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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(San Joaquin)

THE PEOPLE,

Plaintiff and Respondent,

v.

LOREN CURTIS JAMES,

Defendant and Appellant.

C067206

(Super. Ct. Nos.
SF092803A, SF113370A)

After a trial to the court, defendant Loren Curtis James was found guilty of separate counts of driving under the influence and driving with a blood-alcohol level of .08 percent or above. The court placed him on five years' informal probation monitored by the DUI court, including a county program for people with a history of alcohol abuse and multiple DUI convictions, and a condition he serve 10 months in jail.

On appeal, defendant contends the trial court erred in denying his *Pitchess/Brady*¹ motion to discover information in police personnel files. We disagree and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Two police officers on regular patrol saw defendant driving in a 25-mile-per-hour zone and believed he was speeding. The officers followed him and gauged his speed to be about 40 miles per hour.

Before the officers attempted to stop him, he pulled over on his own. With the engine still running, he opened the door and began to get out of the car. The police parked behind his car, activated their lights, and ordered defendant to stay in the car. He did not comply, but he stood still when he got out and put his hands up. The officers smelled alcohol when they detained him in handcuffs. His eyes were red and watery. When one of the officers asked if he had been drinking, he admitted he drank "a little."

The officers ran a license check, which showed defendant's license was suspended due to active DUI probation. A blood draw showed he had a blood-alcohol level of .14 percent, to which he stipulated to at trial. He also stipulated to being under the influence while driving.

Before trial, defendant filed a hybrid *Pitchess/Brady* motion to discover relevant information in the arresting

¹ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531; *Brady v. Maryland* (1963) 373 U.S. 83 [10 L.Ed.2d 215].

officers' personnel files, based on the theory that he was not speeding or driving under the influence and his arrest was a result of the officers' racial bias. The trial court summarily denied the motion. Both the defense and the prosecution waived a jury trial and defendant was found guilty after a short trial to the court.

DISCUSSION

Defendant contends the trial court erroneously denied his motion to discover information in police personnel files under *Pitchess/Brady* because he demonstrated good cause for in camera review of the records. We find no error in the trial court's ruling.

To obtain disclosure of police personnel records, a defendant must submit an affidavit "showing good cause for the discovery or disclosure sought." (Evid. Code, § 1043, subd. (b)(3).) "Good cause for discovery exists when the defendant shows both "materiality" to the subject matter of the pending litigation and a "reasonable belief" that the agency has the type of information sought.'" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1016.) A showing of materiality requires a defendant to set forth a "specific factual scenario of officer misconduct" that establishes "'a plausible factual foundation'" and "'articulate[s] a valid theory as to how the information sought might be admissible'" at trial. (*Id.* at p. 1025.) "To show good cause as required by [Evidence Code] section 1043, defense counsel's declaration in support of a *Pitchess* motion must propose a defense or defenses to the

pending charges." (*Warrick*, at p. 1024.) We review the trial court's denial of discovery of information from police personnel files for an abuse of discretion. (*People v. Lewis and Oliver* (2006) 39 Cal.4th 970, 992.)

Here, defendant's motion asserted "the officers committed a series of misdeeds, the least of which is not [their] fabrication [of] the basis for his stop." Defense counsel's declaration in support of the motion stated "[i]t is possible that . . . defendant was not speeding . . . but that Officers are fabricating these facts to support probable cause to arrest[] . . . defendant and charge him with driving under the influence." This argument suggests defendant was seeking information to challenge, by means of a motion to suppress, the validity of the stop that resulted in his arrest. On appeal, however, defendant characterizes the *Pitchess* motion as a request for discovery to be used for impeachment only, "not as a basis to challenge the stop of his vehicle." More specifically, he asserts that the information he sought by his *Pitchess* motion "would [have] be[en] used to impeach the officers' testimony that [he] drove under the influence" by showing that the officers "fabricated reasons for pulling [him] over . . . out of a racial bias against African-Americans."

On this theory, however, the information defendant sought would not have supported a plausible defense to the charges on which he was tried. Independent of the evidence about why the officers stopped him, the evidence here established that defendant was driving on a suspended license due to active DUI

probation, and the blood test showed he had a blood-alcohol level of .14 percent. Based on his height and weight, he would have been under the influence while driving given this amount of alcohol in his blood. Thus, not only did defendant fail to present a "specific factual scenario of officer misconduct" (*Warrick v. Superior Court, supra*, 35 Cal.4th at p. 1025) that would have supported a defense, there was no factual scenario of officer misconduct that would have made it possible for him to defend himself against the charges he faced, except by challenging the initial stop of his car, which he admits he was not trying to do.

Under these circumstances, the trial court would have abused its discretion had it granted the motion.

Defendant also argues he is "entitled to an in camera review to determine whether the information is discoverable under *Brady*." This argument assumes the *Brady* standard is different than the *Pitchess* standard. On the facts of this case, however, that is not so.

Under *Brady*, "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." (*People v. Jordan* (2003) 108 Cal.App.4th 349, 358.) Both *Pitchess* and *Brady* require that the evidence sought be material to a defense. (*Brady v. Maryland, supra*, 373 U.S. at p. 87 [10 L.Ed.2d at p. 218]; *Warrick v. Superior Court, supra*, 35 Cal.4th at p. 1016.) Because defendant cannot meet the materiality

standard under *Pitchess*, it follows that he cannot meet the same standard under *Brady*, for the reasons described above.

DISPOSITION

The judgment is affirmed.

ROBIE, J.

We concur:

NICHOLSON, Acting P. J.

MAURO, J.