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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Lassen)

THE PEOPLE,

Plaintiff and Respondent,

v.

RICARDO PIMENTEL,

Defendant and Appellant.

C076977

(Super. Ct. No. CH030414)

A nurse and two correctional officers found a weapon in an inmate's shoe while he was receiving emergency medical treatment in the prison trauma center. A jury rejected defendant Ricardo Pimentel's claim that one of the officers had a vendetta against him and someone planted the weapon in his shoe during or following a stabbing on the prison yard. On appeal, defendant asserts the trial court abused its discretion by excluding impeachment evidence against Correctional Officer Brett Fleming. Finding no abuse of discretion, we affirm the judgment. At the request of defendant and the Attorney General, we have conducted an in camera examination of the sealed records regarding

Officer Fleming's personnel file and have found no abuse of discretion in failing to order disclosure. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

FACTS

On July 6, 2012, three inmates at High Desert State Prison attacked defendant, also an inmate, on the prison yard. Defendant was stabbed in the chest. He walked to the stretcher and was taken to the prison trauma center, where he was greeted by two investigating correctional officers and the medical staff, including a nurse who testified at trial.

The nurse testified that after stabilizing defendant she began to take off his shoes, but defendant resisted. She and Officer Fleming asked defendant if he had a weapon in his shoe. Both testified that he told them he did, and in fact, there was a weapon in his shoe. Another officer took a photograph of the weapon in the shoe before booking it.

At trial, defendant denied having a weapon in his shoe. He recounted a number of times when Officer Fleming had told him he "was going to fuck [him] up," to take his children, and to validate him as a gang member. He accused Officer Fleming of taking his personal documents from his cell, including a civil rights complaint defendant had filed against Fleming and paperwork involving his appeal, without giving him a receipt. He also registered a complaint against the nurse when he read her deposition stating she had seen the weapon in his shoe. He explained to the jury that he had been searched before going out onto the yard and that, if he had had a weapon, he would have used it to defend himself in the fight.

Another correctional officer testified that he believed three weapons had been involved in the attack, but he was able to locate only two.

In an attempt to impeach Officer Fleming, the defense informed the court that it planned to call four inmates who would testify that Fleming had fabricated reports or accusations against them. The prosecutor objected. None of the four inmates was a percipient witness to the prison fight or to the discovery of the weapon in defendant's

shoe. One inmate would have testified that Fleming falsified records to validate the inmate as a gang member. A second would have testified that Fleming threatened him and said, “[Y]ou think you are all going to assault my staff and get away with it. I am going to validate you.” The inmate would have testified that Fleming wrote him up even though he was not involved in the incident. A third would have testified that Fleming accused him of engaging in gang activity but he was not within Fleming’s line of vision. And the fourth would have also testified that Fleming falsified a report about his involvement in a type of gang activity because one of his fingers had been amputated and rendered his participation impossible.

Exercising its discretion pursuant to Evidence Code section 352, the trial court excluded the testimony of all four inmates. The court explained that the impeachment evidence would require mini-trials as to “the issue that whether or not the particular inmate was or wasn’t guilty or whether or not Officer Fleming acted properly or improperly.” Had the inmates been percipient witnesses, the court stated, their testimony would have been admitted, but as solely impeachment witnesses, the testimony was excluded under section 352.

DISCUSSION

I

Defendant portrays Officer Fleming as the Darth Vader of High Desert State Prison and the nurse and other correctional officer, both of whom testified they saw the weapon in defendant’s shoe, as his minions. He insists the trial court abused its discretion and denied him his constitutional right to present a defense by excluding the testimony of four inmates who would have established that on multiple occasions Fleming had fabricated accusations or reports to validate them as gang members. Defendant contends that the inability to impeach Fleming emasculated his defense.

A trial court has wide discretion to determine the admissibility of evidence. Evidence Code section 352 provides: “The court in its discretion may exclude evidence

if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” The court’s exercise of discretion under section 352 will not be reversed on appeal absent clear and manifest abuse. (*People v. Tidwell* (2008) 163 Cal.App.4th 1447, 1457 (*Tidwell*)). Thus, to justify appellate intrusion, the court must have exercised its discretion “in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” (*People v. Rodriguez* (1999) 20 Cal.4th 1, 9-10.)

Defendant correctly points out that the calculus shifts if the court’s exercise of discretion under Evidence Code section 352 impedes his right to a fair trial and to present all relevant evidence of significant probative value to his defense. A familiar refrain is that section 352 must bow to due process. “This does not mean that an unlimited inquiry may be made into collateral matters; the proffered evidence must have more than ‘slight-relevancy’ to the issues presented. . . . The proffered evidence must be of some competent, substantial and significant value.” (*People v. Northrop* (1982) 132 Cal.App.3d 1027, 1042, disapproved on other grounds in *People v. Smith* (1984) 35 Cal.3d 798, 807-808.) “ ‘Section 352 permits the trial judge to strike a careful balance between the probative value of the evidence and the danger of prejudice, confusion and undue time consumption. That section requires that the danger of these evils substantially outweigh the probative value of the evidence. This balance is particularly delicate and critical where what is at stake is a criminal defendant’s liberty.’ [Citation.]” (*People v. Burrell-Hart* (1987) 192 Cal.App.3d 593, 599 (*Burrell-Hart*)).

