

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

CHRISTOPHER ERIC BATRES,

Defendant and Appellant.

E063924

(Super.Ct.No. INF1400950)

OPINION

APPEAL from the Superior Court of Riverside County. W. Charles Morgan, Judge. (Retired Judge of the Riverside Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Susan K. Shaler, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Christine Levingston Bergman and A. Natasha Cortina, Deputy Attorneys General, for Plaintiff and Respondent.

## I

### INTRODUCTION

A jury convicted defendant Christopher Eric Batres of one count of carjacking (count 2, Pen. Code, § 215, subd. (a)<sup>1</sup>) and two counts of unlawfully taking or driving a vehicle (counts 4 and 5; Veh. Code, § 10851).<sup>2</sup> Defendant separately admitted the Penal Code section 666.5 enhancement on counts 4 and 5 for possessing a prior vehicle theft conviction. In a bifurcated proceeding, the trial court found true the allegations that defendant had two strike priors (§§ 667, subds. (c) & (e)(1), 1170.12, subd. (c)(1)), two prior serious felony convictions (§ 667, subd. (a)), and two prison priors (§ 667.5, subd. (b)). The court sentenced defendant to 43 years to life in prison.

Defendant's appeal is entirely based on his contention that his defense counsel at trial did not use or pursue information about a detective's purported falsification of a police report. The record does not support defendant's contention. We affirm the judgment.

## II

### STATEMENT OF FACTS

#### *A. Carjacking of Julio Pimental*

On March 27, 2014, Don Biss was driving down Jackson Street in Indio when Julio Pimental blocked his way by standing in the road, waving his arms. Pimental

---

<sup>1</sup> All statutory references are to the Penal Code unless stated otherwise.

<sup>2</sup> The jury acquitted defendant of kidnapping during the commission of a carjacking (count 1, § 209.5) and simple kidnapping (count 3, § 207, subd. (a)).

appeared “frantic,” “panicking,” and “[s]cared,” and was yelling, “My car.” Biss loaned Pimental his cell phone to call 911 and drove Pimental to a nearby gas station to meet the police. Pimental told the 911 dispatcher and responding officers that two men had entered his car, threatened him with a knife, and forced him to drive to the northern part of the city where they left him.

At trial, Pimental testified differently that he had not been honest with the officers because he wanted the police to retrieve his car for him. He explained he had contacted defendant who agreed to help him obtain false documents so he could work. Instead of helping, however, defendant called his accomplice to join him in the car. Eventually the two cohorts had Pimental stop the car in the desert where they struggled with him for the keys. Pimental believed that defendant and his accomplice wanted his wallet and phone as well as his car. Pimental finally gave up fighting and ran away to get help. Defendant drove away in Pimental’s Nissan Versa. After Pimental flagged down a man in a truck for help, he met a police officer, Nathan Quintana, at a nearby gas station.

Within 15 minutes of Pimental’s 911 call, police detective Jeremy Hellawell observed a Nissan traveling on Avenue 45 and followed it until it turned into a parking lot for the Palo Verde Apartments. Defendant and a woman got out of the car. Hellawell noticed that the car did not have license plate so he was not sure whether it was Pimental’s stolen Nissan. Hellawell approached defendant who denied the car belonged to him and walked away. After Hellawell determined the car had been reported stolen, Hellawell pursued defendant’s female companion who was still in view. In the car,

Hellawell found three backpacks or bags containing court documents and a credit card with defendant's name. Defendant was arrested about a week later.

*B. Car Theft*

Francisco Lopez owned a green Mitsubishi that was stolen from the Fantasy Springs Casino. On April 7, 2014, an Indio police officer spotted a car matching the description of the stolen green Mitsubishi Mirage. He followed it to the La Quinta Springs Apartments and saw defendant driving the car. Defendant was arrested.

III

DISCUSSION

Defendant contends that the trial court violated his state and federal constitutional rights to confront and cross-examine witnesses by precluding defense counsel from asking Detective Hellawell about an alleged false police report. However, defendant forfeited the claim on appeal by failing to object on confrontation grounds. Furthermore, defense counsel did not make a credible offer of proof and any error was harmless beyond a reasonable doubt because of the overwhelming evidence of defendant's guilt. Finally, there was no ineffective assistance of counsel (IAC).

