

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.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
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JASON BRYANT,

Defendant and Appellant.

F069403

(Super. Ct. No. BF152591A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. John W. Lua, Judge.

Paul Stubb, Jr., under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Catherine B. Chatman and Harry Joseph Colombo, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

* Before Gomes, Acting P.J., Detjen, J. and Franson, J.

Defendant Jason Bryant was convicted by jury trial of first degree burglary (Pen. Code, § 460, subd. (a);¹ count 1), possession of stolen property (§ 496, subd. (a); count 2), attempting to resist and take a weapon from a peace officer while engaged in the performance of his duties (§§ 148, subd. (b), 664; counts 3 & 4), resisting or obstructing a peace officer while engaged in the performance of his duties (§ 148, subd. (a)(1); count 5), and presenting false identification to a peace officer (§ 148.9, subd. (a); count 6). The trial court sentenced Bryant to a total of six years eight months. On appeal, he requests that we independently review the records reviewed by the trial court on his *Pitchess*² motion and determine whether the trial court ordered all relevant materials disclosed. We affirm.

FACTS

On October 15, 2013, at about 11:00 a.m., a woman observed Bryant and another black male kick in the front door of her neighbor's house in Bakersfield. The woman called the police and described the two males. Bakersfield Police Officer Marc Lugo responded to the burglary in progress dispatch and detained Bryant. When Bryant put his hand into his jacket pocket and held an unknown object, Officer Lugo drew his handgun and pointed it at Bryant. He ordered Bryant to show his hands and he complied. But as Officer Lugo holstered his gun, Bryant took off running. Officer Lugo chased him and repeatedly commanded him to stop as he ran through a yard and jumped a fence, causing Officer Lugo to briefly lose sight of him.

Officer Christopher Messick joined the foot pursuit when he saw Bryant running across a road. He ordered Bryant to stop, but Bryant kept running. Officer Messick

¹ All statutory references are to the Penal Code.

² A *Pitchess* motion is a motion for discovery of a peace officer's confidential personnel records. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*)).

chased him as he jumped a fence and entered a backyard. Bryant entered a shed in the backyard and hid behind the partially open door. When Officer Messick entered the shed, Bryant shut the door, blocking out the light. Bryant tried to move past Officer Messick, who then used his baton to strike Bryant's legs, attempting to subdue him. Officer Messick pushed Bryant up against the wall. Bryant pushed back and continued to try to move past Officer Messick. Officer Messick continued to attempt to strike his legs and repeatedly shouted at him to quit resisting. Bryant repeatedly shouted, "Fuck you."

About 20 to 30 seconds after Officer Messick entered the shed, Officer Lugo entered to assist him. Bryant kept flailing his arms and legs around. Bryant grabbed Officer Messick's baton, pulling Officer Messick's body forward as he did. Officer Messick pulled the baton from Bryant's grasp with both hands and threw it into the corner of the shed. The two officers were able to remove Bryant from the shed and take him into custody as he continued to struggle. Bryant provided a false name to the officers.

Defense Evidence

Bryant's aunt testified that she saw an officer in her backyard. As she went outside, she heard the officer tell Bryant to get down. Bryant was holding his hands up when an officer struck him. Another officer yelled at Bryant and hit him with a baton. Bryant was not resisting the officers. The aunt became irate and yelled at the officers. An officer then hit and injured her.

Bryant testified that an officer stopped him for no reason as he was walking to his aunt's house, where he lived. The officer jumped out of the patrol car and pointed a gun at him. He put his hands up, but he was very afraid, so he turned and ran. He ran to his aunt's house and went into the shed. An officer entered the shed and hit him with a baton as he cried out in pain and screamed for the officer to get away from him. He did not try to take the baton; he only tried to block the baton's blows, one of which struck him in the

head. A second officer entered the shed and pulled him out. Bryant denied giving the officers a false name; he claimed his aunt did it. He also denied having been in the company of another male or entering the burgled house that morning.

DISCUSSION

Before trial, Bryant made a *Pitchess* motion requesting disclosure of Officer Lugo's and Officer Messick's personnel records relevant to lack of credibility, acts of moral turpitude, dishonesty, unbecoming conduct, neglect of duty, and excessive force. The trial court conducted an in camera hearing and ordered some material disclosed.

“A criminal defendant has a limited right to discovery of a peace officer's personnel records. [Citation.] Peace officer personnel records are confidential and can only be discovered pursuant to Evidence Code sections 1043 and 1045.” (*Giovanni B. v. Superior Court* (2007) 152 Cal.App.4th 312, 318.) “[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] 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.” [Citation.] ... If the defendant establishes good cause, the court must review the requested records in camera to determine what information, if any, should be disclosed. [Citation.] Subject to certain statutory exceptions and limitations [citation], “the trial court should then disclose to the defendant “such information [that] is relevant to the subject matter involved in the pending litigation.”” (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

A trial court's decision on a *Pitchess* motion is reviewed under an abuse of discretion standard. (*People v. Prince* (2007) 40 Cal.4th 1179, 1285.) The exercise of that discretion “must not be disturbed on appeal *except* on a showing that the court exercised its discretion in an arbitrary, capricious or patently absurd manner that resulted

in a manifest miscarriage of justice.” (*People v. Jordan* (1986) 42 Cal.3d 308, 316.) We review the record for “materials so clearly pertinent to the issues raised by the *Pitchess* discovery motion that failure to disclose them was an abuse of *Pitchess* discretion.” (*People v. Samayoa* (1997) 15 Cal.4th 795, 827.) The record of the trial court’s in camera hearing is sealed, and appellate counsel are not allowed to see it. (See *People v. Hughes* (2002) 27 Cal.4th 287, 330.) Thus, on request, the appellate court must independently review the sealed record. (*People v. Prince, supra*, at p. 1285.)

We have reviewed the file of confidential records and the transcript of the in camera hearing, and we have found no abuse of discretion committed by the trial court in its choice of which records to disclose and which not to disclose. The court appropriately disclosed the records relevant to the litigated matter.

DISPOSITION

The judgment is affirmed.