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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

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| THE PEOPLE,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>DONALD WASHINGTON,<br><br>Defendant and Appellant. | B235317<br><br>(Los Angeles County<br>Super. Ct. No. BA359839) |

APPEAL from a judgment of the Superior Court of Los Angeles County, Clifford L. Klein, Judge. Reversed and remanded.

Lea Rappaport Geller, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Linda C. Johnson and Michael Katz, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Donald Washington was convicted of possession for sale of cocaine base. He contends the trial court erred in partially denying his request for discovery under *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*). We conclude that the court correctly declined to conduct an in camera review of the personnel records of one officer, but was obliged to conduct a review of the files of another. We therefore reverse the judgment and remand for a limited hearing on that matter.

## RELEVANT PROCEDURAL HISTORY

In October 2009, an information was filed charging appellant with a single count of possession of cocaine base for sale (Health & Saf. Code, § 11351.5). Accompanying the charge were allegations that he had suffered seven prior convictions. Appellant pleaded not guilty and denied the special allegations.

Appellant filed a motion under *Pitchess*, seeking disclosure of information from the personnel records of four Los Angeles Police Department (LAPD) officers. On January 5, 2010, the trial court granted the motion in part and denied it in part. Following an in camera review of two officers' records, the court ordered the disclosure of information regarding one complaint against a single officer.

On March 23, 2010, an amended information was filed. Aside from charging appellant with one count of possessing cocaine base for sale, the information alleged that he had suffered seven prior convictions for purposes of Penal Code section 667.5, subdivision (b), one conviction for purposes of Health and Safety Code section 11370.2, subdivision (a), four convictions for purposes of Health and Safety Code section 11370, subdivisions (a) and (c), and one conviction for purposes of the "Three Strikes" Law (§§ 667, subds. (b)-(i),

1170. 12, subds. (a)-(d)).[1] Appellant pleaded not guilty and denied the special allegations. In June 2010, the trial court denied appellant's motion to suppress evidence (Pen. Code, § 1538.5).

On February 17, 2011, pursuant to a plea agreement, appellant entered a plea of nolo contendere and admitted the prior conviction allegations. Upon the prosecution's motion, the trial court struck the "strike" conviction. The court sentenced appellant to the low term of three years and awarded him 1,134 days in custody credits. As appellant's credits exceeded his sentence, he was released on parole for a three-year period.

When appellant noticed this appeal, the trial court denied his request for a certificate of probable cause. After appellant submitted his opening brief, respondent filed a motion to dismiss the appeal on the ground that appellant had challenged only the ruling on the *Pitchess* motion.[2] Appellant opposed the motion, arguing that his *Pitchess* motion and motion to suppress evidence were legally intertwined (see *People v. Collins* (2004) 115 Cal.App.4th 137, 141). The motion to dismiss was denied.

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[1] The amended information initially alleged three "strike" convictions, but was modified to alleged only one such conviction.

[2] Generally, "[w]hen a defendant has entered a plea of guilty or no contest, the bases for an appeal from the resulting conviction are limited." (*People v. Johnson* (2009) 47 Cal.4th 668, 677.) A defendant must obtain a certificate of probable cause (Pen. Code, §1237.5) to attack the plea agreement itself or the sentence imposed, insofar as "the challenge goes to an aspect of the sentence to which the defendant agreed as an integral part of [the] plea agreement." (*People v. Johnson, supra*, 47 Cal.4th at p. 678.) In the absence of a certificate of probable cause, a defendant may contend only (1) that a motion to suppress evidence was improperly denied, or (2) that after the plea, "'errors occurred in the subsequent adversary hearings conducted by the trial court for the purpose of determining the degree of the crime and the penalty to be imposed.'" (*People v. Brown* (2010) 181 Cal.App.4th 356, 360, quoting *People v. Ward* (1967) 66 Cal.2d 571, 574.)

