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Court of Appeal, Second District, California.

The PEOPLE, Plaintiff and Respondent,

v.

Federico MURATALLA, Defendant and Appellant.

No. B192446.

(Los Angeles County Super. Ct. No. NA065195).

Dec. 17, 2007.

APPEAL from a judgment of the Superior Court of Los Angeles County, [Gary J. Ferrari](#), Judge. Affirmed.

Cheryl Barnes Johnson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, [Dane R. Gillette](#), Chief Assistant Attorney General, [Pamela C. Hamanaka](#), Senior Assistant Attorney General, [Susan D. Martynec](#) and Kenneth N. Sokoler, Deputy Attorneys General, for Plaintiff and Respondent.

[WOODS](#), J.

*1 Federico Muratalla entered a negotiated plea of no contest to possession of methamphetamine with a firearm and admitted he had suffered a prior violent or serious felony conviction within the meaning of the “Three Strikes law.” Pursuant to the plea agreement, Muratalla was sentenced to six years in state prison. On appeal, Muratalla contends the trial court erred in denying his motion to suppress evidence and abused its discretion in partially denying his motion to discover police personnel records ([Evid.Code, §§ 1043, 1045](#); [Pitchess v. Superior Court \(1974\) 11 Cal.3d 531](#) (*Pitchess* motion)). We conclude the denial of the motion to suppress was supported by substantial evidence, and Muratalla was not prejudiced by the trial court's ruling on his *Pitchess* motion.

FACTUAL AND PROCEDURAL BACKGROUND

1. Summary of Suppression Hearing Evidence

a. Prosecution evidence

Los Angeles Police Officers Daniel Robbins and Mark Maldonado were on routine patrol when they followed Muratalla, a known gang member, into an alley intending to arrest him on an outstanding warrant. Muratalla stopped his car and walked up to a gate, ignoring the officers commands to stop. Robbins attempted to handcuff Muratalla, who resisted and lunged through the gate into a backyard. Inside the backyard was a house and detached garage that had been converted into a residence with surveillance cameras mounted on the eaves. After a brief struggle, Officer Robbins handcuffed Muratalla, searched his pockets, and discovered bags of methamphetamine and over \$2,000 in cash, prompting Robbins to radio for the assistance of narcotics officers. Muratalla was placed in the backseat of the patrol car.

Officers Robbins and Maldonado each spoke to Muratalla's girlfriend, who had been in the car with Muratalla and their young son. Neither officer threatened to arrest the girlfriend or to have the Department of Children and Family Services (DCFS) take custody of the son unless Muratalla fully cooperated with a narcotics investigation.

Narcotics Officer Trevor Larsen arrived and interviewed Muratalla in the backseat of the patrol car. Officers Robbins and Maldonado remained outside by the open car window. Larsen explained to Muratalla that having found the methamphetamine, officers would now “like permission to search” Muratalla's residence, the converted garage.^{FN1} Muratalla answered, “Yes.” Larsen requested Muratalla's consent in writing, handed him a consent to search form, and asked that Muratalla “look over this form and sign it.” Muratalla's handcuffs were removed, and he signed the consent form. Larsen could not recall Muratalla asking any questions about the form.

^{FN1}. According to Officer Larsen, after Muratalla was advised of his right to remain silent, to the presence of an attorney and, if indigent, to appointed counsel (*Miranda v. Arizona* (1966) 384 U.S. 436), Muratalla signed a form waiving those rights and told the officers he lived in the converted garage and there were drugs, a shotgun, and a handgun inside his residence. During the ensuing search of Muratalla's residence, police seized these items, which were the subject of Muratalla's motion to suppress. Officer Larsen testified that he never overheard Officers Robbins or Maldonado threaten to arrest Muratalla's girlfriend or to contact DCFS to take custody of Muratalla's son. Larsen did not recall whether the girlfriend was in handcuffs when he arrived. At no time did Muratalla object to the search of his residence or tell officers to stop the search.

b. Defense evidence

*2 Irene Dorame, Muratalla's girlfriend, testified that she and her three children, including Muratalla's one-year-old son, were with Muratalla in his car. When Muratalla got out of the car in the alley to open the gate, he was tackled by Officers Robbins and

Maldonado. Robbins repeatedly searched Dorame's purse and questioned her about Muratalla. When Dorame insisted she did not know anything, the officers threatened to have DCFS take custody of her children. One of the officers appeared to be calling DCFS on the telephone. Robbins and Maldonado demanded to know what was inside Muratalla's residence and again threatened to have her children placed in DCFS custody. At this point, Muratalla's son was allowed to leave with Muratalla's sister-in-law; Dorame's other two children soon followed. As Dorame was crying, Robbins handcuffed her, used profanity, threatened her with jail, and placed her in the patrol car. Robbins and Maldonado then talked with Muratalla for about 20 minutes, and he signed a piece of paper.