Before trial, defense counsel made three motions for a continuance based on personal medical and family issues and on an assertion that "[d]efense counsel has received information that this officer [Hellawell] falsified a police report in a homicide investigation. Defense counsel will need at least two weeks to file a *Pitchess*<sup>[3]</sup> motion in

---

<sup>3</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

[footnote continued on next page]

a timely manner.” (Italics added.) In his second motion, defense counsel stated he did “not believe a *Pitchess* motion would be granted regarding this information. Defense counsel does believe that this information is *Brady*<sup>[4]</sup> material.” (Italics added.) Therefore, defense counsel planned to subpoena the Indio Police Department but expected “a protracted legal battle” which “will take some time.” In his third continuance motion, defense counsel stated he had served the subpoena on March 18, 2015, and the police department needed a reasonable time to respond. Defense counsel never filed a *Pitchess* motion.

During trial on May 28, 2015, the prosecutor explained to the court that defense counsel had issued a trial subpoena to the Indio Police Department for all documents generated in the last eight years “as a result of Jeremy Hellawell falsifying information on a report submitted by him to the Indio Police Department during his investigation of a homicide case.” Defense counsel said the police department had not responded to the subpoena. Therefore, the prosecutor moved to preclude questioning Detective Hellawell on this issue. The court granted the motion, noting that defense counsel was experienced enough to know how to proceed. Defense counsel made no objections to or argument about the court’s ruling. The reasonable conclusion is defense counsel had ultimately

---

*[footnote continued from previous page]*  
*[footnote continued from previous page]*

<sup>4</sup> *Brady v. Maryland* (1963) 373 U.S. 83.

determined he had no reason to question Detective Hellawell about a purported false report.

*A. Forfeiture*

Because defendant did not object below based upon the confrontation clause, he has forfeited his claim. (*People v. Dykes* (2009) 46 Cal.4th 731, 756; *People v. Raley* (1992) 2 Cal.4th 870, 892.) To the extent defendant argues that the trial court's rulings violated his federal constitutional rights to due process and a fair trial, such claims are forfeited on appeal for failure to object on those specific grounds at trial. (*People v. Crittenden* (1994) 9 Cal.4th 83, 126; *People v. Rodrigues* (1994) 8 Cal.4th 1060, 1192-1193; *People v. Mattson* (1990) 50 Cal.3d 826, 854; *People v. Rogers* (1978) 21 Cal.3d 542, 547-548.)

*B. Abuse of Discretion*

Notwithstanding the forfeiture, there was no good faith basis on which to impeach Detective Hellawell. Both the California and federal Constitutions guarantee the right of an accused in a criminal prosecution to confront (and impeach) the witnesses against him. (U.S. Const., 6th & 14th Amends.; Cal. Const., art. I, § 15; *Delaware v. Van Arsdall* (1986) 475 U.S. 673, 678; *Davis v. Alaska* (1974) 415 U.S. 308, 316; *People v. Quartermain* (1997) 16 Cal.4th 600, 623.) But not every restriction on a defendant's desired method of cross-examination is a constitutional violation. (*People v. Chatman* (2006) 38 Cal.4th 344, 372.) The trial court "retains wide latitude in restricting cross-examination that is repetitive, prejudicial, confusing of the issues, or of marginal relevance. [Citations.]" (*People v. Frye* (1998) 18 Cal.4th 894, 946, disapproved on

other grounds by *People v. Doolin* (2009) 45 Cal.4th 390; *People v. King* (2010) 183 Cal.App.4th 1281, 1316.) And, absent a showing by defendant that the prohibited cross-examination would have produced ““a significantly different impression of [the witnesses’] credibility”” (*Delaware v. Van Arsdall, supra*, 475 U.S. at p. 680), there is no confrontation clause violation. (*Frye*, at p. 946.) The defendant’s confrontation rights are not violated as long as the jury has had an opportunity to assess the witness’s demeanor and credibility. (*People v. Homick* (2012) 55 Cal.4th 816, 861.)

Here, the trial court acted within its discretion in precluding cross-examination of Detective Hellowell about an allegedly false police report when there was no reason for such questioning and it would not have produced a significantly different impression of the detective’s credibility concerning his interactions with the victim. The only information presented to the court was that defense counsel had unsuccessfully issued a subpoena to the Indio Police Department for documents related to a false police report by Hellowell. Further, although defense counsel contemplated filing a *Pitchess* motion, he never did so. Again, the only reasonable inference is that defense counsel did not have a good faith basis to believe the detective had made a false police report.

Defendant argues the trial court mistakenly based its ruling on the fact that defense counsel had not filed a *Pitchess* motion. The record reflects, however, that the court simply commented that defense counsel was experienced enough to recognize there was no basis for a *Pitchess* motion.