Defendant urges us to find an abuse of discretion on the strength of the court’s analysis in *Burrell-Hart*, *supra*, 192 Cal.App.3d 593. We have no quarrel with the principles of law articulated in *Burrell-Hart* nor to the application of those principles to the facts presented. Sensitive, as are we, to the defendant’s fundamental right to present a defense, the Court of Appeal found the trial court abused its discretion by excluding

evidence that the rape victim had falsely accused another man of rape under circumstances similar to the alleged rape with which the defendant had been charged. It goes without saying that a rape victim's credibility is highly relevant. (*Id.* at pp. 599-600.)

But the appellate court's insights are instructive. "Moreover, since the evidence was to be presented by the testimony of three witnesses, two of whom testified anyway, the presentation of said evidence would not consume an undue amount of time. Nor would the jurors necessarily be confused or misled if they were given the opportunity to compare the circumstances of this case with the Fields incident to determine if the victim lied and would do so again in similar circumstances." (*Burrell-Hart, supra*, 192 Cal.App.3d at p. 600.)

Here defendant sought to impeach one of three percipient witnesses to the discovery of the weapon in his shoe, not, as in *Burrell-Hart*, the sole victim and only percipient witness. We agree with defendant the evidence is relevant to prove the witnesses' credibility. We would not, however, characterize it as highly probative. If a rape victim, under similar circumstances, had falsely accused another man of rape, that evidence would undermine her credibility about the truth of her accusation against the defendant. It would be central to the prosecution's case. Slightly less probative, however, would have been evidence that other inmates suspected Officer Fleming was falsifying reports to validate them as gang members. The issue would invariably devolve into a separate trial on each inmate's allegations and Fleming's denial of the charges leveled at him. Thus, defendant's jury would be charged not only with determining whether he had a weapon in his shoe, but also with determining the truth of each of the four inmates' accusations that Fleming was wrong in amassing evidence that they were involved in gangs.

But conceding that the evidence is relevant does not determine whether the court abused its discretion. Allowing the testimony in *Burrell-Hart* was minimally intrusive.

Indeed, the court expressly observed that two of the three witnesses were going to testify anyway and the testimony would not consume an undue amount of time. Nor was the issue collateral—whether a rape victim had falsely accused another man in the past was a key fact central to her credibility in accusing the defendant of raping her. Here, however, the trial court stressed that the inmates were not percipient witnesses to the commission of the charged offense. Their testimony, though tangentially relevant to Fleming’s credibility, would have necessitated four mini-trials to determine whether the jurors believed the inmates’ accounts or Officer Fleming’s denial. We cannot conclude, as the court did in *Burrell-Hart*, that the trial court’s decision was arbitrary, capricious, or patently absurd. Rather, it was a careful and measured balancing of the probative value of the impeachment evidence and the undue consumption of time it would necessitate to try.

Tidwell, supra, 163 Cal.App.4th 1447 provides a more analogous template. In *Tidwell*, it was not readily apparent that the prior complaints by a rape victim were false. (*Id.* at pp. 1457-1458.) Here, too, Officer Fleming’s conduct in collecting evidence of gang affiliation was hotly contested. We concluded: “Although there was some evidence that R.C. made inconsistent statements, there was no conclusive evidence that her prior rape complaints were false. The defense was unable to obtain evidence from the men that R.C. accused, and inferences could be drawn either way from the circumstances of the prior incidents and R.C.’s statements concerning the incidents. In addition to the weaknesses in the evidence concerning falsity of the rape complaints, admitting the evidence would have resulted in an undue consumption of time as the defense attempted to bolster its view and the prosecution introduced evidence that Crawford had raped another female student. We therefore cannot say that the trial court abused its discretion in excluding the evidence based on the weak nature of the evidence of falsity of the complaints and the confusion of the jury and consumption of time it would have

engendered for the parties to embark on the task of litigating the truthfulness of R.C.’s prior complaints.” (*Id.* at p. 1458.)

Nor did Officer Fleming “open the door” to impeachment by otherwise inadmissible evidence by making sweeping or grandiose statements. (*People v. Robinson* (1997) 53 Cal.App.4th 270, 282; *Andrews v. City and County of San Francisco* (1988) 205 Cal.App.3d 938, 946.) Defendant insists that the trial court erred by excluding the evidence in the same way the trial court erred in *Andrews* at page 947. Not so. In *Andrews*, the police officer volunteered on direct examination that he had developed patience in handling arrestees. (*Andrews*, at p. 945.) His truthfulness and character for patience thus became the foremost issue in the case. (*Id.* at p. 947.) But defendant fails to point to any comparable sweeping assertions by Officer Fleming that were left unchecked or untarnished by the exclusion of the inmates’ testimony.

Defendant’s *Pitchess* motion sought to discover Officer Fleming’s personnel file, including inmate complaints, to demonstrate a “pattern of conduct involving . . . threats, planting evidence, false arrest, falsification of police reports, fabrication of probable cause, false testimony, perjury, dishonesty, and/or the filing of false reports.” (See *Pitchess, supra*, 11 Cal.3d 531.) Following an in camera review of the records, the trial court determined there was “no information or reports that are relevant to the motion.” Defendant requests this court to review the sealed records examined by the trial court to determine whether the trial court abused its discretion by refusing to disclose any other documents in the officers’ files. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228-1229 (*Mooc*)). The Attorney General concurs in the propriety of the request.

We have conducted an independent review of the materials submitted to the trial court and conclude the trial court did not erroneously withhold any documents. (See *People v. Fuiava* (2012) 53 Cal.4th 622, 646-648.) Defendant has failed to demonstrate an abuse of discretion. (*Mooc, supra*, 26 Cal.4th at pp. 1228-1229.)

DISPOSITION

The judgment is affirmed.

_____ RAYE _____, P. J.

We concur:

_____ BLEASE _____, J.

_____ ROBIE _____, J.