Nancy Parilla, Muratalla's sister-in-law, testified when she saw Dorame and the children with police, she decided to offer to take Muratalla's son and overheard one officer say that he was going to telephone DCFS. The officer made this statement to another officer; he was not speaking to either Muratalla or Dorame at the time. After requesting permission from the officers, Parilla was allowed to leave with Muratalla's son.

Muratalla testified in his own defense that he was driving home with Dorame, their one-year-old son, and Dorame's other two children. When Muratalla left his car to open the gate, he was tackled and slammed to the ground by Officers Robbins and Maldonado. Muratalla suffered various resulting injuries, including scraped and bleeding arms, knees, and elbows as well as back pain, that he was still experiencing at the time of the suppression hearing. Muratalla was handcuffed, taken to the front of the patrol car and searched while Dorame and two of the children were standing nearby. Robbins attempted to open the locked front door and one of the windows of Muratalla's residence. Maldonado said they "had" to search the residence, but Muratalla insisted they needed a search warrant, and he refused to consent to the search. While Maldonado was talking to Muratalla, Robbins was speaking to Dorame and searching her purse.

Muratalla testified the two officers separately and repeatedly demanded he consent to search his residence. They raised their voices and used profanity. When Muratalla steadfastly refused to give his consent, the officers began "playing the mind games on [him]." They threatened to plant the recovered methamphetamine on Dorame and to have DCFS take custody of the children. By this time Dorame was handcuffed and visibly upset. Muratalla did not want her to be blamed for something he had done.

Muratalla testified that he did not feel compelled to give his consent by Officers Robbins and Maldonado's numerous demands to search his residence and repeated threats to Dorame. It was when a third (unknown) officer "pretended" to telephone DCFS that he felt he had to comply, believing his girlfriend and son would be taken away unless he signed the consent to search form.

*3 Dr. Richard Leo, a social scientist and professor of criminology and psychology at the University of California at Irvine, testified for the defense. Leo has spent years studying police interrogation techniques and had authored numerous articles on the topic. He had also observed numerous interrogations and had qualified as an expert on the subject of

both coerced and false confessions. According to Leo, police interrogators receive specialized training in the use of numerous tactics and techniques designed to overcome a suspect's resistance and elicit a statement or admission. Among these tactics and techniques are explicit or implicit threats to induce compliance. Leo opined that threatening to arrest a suspect's girlfriend or to have the suspect's child removed in order to gain access to the suspect's residence would qualify as coercive threats. Such threats, if used to gain consent, would also affect the suspect's subsequent perceptions about whether the suspect should make statements during an interrogation. Officer Maldonado testified that neither he nor Officer Robbins threatened to arrest Dorame, or to contact DCFS to take custody of Muratalla's son. Nor had he ever before made similar threats to anyone.

Jessica Gutierrez testified that on two separate occasions she encountered Officer Maldonado when she was in her car and he was in his patrol car. Both times Maldonado asked her personal questions and never ticketed her.

Antonio Aguilar testified that Officer Maldonado found a gun under Aguilar's apartment and threatened to have DCFS take custody of Aguilar's children if he did not reveal who owned the gun.

c. The trial court's findings

After the hearing concluded, defense counsel moved to suppress the evidence seized from Muratalla's residence as the fruit of a nonconsensual search. Counsel argued the officers had employed such tactics as threatening to have Muratalla's son taken by DCFS and handcuffing Dorame to coerce Muratalla to give oral and written consent to search.

After listening to counsels' argument and reviewing the suppression hearing transcript, the trial court denied the motion, determining that under the totality of circumstances, Muratalla's consent to search was voluntary. The court found that assuming the officers had discussed the possibility of having DCFS take custody of the children and had handcuffed Dorame in Muratalla's presence, such conduct did not induce Muratalla "to do something that he otherwise might not have done." The court noted that it would have found Muratalla's consent to have been involuntary had the officers said to Muratalla that his son would be removed by DCFS and his girlfriend would be arrested unless he agreed to the search of his residence. But in the absence of such a direct threat by the officers, the trial court concluded that Muratalla's consent was obtained without police coercion.

2. *The Pitchess Motion*

Muratalla filed a motion for discovery of *Pitchess* material seeking personnel records for Officers Robbins and Maldonado, requesting any and all documents recording any instance of misconduct, including but not limited to "acts of dishonesty or aggressive behavior, violence, excessive force, or attempted violence or excessive force." Among

the documents attached to the motion were the arrest report and the completed consent to search form.