## DISCUSSION

Appellant contends the trial court erred in denying his request under *Pitchess* for discovery regarding the personnel records of two LAPD officers. He argues that he showed good cause for an in camera examination of their records. In addition, regarding the two other LAPD officers, he asks us to review the records that the trial court examined in camera to determine whether they contain discoverable materials beyond those that the court disclosed.

### A. *Governing Principles*

Generally, the procedure by which a criminal defendant may obtain access to confidential peace officer personnel records through a *Pitchess* motion is governed by Penal Code sections 832.7 and 832.8 and Evidence Code sections 1043 through 1045. Under these provisions, "on 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.] . . . 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 [citations], 'the trial court should then disclose to the defendant "such information [as] is relevant to the subject matter involved in the litigation."' [Citations.]" (*People v. Gaines* (2009) 46 Cal.4th 172, 179.)

The key issue before us is whether appellant established good cause for his requested discovery regarding the two pertinent officers. The standards governing this requirement are stated in *Warrick v. Superior Court* (2005) 35 Cal.4th 1011 (*Warrick*). There, the defendant was charged with possessing cocaine base for sale. (*Id*. at p. 1017.) According to the police report, when police

officers approached the defendant, who was standing in an area known for narcotics activities, the defendant fled, discarding baggies containing cocaine. (*Id*. at p. 1016.) The defendant's *Pitchess* motion sought disclosure of citizen complaints against the arresting officers for making false arrests, falsifying police reports, or planting evidence. According to the attorney declaration supporting the motion, the defendant had entered the area in question to buy -- not sell -- drugs, that the narcotics dealers dropped their baggies when they saw the officers, and that he ran from the officers only because he feared arrest due to an outstanding parole warrant. (*Warrick, supra,* 35 Cal.4th at p. 1017.)

Our Supreme Court explained that to show good cause, "defense counsel's declaration in support of a *Pitchess* motion must propose a defense or defenses to the pending charges." (*Warrick, supra*, 35 Cal.4th at p. 1024.) "The declaration must articulate how the discovery sought may lead to relevant evidence or may itself be admissible direct or impeachment evidence [citations] that would support those proposed defenses." (*Ibid*.) In addition, the declaration "must also describe a factual scenario supporting the claimed officer misconduct." (*Ibid*.) Generally, "a scenario is plausible [when] it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges." (*Id*. at p. 1026.) In some circumstances, the scenario may consist of a denial of the facts asserted in the police report. (*Id*. at pp. 1024-1025.) In other circumstances, more is required. (*Id*. at p. 1025.) However, the defendant need not present "a credible or believable factual account of, or a motive for, police misconduct." (*Id*. at p. 1026, italics deleted.)

Turning to the *Pitchess* motion at issue in *Warrick*, the Supreme Court concluded that the defendant had offered a plausible factual scenario. The court stated: "The scenario . . . is internally consistent; it conflicts with the police report

only in denying that defendant possessed any cocaine and that he was the one who discarded the rocks of cocaine found on the ground. Those denials form the basis of a defense to the charge of possessing cocaine for sale. Thus, [the] defendant has outlined a defense raising the issue of the practice of the arresting officers to make false arrests, plant evidence, commit perjury, and falsify police reports or probable cause." (*Warrick*, *supra*, 35 Cal.4th at p. 1027.)

B. *Underlying Proceedings*

Appellant's *Pitchess* motion sought discovery regarding LAPD Officers Barragan (#37890) and Peko (#37978), who initially arrested him, as well as LAPD Officer Matthies (#37494) and Detective Alves (#32045), who were present at the scene of the arrest. The motion sought complaints against the officers relating to broad categories of misconduct, including "aggressive behavior, racial bias, coercive conduct, violations of constitutional rights," illegal searches and seizures, perjury, fabrication of evidence and charges, false police reports, and acts of moral turpitude.

