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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CITY OF FULLERTON, Petitioner, v. THE SUPERIOR COURT OF ORANGE COUNTY, Respondent; THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest.	G046093 (Super. Ct. No. 09NF3198) O P I N I O N

Original proceedings; petition for a writ of mandate/prohibition to challenge an order of the Superior Court of Orange County, Richard M. King, Judge. Petition granted.

Jones & Mayer and Gregory P. Palmer for Petitioner.

No appearance for Respondent.

Tony Rackauckas, District Attorney, and Gregory J. Robischon, Deputy District Attorney, for Real Party in Interest.

THE COURT:*

Defendant Pedro Roman and the Orange County District Attorney's Office filed discovery motions pursuant to Evidence Code sections 1043 and 1045 (known and referred to as a *Pitchess*[1] motion) to compel discovery of the personnel records of Fullerton police officers. The trial court granted the *Pitchess* motions and petitioner, the City of Fullerton, representing the police department, filed a petition for a writ of mandate/prohibition complaining the custodian of records was ordered to disclose information from two incidents in 2009 (PSB 2009-64 and 2009-129) that were not relevant to the issues of dishonesty or excessive force, and also ordered to disclose the entire reports from an incident in 2010 and 2011 (PSB 2010-122 and 2011-20). We find no merit to the first issue raised by petitioner, but agree the trial court erred by ordering the entire reports disclosed in PSB 2010-122 and 2011-20, beyond the initial contact information of the complainants and witnesses.[2]

FACTS

Defendants Pedro Roman, Hector Hernandez, and Mario Jorge Perez, are charged in an information with second degree robbery, carrying a loaded firearm, and street terrorism. Gang and firearm enhancements are also alleged and in preparation for trial, Roman filed a discovery motion pursuant to Evidence Code section 1043 seeking information from the personnel records of Fullerton police officers Edward Lemoine and

* Before Bedsworth, Acting P. J., O'Leary, J., and Fybel, J.
1 (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.)
2 We summarily deny all other claims raised in the petition.

Vincent Mater. Roman's codefendants joined the motion, and because Mater has the dubious distinction of being on the district attorney's "*Brady* List," the district attorney's office also filed a *Pitchess* motion as to Mater, whose employment has since been terminated by the Fullerton Police Department.

Initially, the trial court granted the *Pitchess* motion only as to Officer Mater. However, during the in camera review of Mater's personnel file, the trial court reconsidered its previous ruling denying the *Pitchess* motion with respect to Lemoine, and granted the motion as to Lemoine as well. At the conclusion of the in camera hearing into the officers' personnel records, the trial court ordered the custodian of records to disclose the contact information of the complainants in the 2009 reports. After redacting the findings and conclusions from the 2010 and 2011 reports, the trial court ordered the custodian of records to disclose the entire reports in PSB 2010-122 and PSB 2011-20.

Petitioner filed a petition for a writ of mandate or prohibition seeking a peremptory writ in the first instance to vacate the trial court's order disclosing information from the 2009 incidents, and to limit the information disclosed in PSB 2010-122 and 2011-20 to the discipline imposed and the names, addresses, and telephone numbers of the complainants and witnesses in the report. This court stayed respondent court's order only as to the disclosure of information beyond the names, telephone numbers, and addresses of witnesses in PSB 2010-122 and PSB 2011-20, and invited real party to file an informal response. (*Palma v. U.S. Industrial Fasteners, Inc.* (1984) 36 Cal.3d 171, 180.) Although the People are the only real party listed in the petition, the prayer is not limited to the People and seeks to vacate respondent court's order on November 15, 2011. Accordingly, this court also invited defendants Roman, Hernandez, and Perez to file an informal response as well. However, despite the invitation, only the district attorney's office filed a response and concedes petitioner's contention that the trial court erroneously ordered the release of the entire 2010 and 2011 reports has merit.

A trial court's ruling on a *Pitchess* motion is based on the trial court's sound discretion and is reviewable for abuse. (*Alford v. Superior Court* (2003) 29 Cal.4th 1033, 1039.) "When a trial court's decision rests on an error of law, that decision is an abuse of discretion." (*People v. Superior Court* (*Humberto S.*) (2008) 43 Cal.4th 737, 746.)

DISCUSSION

Evidence Code section 1043 states that upon a showing of good cause, a trial court is required to conduct an in camera hearing into a peace officer's personnel records and disclose relevant information as defined in Evidence Code section 1045, subdivision (b). Although "not required by the statutory scheme, [ ] 'courts have generally refused to disclose verbatim reports or records of any kind from peace officer personnel files, ordering instead . . . that the agency reveal only the name, address and phone number of any prior complainants and witnesses and the dates of the incidents in question. [Citations.]' [Citation.]" (*Alvarez v. Superior Court* (2004) 117 Cal.App.4th 1107, 1112 (*Alvarez*).) This judicially created rule generates an additional layer of protection by "impos[ing] a further safeguard to protect officer privacy where the relevance of the information sought is minimal and the officer's privacy concerns are substantial." (*Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1090 (*Haggerty*); *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1019.) However, should the initial contact information prove to be inadequate, the defendant can move for further discovery to prepare his case, (*Kelvin L. v. Superior Court* (1976) 62 Cal.App.3d 823, 828-829 (*Kelvin L.*)) and "the practice of disclosing only the name of the complainant and contact information must yield to the requirement of providing sufficient information to prepare for a fair trial." (*Alvarez* at p. 1112.)