*4 In support of the motion, defense counsel filed a declaration stating he was informed and believed that, “Without warning Officers Robbins and Maldonado came from behind [Muratalla], threw him to pavement [sic], thus causing him to suffer abrasions on his arms and legs. Officer Robbins then issued a false police report when he claimed that [Muratalla] ‘refused to comply with [their] commands,’ thus warranting their violence on him.” Defense counsel stated the described discovery was being sought to locate witnesses to testify that the officers customarily committed “unnecessary acts of aggressive behavior, acts of violence or attempted violence, or acts of excessive force or attempted force” and these “character traits” were “relevant to show the officers’ propensity to engage in excessive force and dishonesty, and that the officers engaged in such conduct in this case.” Counsel also stated the discovery would be used to cross-examine and to impeach the testimony of the officers.

At the hearing on the *Pitchess* motion, the city attorney urged there was a lack of good cause for an in camera review of any personnel records unrelated to dishonesty; that any records concerning the use of excessive force by Officers Robbins and Maldonado were irrelevant to the pending charges. The trial court agreed and asked defense counsel to explain the materiality of any purported use of excessive force by the officers in this case. The following exchange occurred between the trial court and defense counsel:

“[COUNSEL]: If I may, the issue of aggressiveness, while the court may not see it at this moment, there is an issue in this particular case as to whether my client gave voluntary consent. There is a claim by the police that my client wrote out almost like an affidavit allowing them consent to enter into this garage where they found other things. Their behavior in this particular case and their aggressive behavior, all right, plays into that because it's a situation where my client is in the car with his girlfriend and his child, he's thrown to the ground, his girlfriend is threatened and his child is-my client is being told that his child is going to be taken away from him. This is aggressive behavior by these police officers.”

“THE COURT: Let's assume this, what does it have to do with the allegation he's charged with possession-couple counts of possession of a firearm, possession of dope, narcotics? I don't see-what's the materiality of the relevance of the excessive force?”

“[COUNSEL]: Firearms are the byproduct of the consent alleging voluntary consent form given by my client but that's vitiated by the fact these officers used aggressive, forceful tactics in order to get the consent. Example of that, they throw him down. Unbeknownst to him they creep up behind him while he's opening the gate, throw him down. He's scraped up, he has abrasions on him. I think that goes to the issue which is later on being presented maybe not in this position right now but the issue involving consent whether it was voluntary or not aggressive force is a factor in determining whether it was voluntary or not.”

*5 “THE COURT: Well, I don't see it.”

The trial court granted Muratalla's *Pitchess* motion for the requested personnel records relating to dishonesty, but not to excessive force, and immediately conducted an in camera review of the relevant personnel records of Officers Robbins and Maldonado.

DISCUSSION

1. *Substantial Evidence Supports the Denial of the Motion to Suppress*

In reviewing the ruling on a motion to suppress, the appellate court defers to the trial court's factual findings, express or implied, when supported by substantial evidence. ([People v. Brendlin \(2006\) 38 Cal.4th 1107, 1113](#); [People v. Ayala \(2000\) 23 Cal.4th 225, 255](#); [People v. James \(1977\) 19 Cal.3d 99, 107](#).) The power to judge credibility, weigh evidence and draw factual inferences is vested in the trial court. (*James*, at p. 107.) In determining whether, on the facts found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment. (*Brendlin* at p. 1113; [People v. Ramos \(2004\) 34 Cal.4th 494, 505](#) ^{FN2}.)

^{FN2}. Whether relevant evidence obtained by assertedly unlawful means must be excluded is determined exclusively by deciding whether its suppression is mandated by the federal Constitution. ([Cal. Const., art. I, § 28](#), subd. (d); [In re Randy G. \(2001\) 26 Cal.4th 556, 561-562](#); [In re Lance W. \(1985\) 37 Cal.3d 873, 885-890](#).)

“The Fourth Amendment protects an individual's reasonable expectation of privacy against unreasonable intrusion on the part of the government. A warrant is required unless certain exceptions apply, including the exception that permits consensual searches. [Citations.]” ([People v. Jenkins \(2000\) 22 Cal.4th 900, 971](#).) A consent to search must be voluntary. (*Id.* at p. 973.) Whether consent was given voluntarily or was the product of coercion on the part of the searching officers is a question of fact to be determined from the totality of the circumstances. (*Ibid.* citing [Schneckloth v. Bustamonte \(1973\) 412 U.S. 218, 227 \[93 S.Ct. 2041, 2048-2049, 36 L.Ed.2d. 854\]](#).) The People have the burden of establishing by a preponderance of the evidence that a defendant gave consent and that his consent “was the product of his free will and not a mere submission to an express or implied assertion of authority.” ([People v. James, supra, 19 Cal.3d 99, 106](#); see also p. 106, fn. 4 [standard of proof is preponderance of the evidence].)