The police report accompanying the motion was written by Barragan and Peko. According to the report, on July 31, 2009, they investigated an informant's tip that a narcotics dealer nicknamed "Twin" was selling drugs from a grey Chrysler in a specified area. The officers worked "plain clothes" in an unmarked car. At approximately 3:00 p.m., they saw a grey Chrysler park near a man standing on a sidewalk. The car was driven by Bret Maybee, and contained appellant and Anthony Howard as passengers. After recognizing appellant from a prior drug investigation, they conducted a Department of Motor Vehicle check on the Chrysler and determined that there was a misdemeanor warrant related to the

car. Appellant left the Chrysler, retrieved an object from his pocket, shook hands with the man on the sidewalk, and returned to the car.

Because appellant appeared to have engaged in a drug transaction, Barragan and Peko followed the Chrysler and asked for assistance from other police units. When the car stopped at a location known for illegal drug sales, Barragan and Peko parked nearby. After appellant left the car, he was approached by Rachel Garcia, who recognized Barragan and Peko as police officers, looked at appellant, and pointed in their direction. Appellant ran back to the Chrysler, got in, and told Maybee, "Go mutherfucka, Go[. I]t's the police."

The officers pursued the Chrysler, which drove at high speeds, and again asked for assistance from other units. During the chase, the Chrysler nearly hit a police vehicle containing Matthies and Alves that approached it from the front. As a result, the Chrysler swerved out of control, struck a curb, and stopped. Appellant and Maybee ran from the car, while Howard remained inside. As Barragan and Peko followed on foot, Peko saw appellant throw away several plastic baggies containing a white substance. After Barragan and Peko took appellant and Maybee into custody, Peko recovered three clear plastic bindles containing a substance resembling cocaine base.

Matthies and Alves detained Howard. When Matthies searched the Chrysler, he found a razor blade with a white residue and three pipes containing similar residue. He also found appellant's cellphone. Because the phone rang, Matthies answered it and heard a voice ask whether "Twin" was "slangin," which he recognized as a street term for selling narcotics.

Later, Matthies interviewed Maybee, who waived his *Miranda* rights.[3] Maybee said that he "was driving [appellant] around" and that appellant "was going to pay him with some rock." In addition, Matthies interviewed Garcia, who had been detained and also waived her *Miranda* rights. She stated that she recognized Peko and Barragan while accompanying another person who intended to buy cocaine from appellant. She told her companion, who warned Washington that the officers were watching.

Accompanying the *Pitchess* motion was a declaration from appellant's counsel, who stated: "[Appellant] asserts that Officers Peko and Barragan have fabricated the police report alleging that he entered into a narcotic transaction on July 31, 2009. He specifically denies allegations that he exited a vehicle . . . at approximately [3:00 p.m.] . . . . He further denies that he communicated with . . . Garcia in any manner . . . . He further[] denies that he threw any bindles containing narcotics as reported by [O]fficer Barragan. Finally, he denies he [*sic*] being pursued by [O]fficer[] Matthies and Detective Alves[,] insisting instead that he was arrested because he refused to 'work' for said officers in ongoing narcotics investigations."

During the hearing on the motion, appellant's counsel stated: "[Appellant] worked for Mat[t]hies in the past, who wasn't happy with the results. And he is indicating here that Mat[t]hies told him, 'Either we're going to put a case on you, or you're going to cooperate.' He refused to cooperate, which is what led to this charge."

The trial court granted the motion solely to the extent it concerned Barragan and Peko, and limited its review to evidence of perjury, writing false police reports

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[3] *Miranda v. Arizona* (1966) 384 U.S. 436.

(including false statements in police reports), and the fabrication or planting of evidence. In concluding that appellant had presented a plausible factual scenario regarding Barragan and Peko, the court stated: "[Appellant] has made [a] sufficient [description] beyond a general denial. There is only so much he can say if he's standing there on the street corner. But he does deny specifically any conversation with . . . Garcia, and [that] he left, got outside the vehicle, if there was any pursuit." The court further found that appellant's scenario was inadequate with respect to Matthies and Alves because the "chase" did not involve them. Following an in camera review, the court ordered disclosure of information regarding one complaint involving Peko.