In this case, after almost two years in custody, Roman filed a *Pitchess* motion two months before the start of trial.[3] During the in camera hearing into the officers' personnel records, the trial court concluded the parties were entitled to discovery, but because of the pending trial date, expressed concern over the feasibility of the defendants' ability to investigate in a timely manner without waiving time if disclosure of the 2010 and 2011 incidents were limited to the initial contact information. To justify releasing the entire reports in this case, the trial court relied on *Haggerty*, *supra*, 117 Cal.App.4th 1079. In *Haggerty*, an inmate filed a complaint alleging he had been beaten by a deputy at a county detention facility. As a result of the beating, an internal affairs investigation took place and generated a report. After the inmate filed a civil suit against the deputy, the trial court granted his *Pitchess* motion and ordered the entire 23 page internal affairs report disclosed.

Haggerty recognizes the line of criminal cases that *Pitchess* discovery is limited to the names, addresses and telephone numbers of complainants or witnesses, (*City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74; *City of Azusa v. Superior Court* (1987) 191 Cal.App.3d 693 (*City of Azusa*); *Arcelona v. Municipal Court* (1980) 113 Cal.App.3d 523; *Carruthers v. Municipal Court* (1980) 110 Cal.App.3d 439; *People v. Matos* (1979) 92 Cal.App.3d 862; *Kelvin L.*, *supra*, 62 Cal.App.3d 823;) but concluded, "[t]his reasoning does not apply in this case." (*Haggerty* at p. 1090.) According to *Haggerty*, when the officer's conduct is the issue in the litigation, the judicially imposed limitation to "further safeguard" the officer's privacy is inapposite. "[The officer's] reasonable privacy concerns are diminished because he is the defendant in the litigation and the requested internal investigation records concern his actions that are alleged to be wrongful and will be fully litigated at trial. [¶] Because of the direct

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[3] At the time Roman filed the *Pitchess* motion on September 13, 2011, trial was scheduled to begin November 25, 2011. While the *Pitchess* motion was pending, trial was continued to January 25, 2012.

relevance of the information, the courts have generally recognized that the law enforcement records of the investigation at issue may be discoverable and have never imposed any special limitations on this disclosure if the requested discovery otherwise meets the statutory criteria." (*Ibid.*)

Unlike *Haggerty*, the information ordered released in the 2010 and 2011 reports are not the subject of this litigation, and absent a finding by the trial court that the initial contact information is inadequate to prepare his case, (*Kelvin L., supra*, 62 Cal.App.3d at pp. 828-829) "plaintiffs [are] entitled, at most, to the names and addresses of other persons who complained . . . within five years preceding the plaintiffs' arrest. [Citation.]" (*City of Azusa, supra,*191 Cal.App.3d at pp. 696-697.)

Although the trial court expressed concern over the defendants' ability to investigate in a timely manner because of the pending trial date, the time constraints in this case do not justify deviating from the established rule, especially where the defendant waited almost a year after the arraignment on the information before filing the *Pitchess* motion in this case. As such, respondent court's order disclosing the reports in PSB 2010-122 and 2011-20 without a finding that the initial contact information is inadequate, is premature and represents an error of law.

Initially, this court issued an alternative writ of mandate directing respondent court to vacate its ruling ordering petitioner to disclose information beyond the names, telephone numbers, and addresses of witnesses and complainants in the 2010 and 2011 reports, and to limit disclosure to the initial contact information unless the moving parties make a showing that the initial contact information provided by petitioner is inadequate to investigate their case. Subsequent to this court's order, petitioner complied with the trial court's order to disclose only the names, addresses, and telephone numbers to real parties, but respondent court declined to comply with the alternative writ issued by this court. Nonetheless, the district attorney concedes the actual release of reports in this case is error and does not oppose the issuance of a peremptory writ. In this

case, petitioner's right to relief is obvious and no purpose would reasonably be served by plenary consideration of this issue. (*Lewis v. Superior Court* (1999) 19 Cal.4th 1232, 1241.)

DISPOSITION

Let a peremptory writ of prohibition issue permanently restraining respondent court from disclosing information in PSB 2010-122 and 2011-20 beyond the names, addresses, and telephone numbers of complainants and witnesses unless the moving parties first make a showing the initial contact information is inadequate to investigate their case. In the interest of justice, this opinion is final as to this court forthwith. The stay previously issued is dissolved. Each party is to bear its own costs in this original proceeding.