In denying the suppression motion, the trial court found: (1) the officers discussing the potential need to contact DCFS and handcuffing Dorame did not contribute to Muratalla's giving consent; and (2) Muratalla's consent was voluntary because he was not directly threatened with the removal of his son and the arrest of his girlfriend unless he agreed to the search of his residence.

As the parties agreed, the issue of whether Muratalla's consent to search his residence was voluntary or coerced turned on witness credibility, the exclusive province of the trial court hearing the motion. ([In re Arturo D. \(2002\) 27 Cal.4th 60, 77](#).) While nothing in

the testimony of Officers Robbins or Larsen suggests that Muratalla's oral or written consent was involuntary or coerced by police, of greater significance is that the testimony of defense witnesses supports the trial court's findings. According to Nancy Padilla's testimony, officers at the scene spoke only to each other about possibly contacting DCFS, and shortly thereafter, they allowed Padilla to leave with Muratalla's son. Although Dorame claimed the officers repeatedly threatened to have DCFS take custody of her children at the scene, she acknowledged during her testimony that Muratalla's sister-in-law was permitted to take Muratalla's son with her. Finally, Muratalla testified during direct examination that the officers' purported demands for his consent and threats to arrest his handcuffed and visibly shaken girlfriend did not induce him to agree to the search of his residence. Substantial evidence supports the trial court's findings that Muratalla's consent to search his residence was freely and voluntarily given.

2. Muratalla Was Not Prejudiced By the Trial Court's Ruling On the Pitchess Motion

*6 When a defendant claims an officer has engaged in misconduct that provides a defense to the charges against the defendant, the defendant may file a *Pitchess* discovery motion seeking information from the officer's personnel file regarding similar complaints of misconduct against the officer. ([Pen.Code, §§ 1043, 1045](#); see [California Highway Patrol v. Superior Court \(2000\) 84 Cal.App.4th 1010, 1019.](#)) A trial court has wide discretion when ruling on a *Pitchess* discovery motion. ([People v. Memro \(1995\) 11 Cal.4th 786, 832.](#)) However, a trial court's exercise of its discretion is not unlimited and must be governed by the controlling legal principles. (See [People v. Superior Court \(Alvarez\) \(1997\) 14 Cal.4th 968, 977.](#)) 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.](#))

To obtain in camera review of an officer's personnel records for information relevant to claimed officer misconduct, the defendant must make a showing of good cause for the discovery. ([Evid.Code, § 1043](#), subd. (b)(3).) To show good cause, a defendant must demonstrate both that a “specific factual scenario” establishing a “plausible factual foundation” for the purported officer misconduct ([City of Santa Cruz v. Municipal Court \(1989\) 49 Cal.3d 74, 85-86; California Highway Patrol v. Superior Court, supra, 84 Cal.App.4th at p. 1020.](#)) and that the misconduct would (if credited) be material to the defense ([Warrick v. Superior Court \(2005\) 35 Cal.4th 1011, 1016.](#)) *Warrick* clarified the materiality element obligates the defendant to establish a logical link between the pending charge and the proposed defense and to articulate how the requested discovery is to support the proposed defense. (*Id.* at p. 1021.) Accordingly, defense counsel's supporting declaration must propose a defense, and articulate how the requested discovery may be admissible as direct or impeachment evidence in support of the proposed defense, or how the requested discovery may lead to such evidence. (*Id.* at p. 1024.)

Muratalla contends the trial court abused its discretion by denying his discovery request for *Pitchess* information bearing on the use of excessive force by Officers Robbins and Maldonado. Muratalla argues, as his counsel did at the hearing, that such information is

material to his defense because his consent to search was coerced by the officers' "aggressive, forceful tactics." After tackling and arresting Muratalla, the officers threatened to turn over his son to DCFS and to arrest Dorame unless Muratalla consented to the search of his residence.

There is considerable doubt that Muratalla's motion and supplemental argument at the hearing were sufficient to satisfy even the "relatively low threshold" for an in camera review articulated by the California Supreme in *Warrick* with respect to his request for *Pitchess* information relating to the officers' use of excessive force. However, even if they did, given the assumption of the trial court-that officers discussed contacting DCFS and Dorame was handcuffed-as a predicate to determining that Muratalla's consent was voluntary, there is no reasonable probability that information from an in camera review would change the outcome. At most, any such information would serve to reinforce Muratalla's credibility that the officers acted as the court assumed they did when it denied the motion to suppress. Therefore, even assuming Muratalla had established good cause for the requested discovery, the failure to conduct an in camera review is harmless under the circumstances. (See [People v. Memro \(1985\) 38 Cal.3d 658, 684](#) [Any error in denying defendant's *Pitchess* motion is subject to harmless error analysis].).

DISPOSITION

*7 The judgment is affirmed.

We concur: [PERLUSS](#), P.J., and [ZELON](#), J.

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