C. *Adequacy of Scenario Regarding Matthies and Alves*

Appellant does not challenge the trial court's limitation of the scope of its in camera review of Officers Barragan's and Peko's files to evidence of perjury, falsified police reports, and fabricated or planted evidence.[4] His principal contention is that the court erred in denying an in camera review of Matthies's and Alves's personnel records. We review this ruling for an abuse of discretion. (*People v. Galan* (2009) 178 Cal.App.4th 6, 12.) As explained below, although we see no error in connection with Alves, we conclude the court improperly declined to examine Matthies's records.

At the outset, we observe that our inquiry is controlled by the narrow scope of the appeal before us. Because appellant entered a plea of nolo contendere and

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[4] Although appellant's opening brief suggests that the limitation was "problematic[]," he presents no argument (with citation to appropriate legal authorities) that it was erroneous. Accordingly, he has forfeited any such contention. (*People v. Webber* (1991) 228 Cal.App.3d 1146, 1166 & fn. 4; *People v. Dougherty* (1982) 138 Cal.App.3d 278, 282-283.)

failed to obtain a certificate of probable cause, his challenge to the ruling on the *Pitchess* motion is subject to appellate review only due to its relationship to his motion to suppress evidence. (*People v. Brown*, *supra,* 181 Cal.App.4th at p. 360.) We therefore examine the factual scenario that appellant offered in support of his *Pitchess* motion in light of his motion to suppress.

The latter motion sought to suppress pipes and other tangible evidence found in the Chrysler following appellant's arrest on the ground that Barragan and Peko "fabricated the events leading to the arrest." In testifying at the hearing on the motion, Officer Peko repeated the account of the events found in the police report, namely, that he and Barragan discovered an outstanding warrant regarding the Chrysler, saw appellant engage in apparent drug transactions, and then pursued the Chrysler while asking for assistance from other police units. In support of the motion, appellant presented evidence that the LAPD had no record of any communications from Barragan and Peko's vehicle before appellant's arrest, with the exception of a DMV inquiry regarding a license plate that disclosed no information regarding an outstanding warrant. Relying on Officer Peko's testimony, the trial court denied the motion.

The key question before us is whether appellant, in seeking discovery under *Pitchess*, described a factual scenario supporting an in camera review of Matthies's and Alves's records, for purposes of identifying evidence potentially relevant to appellant's theory underlying the motion to suppress. In resolving this question, we accept the trial court's determinations underlying its ruling on the *Pitchess* motion with respect to Barragan and Peko, as respondent has not challenged this ruling. In concluding that appellant had described a sufficiently plausible scenario involving falsified police reports and fabricated evidence by Barragan and Peko, the trial court found that appellant had denied that he left the

vehicle at 3:00 p.m., that he later communicated with Garcia, and that "there was any pursuit." As explained below, the trial court's ruling with respect to Matthies cannot be reconciled with these determinations and the other allegations in the attorney declaration supporting the *Pitchess* motion.

According to the police report, Matthies was present as the pursuit ended and later developed evidence of the crucial pre-arrest events that -- as the trial court found -- appellant specifically denied in his *Pitchess* motion. The report stated that Barragan and Peko saw appellant engage in an apparent drug transaction outside the Chrysler at 3:00 p.m. Later, when appellant left the Chrysler again to meet Garcia, she warned him of Barragan's and Peko's presence, and he fled in the Chrysler. Barragan and Peko asked for police assistance as they pursued the Chrysler, which crashed into a curb as a result of the near collision with Matthies and Alves's vehicle. Matthies and Alves then detained Howard, who remained in the car, while appellant and Maybee fled on foot. After discovering items of incriminating evidence in the Chrysler, Matthies interviewed Maybee and Garcia. According to Matthies, Maybee said that appellant was selling drugs from the car, and Garcia said that when she approached appellant so that her companion could buy cocaine, she recognized Barragan and Peko as police officers and alerted her companion, who warned appellant of their presence.

