady, supra,* 373 U.S. 83, the prosecution must disclose to the defense any evidence that is 'favorable to the accused' and is 'material' on the issue of either guilt or punishment. Failure to do so violates the accused's constitutional right to due process. (*Brady,* at pp. 86-87.) Evidence is material under the *Brady* standard 'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.' [Citation.]" (*City of Los Angeles v. Superior Court* (2002) 29 Cal.4th 1, 7-8 (*City of Los Angeles*).) "*Brady* materiality is a 'constitutional standard' required to ensure that nondisclosure will not 'result in the denial of defendant's [due process] right to a fair trial.' [Citation.] [¶] Because the *Brady* rule encompasses evidence 'known only to police investigators and not to the prosecutor,' it is incumbent upon the prosecutor to learn of any favorable evidence 'known to the others acting on the government's behalf in [a] case, including the police.' [Citations.] The prosecution's disclosure duty . . . applies even without a request by the accused; it pertains not only to exculpatory evidence but also to impeachment evidence. [Citations.]" (*Id.* at p. 8.)

Pursuant to *Pitchess*, a defendant is entitled to information that will "facilitate the ascertainment of the facts and a fair

trial." (*Pitchess, supra*, 11 Cal.3d at p. 536.) "[T]he California Legislature 'codified the privileges and procedures surrounding what had come to be known as "*Pitchess* motions" . . . through the enactment of Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045.' [Citation.]" (*City of Los Angeles*, *supra*, 29 Cal.4th at p. 9.) Our Supreme Court has "described the statutory scheme as follows: 'The Penal Code provisions define "personnel records" (Pen. Code, § 832.8) and provide that such records are "confidential" and subject to discovery only pursuant to the procedures set forth in the Evidence Code. (Pen. Code, § 832.7.)" (*Ibid.*, quoting from *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 82.)

"Unlike the high court's constitutional materiality standard in *Brady,* which tests whether evidence is material to the fairness of trial, a defendant seeking *Pitchess* disclosure must, under statutory law, make a threshold showing of 'materiality.' (Evid. Code, § 1043, subd. (b).) Under *Pitchess,* a defendant need only show that the information sought is material 'to the subject matter involved in the pending litigation.' (Evid. Code, § 1043, subd. (b)(3).) Because *Brady*'s constitutional materiality standard is narrower than the *Pitchess* requirements, any citizen complaint that meets *Brady*'s test of materiality necessarily meets the relevance standard for disclosure under *Pitchess.* (Evid. Code, § 1045, subd. (b).)" (*City of Los Angeles, supra*, 29 Cal.4th at p. 10.) Conversely, if the *Pitchess* relevance standard is not satisfied, *Brady*'s materiality test also is not met.

c. No procedural error or abuse of discretion occurred

Our independent examination of the sealed transcript reveals the trial court complied with the procedural mandates

regarding disclosure of confidential material in Deputy Navarro's personnel record and did not abuse its discretion in finding there was nothing to disclose, which finding is supported by substantial evidence. Further, when viewed in context, this finding comported with the principles applicable under both *Brady* and *Pitchess*.

2. G095189 (Criminal Threats)

Defendant contends the April 8, 2016 minute order in the clerk's transcript improperly recites: "The court signs a protective order this date." Respondent concedes this recital is in error.

As the parties note, the reporter's transcript of the proceedings that day does not reflect the trial court signed a protective order. The clerk's transcript does not contain a copy of any signed protective order, and the supplemental clerk's transcript contains a certificate by the court clerk detailing the steps taken in an unsuccessful search for such document.

"Entering the judgment in the minutes being a clerical function (Pen. Code, § 1207), a discrepancy between the judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error." (*People v. Mesa* (1975) 14 Cal.3d 466, 471.) "It is well-settled that clerical errors in a judgment, where they are shown by the record, may be corrected at any time. [Citation.] A court of general jurisdiction has power after judgment, pending an appeal and even after affirmance of the judgment on appeal, and regardless of lapse of time, to correct clerical errors whether made by the court, clerk or counsel so that its records will conform to and speak the truth. [Citation.] And[, alternatively,] an appellate court may correct a judgment containing an obvious clerical error or other defect

resulting from inadvertence by modifying the judgment. [Citation.]" (*Hennefer v. Butcher* (1986) 182 Cal.App.3d 492, 506-507.)

The appropriate procedure here is to direct the trial court to prepare an amended minute order, nunc pro tunc, deleting the recital: "The court signs a protective order this date." Without further discussion, we reject, as unsupported by reasoned argument and applicable authority, defendant's request that this court order the trial court to issue an affirmative declaration that "no valid protective order is part of the judgment" to "avoid any future confusion[.]" (*People v. Stanley* (1995) 10 Cal.4th 764, 793; accord, *People v. Bryant* (2014) 60 Cal.4th 335, 363-364.)

DISPOSITION

The judgment in GA095071 is affirmed. The judgment in GA095189 is affirmed, and the matter is remanded with directions to the trial court to prepare an amended minute order for April 8, 2016, nunc pro tunc, striking the recital: "The court signs a protective order this date."

GRIMES, J.

WE CONCUR:

RUBIN, Acting P. J.

FLIER, J.