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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. ROBERT TONY ROSSI, Defendant and Appellant.	F037865 (Super. Ct. No. BF093077A) **OPINION**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Lee P. Felice, Judge.

John L. Staley, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Assistant Attorney General, Janis Shank McLean and David A. Rhodes, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Vartabedian, Acting P. J., Buckley, J., and Cornell, J.

Defendant Robert Tony Rossi was convicted of one count of possession of cocaine. (Health & Saf. Code, § 11350.) He appeals, claiming his judgment should be reversed because the trial court erroneously restricted his cross-examination of the undercover officer. We affirm.

FACTS

Melissa Cahill is a reserve officer in the police department. On September 29, 2000, she was working undercover, posing as a prostitute in a sting operation. Thomas Cady approached Officer Cahill and asked her the price for a certain sexual act. Shortly thereafter, defendant walked up to Officer Cahill and Cady. Defendant asked Officer Cahill if she took drugs. She said yes. Defendant asked her if she had any drugs. She said no. Defendant asked her if she knew where he could get drugs; she referred him to an establishment in town. Defendant told her he was going to go get some drugs and he would come back and share them with her. Defendant and Cady left.

Officer Cahill was in a room at a hotel with a "john" (a prostitute's customer) when another undercover officer came in and told her that defendant and Cady were looking for her. Officer Cahill went out to Cady's car. Cady asked Officer Cahill if she was still working. She said yes. Officer Cahill asked Cady if he had any drugs. Cady looked to defendant, and defendant patted his left front pocket. Officer Cahill told defendant and Cady to meet her in room 52. They followed her to the room and were arrested. A cigarette package containing rock cocaine was retrieved from defendant's pocket.

On cross-examination of Officer Cahill it was established that she made a mistake in her police report. In her report she stated that Cady told her he had rock cocaine to share with her and asked her if she had a pipe to smoke it with. After the preliminary hearing, Officer Cahill changed her report to read that defendant, not Cady, made this statement to her.

Defense

Defendant testified that Cady was a homeless man whom he had met and was trying to help. Cady drove by the undercover officers, and defendant told him that they were not prostitutes, but they were police officers. Cady wanted to talk to them. Defendant waited in the car while Cady went and spoke to Officer Cahill. Defendant eventually went to find Cady. He did not ask Officer Cahill if she took drugs. He asked her four times if she was a police officer and she said no.

Defendant and Cady left. While they were driving back to Officer Cahill's location, defendant asked Cady for a cigarette. Cady handed him a pack of cigarettes. Defendant removed one cigarette from the package and put the package in his pocket. He did not know that the package contained drugs.

Defendant admitted he had two prior felony convictions.

DISCUSSION

During the cross-examination of Officer Cahill, defense counsel sought to ask her questions regarding "lies" she had told. The prosecutor objected. A hearing was held outside the presence of the jury. Counsel informed the trial court that it was necessary to question Officer Cahill on the lies she told to defendant in her undercover capacity and to explore her training and ability to lie.

In particular defense counsel argued to the court: "[P]art of all of her background and experience in lying is relevant because she lies convincingly. I want to find out if she took classes to lie convincingly, whether she practices lying convincingly. Because our defense is when she says it was Rossi [defendant] who told her that he had rock instead of Cady, she's lying, and she appears convincing. Well, she appeared convincing that night. She could easily tell lies. She could tell them just like water off the back of a duck. She tells them so convincingly. She even dresses to facilitate her lying. [¶] Under all of those circumstances, I think that we are permitted to get into this because it goes to

our defense as to whether she is accurate when she says that it was Rossi who told her when, in the report, she says it was Cady who told her."

The trial court ruled that although it thought that defendant's assertions regarding Officer Cahill's ability to lie convincingly would be permissible argument, it would not allow defendant to question Officer Cahill on her training and preparation to lie nor could he question her on each specific "lie" she told to defendant and Cady.

In his closing argument to the jury, defense counsel was allowed to argue that Officer Cahill was very adept at lying and was a convincing liar. He emphasized this point repeatedly to the jury.

Defendant claims that the trial court erroneously limited his cross-examination of Officer Cahill. He argues that he should have been allowed to impeach Officer Cahill's veracity by asking questions regarding her ability to lie. He asserts that the error is one of constitutional dimension because he was denied his right of confrontation. Defendant contends that he was prejudiced. Defendant maintains that a different result would have occurred if defense counsel would have been allowed to fully explore the extent to which Officer Cahill made false statements to Mr. Cady and defendant to lure them into obtaining drugs for her and participating in an act of prostitution.

"Under the Sixth Amendment of the United States Constitution, a defendant has the constitutional right to confront the witnesses against him and to cross-examine his accusers. A criminal defendant states a violation of the confrontation clause by showing that he was prohibited from engaging in otherwise appropriate cross-examination designed to show bias on the part of the witness, and thereby to expose facts from which the jury could appropriately draw inferences relating to the reliability of the witness." (*In re Ryan N.* (2001) 92 Cal.App.4th 1359, 1385.)

Allowing the cross-examination sought here by defendant would not have produced a significantly different impression of the witness's credibility. It was obvious to the jury that Officer Cahill engaged in numerous lies to Cady and defendant in order to

convince them to come to the hotel room where they were arrested. Officer Cahill also testified that she had been involved in 10 arrests that evening, and most of them were for solicitation of prostitution. Thus, it was clear to the jury that Officer Cahill could "lie" and "lie convincingly" as she posed as a prostitute. Whether Officer Cahill had training in "lying" would add nothing to the jury's credibility determinations; the jurors were already aware of her abilities. Defendant was allowed to argue this theory to the jury, and did so extensively. Defendant had the opportunity to place Officer Cahill in her proper light. The jury had adequate facts to fairly appraise her testimony and credibility.

Error, if any, was not prejudicial under either the Chapman (*Chapman* v. *California* (1967) 386 U.S. 18, 24) standard or the Watson (*People* v. *Watson* (1956) 46 Cal.2d 818, 836) standard of review. Further cross-examination of Officer Cahill, as desired by defendant, would not have produced a significantly different impression of Officer Cahill's credibility.

DISPOSITION

The judgment is affirmed.