In view of the police report, appellant charged Matthies with the same type of fabrication of evidence and falsification of police reports that he alleged against Barragan and Peko. Under that scenario, as apparently accepted by the trial court, appellant never left the car at 3:00 p.m., never communicated with Garcia "in any manner," and was never involved in any pursuit. Accordingly, for purposes of the *Pitchess* motion, the claim as to Matthies was that he falsified or contrived Maybee's and Garcia's statements because they contradict that scenario.

Furthermore, appellant's scenario attributed responsibility for Barragan and Peko's fabrications to Matthies, as the attorney declaration underlying the motion asserted that appellant "was arrested because he refused to 'work' for [Matthies and Alves] in ongoing narcotics investigations." Indeed, at the hearing on the motion, appellant's counsel underscored Matthies's responsibility, arguing that he had purportedly threatened to "'put a case on [appellant].'" Accordingly, appellant's scenario, as accepted by the court for purposes of the *Pitchess* motion and otherwise elaborated in the attorney declaration, charged Matthies not only with fabricating evidence corroborating the propriety of the arrest after it occurred, but also with arranging for the arrest.

Because the scenario portrayed Matthies as both motivating and corroborating Barragan's and Peko's alleged fabrications or falsifications, the trial court was obliged to grant discovery regarding Matthies as well as Barragan and Peko, notwithstanding the limited scope of the appeal before us. As noted above, the theory underlying appellant's motion to suppress was that the pre-arrest events that purportedly justified the arrest were wholly fabricated. Discovery into Matthies's personnel records was relevant to this theory, insofar as appellant sought evidence of perjury, falsified police reports, and fabricated or planted evidence. At a minimum, such evidence was potentially material to the assessment of Peko's credibility regarding the propriety of the arrest. We therefore conclude that the scenario established the existence of good cause to examine Matthies' personnel records. (See *People v. Hustead* (1999) 74 Cal.App.4th 410, 417 (*Hustead*) [trial court improperly denied *Pitchess* motion when defendant provided factual scenario contradicting arresting officer's observations, as stated in police report].)

In contrast, we see no error in the ruling regarding Alves, even though the attorney declaration also attributed appellant's arrest to him. In our view, the allegation in the attorney declaration that appellant "was arrested because he refused to 'work' for" Matthies and Alves, unsupported by any description of specific misconduct by Alves, is insufficient to establish good cause for discovery into his records. (*City of San Jose v. Superior Court* (1998) 67 Cal.App.4th 1135, 1147 [for purposes of *Pitchess* motion, defendant's bald assertion that "'knowing and voluntary consent to enter was not . . . obtained'" by officers who conducted search did not allege specific factual scenario of misconduct]; see also *People v. Collins, supra*, 115 Cal.App.4th at p. 151 [trial court properly denied *Pitchess* motion when defendant ascribed no misconduct to officers related to allegedly improper search].) However, unlike Matthies, nothing in the police report or appellant's factual scenario suggested that Alves had actively fabricated evidence or placed falsehoods in a police report. The police report stated only that he was present when appellant was arrested, and at the hearing on the *Pitchess* motion, appellant's counsel made no mention of Alves, referring only to Matthies's purported threat to "'put a case on [appellant].'" Accordingly, the trial court erred in denying a review of Matthies's records, but not in denying a review of Alves's records.

D. *Barragan's and Peko's Records*

Appellant has also asked us to conduct an independent examination of Barragan's and Peko's records to determine whether they contain discoverable information beyond that disclosed by the trial court. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) We have done so, and conclude there is no basis to disturb the trial court's rulings regarding Barragan's and Peko's records.