Although Detective Hellowell was the only officer to testify Pimental was afraid to identify defendant, defendant does not show that the proposed cross-examination would

have produced a significantly different impression of the detective's credibility concerning his interactions with Pimental or otherwise because Detective Hellawell's version was thoroughly corroborated by other evidence. Detective Hellawell's summary of what Pimental told him about the carjacking was consistent with Officer Quintana's account. Pimental's identification of defendant in a six-pack was amply corroborated by other evidence including Pimental's trial testimony, Pimental's identification of defendant at trial, the presence of defendant's belongings in Pimental's car, and defendant's other vehicle theft offense.

Before identifying defendant, Pimental told Detective Hellawell that he knew "how dangerous the streets can be and feared for retaliation, and made specific comments about Cartels are known to hurt people that testify in court." Pimental also said that he was in fear for his family as well as himself. These general statements did not relate specifically to defendant. Instead, Pimental repeatedly testified that he was afraid to be in court because "of the situation that's outside. A lot of problems. The robberies and deaths and everything, murders and everything."

Not only was Detective Hellawell corroborated in every material respect but the court also allowed the defense to cross-examine the detective fully. The exclusion of an unsupported suggestion that the detective falsified a police report in the past, in another case, does not rise to a confrontation clause violation: "The trial court's sustaining of this single question did not violate the Sixth Amendment under this standard." (*People v. Hillhouse* (2002) 27 Cal.4th 469, 494.) Given the overwhelming evidence of defendant's guilt, defendant cannot show that the prohibited cross-examination would have produced

a significantly different impression of Detective Hellowell's credibility. Accordingly, there was no confrontation clause violation.

*C. Harmless Error*

Any error is harmless beyond a reasonable doubt under the more stringent federal standard: "The correct inquiry is whether, assuming that the damaging potential of the cross-examination were fully realized, a reviewing court might nonetheless say that the error was harmless beyond a reasonable doubt. Whether such an error is harmless in a particular case depends upon a host of factors, all readily accessible to reviewing courts. These factors include the importance of the witness' testimony in the prosecution's case, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness on material points, the extent of cross-examination otherwise permitted, and, of course, the overall strength of the prosecution's case." (*Delaware v. Van Arsdall*, *supra*, 475 U.S. at p. 684; see *People v. Rodriguez* (1986) 42 Cal.3d 730, 750-751.)

The case against defendant was very strong. His belongings were found in Pimental's car. Despite disavowing the kidnapping aspect of the charges, Pimental identified defendant as the carjacker both in the photo lineup and at trial. Defendant committed a separate vehicle theft. Additionally, Detective Hellowell's testimony was cumulative and thoroughly corroborated in all material respects and he was otherwise subject to full cross-examination. No prejudicial error was shown.

#### D. *Pitchess Motion and IAC*

Finally, defendant urges it was IAC not to file a *Pitchess* motion. However, defense counsel's decision not to file a *Pitchess* motion was reasonable and there was no prejudice. In order to establish IAC, defendant must show that trial counsel's performance fell below an objective standard of reasonableness, and, as a result, he suffered prejudice. If there is insufficient evidence of prejudice, a reviewing court may dispose of an ineffectiveness claim without first determining whether counsel's performance was deficient. (*Strickland v. Washington* (1984) 466 U.S. 668, 697.)

An appellate court must "indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." (*Strickland v. Washington, supra*, 466 U.S. at pp. 687-694.) Trial counsel's performance is deemed reasonably competent unless the record does not provide an explanation for his performance, or "there simply could be no satisfactory explanation." (*People v. Lopez* (2008) 42 Cal.4th 960, 966.)

Defendant must also demonstrate that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." (*Strickland v. Washington, supra*, 466 U.S. at p. 694; *In re Avena* (1996) 12 Cal.4th 694, 721.)

Here defense counsel was aware of the *Pitchess* procedure for obtaining an officer's personnel file and of the significance of a possible false police report. Defense counsel twice mentioned filing a *Pitchess* motion when requesting continuances and

discussed it with the court. Although it may not be expressly articulated, it is obvious from the record that defense counsel decided not to file a *Pitchess* motion because he did not think it would have merit. Since defense counsel twice represented that he was investigating the issue yet chose not to file a *Pitchess* motion, it also seems reasonable to conclude that his investigation did not uncover any further information—consistent with defense counsel’s representation that the information he sought constituted *Brady* material.

In view of the wealth of evidence against defendant and corroborating Detective Hellawell’s testimony, defense counsel could have reasonably determined that any *Pitchess* motion would be unsuccessful and would not have affected the verdict. Similarly, defendant cannot establish prejudice and IAC.

#### IV

#### DISPOSITION

We hold the trial court did not abuse its discretion and there was no prejudicial error. We affirm the judgment.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON

J.

We concur:

HOLLENHORST

Acting P. J.

MILLER

J.