E. *Remedy*

The remaining question concerns the appropriate remedy for the erroneous denial of an in camera review of Matthies's records. As explained in *Hustead,* aside from establishing this error, appellant is obliged to demonstrate prejudice from the denial of discovery. (*Hustead, supra,* 74 Cal.App.4th at p. 418.) Here, appellant's challenge to the ruling on the *Pitchess* motion is cognizable on appeal only due to its relationship to his motion to suppress evidence. Thus, even were the trial court to determine that Matthies's records contain discoverable information, appellant would be obliged to show that the information would have led to relevant and admissible evidence that he could have presented in support of the motion to suppress. (See *Hustead, supra,* at p. 419.) Moreover, as appellant was sentenced pursuant to a plea agreement, he must also establish a basis for withdrawing his plea. (See *People v. Mazurette* (2001) 24 Cal.4th 789, 799.) Under these circumstances, the appropriate remedy is to reverse the judgment, with directions to the trial court to conduct an in camera review of Matthies's records, limited in scope to the review conducted in connection with Barragan's and Peko's records, that is, to perjury, writing false police reports (including false statements in police reports), and the fabrication or planting of evidence. (*Hustead, supra,* 74 Cal.App.4th at pp. 418-419.) If (1) the review discloses no discoverable material, (2) appellant shows no prejudice from the denial of discoverable material, or (3) appellant establishes no basis for withdrawing his plea, the court is to reinstate the judgment. (See *Hustead,* at p. 419.)

## DISPOSITION

The judgment is reversed, and the matter is remanded with directions to the trial court to conduct an in camera hearing on appellant's *Pitchess* motion consistent with this opinion. If the hearing reveals no discoverable information in Officer Matthies's personnel file that would lead to admissible evidence helpful to appellant's motion to suppress evidence, the trial court shall reinstate the judgment and sentence. If the in camera hearing reveals discoverable information that could lead to admissible evidence helpful to appellant in connection with the motion to suppress, the trial court shall grant the requested discovery, and allow appellant an opportunity to demonstrate prejudice. If no prejudice is demonstrated or appellant fails to establish a basis for withdrawing his plea, the trial court shall reinstate the original judgment and sentence.

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

MANELLA, J.

I concur:

EPSTEIN, P. J.

SUZUKAWA, J.

I respectfully dissent.

It is essential to set forth the parameters of our review. Appellant pled no contest to a violation of Health and Safety Code section 11351.5, a felony. A no contest plea admits every element of the crime charged and "[i]ssues concerning the defendant's guilt or innocence are not cognizable on appeal from [such a] plea." (*People v. Voit* (2011) 200 Cal.App.4th 1353, 1364.) As a result, ordinarily appellant would not be able to contest the denial of his *Pitchess* motion.[1] (See *People v. Hunter* (2002) 100 Cal.App.4th 37, 42-43 [guilty plea precludes appellate review of denial of discovery motion].) There is an exception where a defendant challenges the propriety of a search, as appellant did here. Penal Code section 1538.5, subdivision (m) provides in pertinent part: "A defendant may seek further review of the validity of a search or seizure on appeal from a conviction in a criminal case notwithstanding the fact that the judgment of conviction is predicated upon a plea of guilty." In *People v. Collins* (2004) 115 Cal.App.4th 137, 149, we determined that appellate review of the denial of a *Pitchess* motion was permitted "to the extent the motion is 'directed to the legality of the search.' (*People v. Hobbs* [(1994)] 7 Cal.4th 948, 956 . . . .)" With that background, I turn to appellant's *Pitchess* motion.

The police report that was attached to the motion was written by Officer Peko. He wrote that on July 31, 2009, at approximately 3:00 p.m., he and his partner, Officer Barragan, were in the area of La Brea Boulevard and 21st Street. The officers had been previously told that a dealer by the name of "Twin," who

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[1] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

was usually in a gray Chrysler, sold narcotics in the area. The officers parked their vehicle where they had a clear view of the corner of La Brea and 21st. They observed a gray Chrysler. Appellant was in the passenger seat. He exited the vehicle and approached an unidentified male. Appellant retrieved an object from his front pants pocket, cupped the item in his hand, and shook hands with the male. Appellant walked back toward the Chrysler, placed what he had in his hand into his rear pants pocket, and entered the car. The car pulled away. Believing they had witnessed a narcotics transaction, the officers called for a black and white patrol vehicle to conduct a traffic stop on the Chrysler. They continued to follow the Chrysler. It stopped near the corner of Mansfield Avenue and Washington Boulevard, another area known for narcotics activity. The officers parked nearby. Appellant got out of the car. A woman, identified as Rachel Garcia, and another female walked toward appellant, who was standing on the corner. As Garcia passed the officers, she recognized them from previous arrests. Garcia went to appellant and pointed at the officers' vehicle. Appellant ran quickly toward the Chrysler while holding his right front pants pocket. Observing what they believed was activity consistent with narcotics sales, the officers exited their vehicle, pulled out their badges, and identified themselves as Los Angeles police officers. Appellant jumped through the open passenger window of the Chrysler and said to the driver, "Go . . . , it's the police." The Chrysler sped away with Peko and Barragan in pursuit. Barragan requested backup. Matthies and Alves responded. The Chrysler drove in the direction of Matthies and Alves's vehicle. There was a near collision. The Chrysler hit a parked vehicle and ran into a fence. Appellant ran from the car. As Peko pursued him, he saw appellant remove several clear plastic baggies containing an off white rock-like substance and toss them on the

ground. Peko took appellant into custody and recovered the plastic bindles he had discarded.

After appellant ran from the Chrysler, Matthies did the following: (1) took one of the passengers of the Chrysler into custody; (2) recovered a razor blade containing residue resembling cocaine from the Chrysler; (3) found appellant's cell phone in the Chrysler; (4) twice answered the phone and each time heard a male voice ask if "Twin" was "slangin," which according to Matthies meant that the callers were asking whether appellant was selling drugs (Matthies knew that appellant's nickname was Twin); (5) interviewed the passenger who said that he saw appellant toss the baggies that Peko recovered; and (6) interviewed two others who said that appellant was selling cocaine that day. None of these acts provided probable cause for appellant's detention, which had already occurred.

Amidst the boilerplate in appellant's motion was a brief paragraph explaining why the requested discovery, an examination of the personnel files of Officers Peko, Barragan, Matthies, and Alves, was necessary.

"The defendant asserts that Officers Peko and Barragan have fabricated the police report alleging that he entered into a narcotic transaction on July 31, 2009. He specifically denies allegations that he exited a vehicle on July 31, 2009 at approximately [3:00 p.m.] at the corner of La Brea and 21st. He further denies he communicated with Rachael Garcia in any manner on July 31, 2009. He further[] denies that he threw any bindles containing narcotics as reported by [O]fficer Barragan. Finally, he denies he [was] being pursued by [O]fficer[] Matthies and Detective Alves insisting instead that he was arrested because he refused to 'work' for said officers in ongoing narcotics investigations."

At the hearing on the *Pitchess* motion, appellant's attorney told the court that Matthies was the person who had threatened to "put a case on [appellant]" if

he did not assist the officers. Counsel stated, "In fact, it appears he's the one directing it, though you'll never see the police write that in the report. He seems to be the moving officer."

The trial court granted an in camera hearing in order to review the personnel files of Officers Peko and Barragan. It denied the motion with respect to Officers Matthies and Alves because they were not involved in the pursuit that led to appellant's arrest. The majority finds the court erred by not also examining Matthies's personnel file. Given that we are reviewing the effect of the ruling with respect only to appellant's challenge to the evidence recovered, the trial court got it right.[2]

The police report states that after following appellant and observing him conduct a narcotic sale, Peko and Barragan attempted to detain appellant and the other occupants of the Chrysler. When they identified themselves as police officers, appellant jumped into the Chrysler through the open passenger window and exhorted the driver to leave the scene. Peko and Barragan initiated the pursuit that eventually led to the Chrysler crashing and appellant running from the vehicle. According to the report, at no time leading to the attempted detention on Mansfield Avenue were Matthies and Alves present.

Significantly, in the declaration supporting the motion, appellant did not deny that: (1) he got out of the car on Mansfield Avenue; (2) Officers Peko and Barragan identified themselves as police officers and attempted to detain him; (3) he jumped through the open passenger window and told the driver to leave; (4) he was pursued by Officers Peko and Barragan; (5) the Chrysler crashed during the

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[2] Because the majority concludes the trial court erred only with respect to the discovery of Officer Matthies's personnel file, I do not address the ruling as to Officer Alves.

pursuit; and (6) he ran from the car. Appellant denied only that he was pursued by Matthies and Alves. Thus, appellant did not dispute the facts that provided the basis for his detention. The declaration stated that Peko and Barragan "fabricated the police report alleging that he entered into a narcotic transaction on July 31, 2009." That event occurred on the corner of La Brea and 21st, not on Mansfield Avenue, the site of the attempted detention.

In ruling on a *Pitchess* motion, the trial court "determines whether defendant's averments, '[v]iewed in conjunction with the police reports' and any other documents, suffice to 'establish a plausible factual foundation' for the alleged officer misconduct and to 'articulate a valid theory as to how the information sought might be admissible' at trial.' ([*City of*] *Santa Cruz* [*v. Municipal Court* (1989)] 49 Cal.3d [74,] 86.)" (*Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1025.) In the present case, did appellant articulate a valid theory as to how the information in Officer Matthies's personnel file might be admissible at the suppression hearing conducted in the trial court? The answer is "No."

"To show the requested information is material, a defendant is required to 'establish not only a logical link between the defense proposed and the pending charge, but also to articulate how the discovery being sought would support such a defense or how it would impeach the officer's version of events.' [Citation.]" (*Garcia v. Superior Court* (2007) 42 Cal.4th 63, 71.) Even if we accept that Matthies had a desire to "put a case" on him, appellant does not explain how complaints lodged against Matthies had any effect on the veracity of Peko or Barragan, the officers who developed the probable cause for appellant's detention and recovered the cocaine he allegedly threw.[3] The declaration in support of

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[3] As noted, Officer Peko saw appellant throw the baggies of cocaine and recovered them.

appellant's *Pitchess* motion did not allege a single fact that explains why Peko or Barragan would manufacture probable cause to detain appellant at Matthies's behest. Appellant's contention that his arrest was the result of a conspiracy orchestrated by Matthies is pure speculation.

In addition, by failing to deny that Officers Peko and Barragan tried to detain him and pursued him when he fled, thus leading to his arrest, appellant cannot establish that material from Officer Matthies's personnel file was relevant to the suppression motion. The case of *People v. Collins*, *supra*, 115 Cal.App.4th 137, is illustrative. There, the defendant sought discovery of the personnel records of two officers concerning past incidents of misconduct. The trial court denied the motion. As discussed above, we examined the trial court's ruling because it "was intertwined with litigating the legality of the search." (*Id.* at p. 151.) We concluded the trial court properly found no good cause for conducting an in camera review of the two officers' files based on the fact that neither officer was involved in the search that led to the discovery of the contraband. "Consequently, defendant failed to establish a 'specific factual scenario' establishing a 'plausible factual foundation' for allegations of misconduct by [the two officers] that would justify discovery of their personnel records." (*Ibid.*)

So it is here. Matthies was not involved in the detention and pursuit that eventually led to appellant's arrest. Nor did he provide the testimony that justified the detention and search.[4] Indeed, he could not have because, according to the police report, he did not witness those events. Any evidence Matthies uncovered after appellant was detained by Peko and Barragan is relevant solely on the issue of appellant's guilt, not the suppression motion. As a result, the trial court

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[4] Officer Peko was the sole prosecution witness at the suppression hearing.

properly refused to conduct an in camera hearing with respect to Officer Matthies. Accordingly, I would affirm the judgment.

SUZUKAWA, J.