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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS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 TWO

THE PEOPLE, Plaintiff and Respondent, v. EDWIN HENRIQUEZ, Defendant and Appellant.	B230115 (Los Angeles County Super. Ct. No. BA358383)

APPEAL from a judgment of the Superior Court of Los Angeles. William Sterling, Judge. Affirmed.

Marta I. Stanton, 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, Lawrence M. Daniels and Scott A. Taryle, Deputy Attorneys General, for Plaintiff and Respondent.

Edwin Henriquez, also known as Edwin Antonio Henriquez, appeals from the judgment entered upon his convictions by jury of carrying a loaded handgun not registered to him (Pen. Code, former § 12031, subd. (a)(1), count 5),[1] and, as lesser included offenses, of possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a), count 3), misdemeanor possession of marijuana under 28.5 grams (Health & Saf. Code, § 11357, subd. (b), count 4), and misdemeanor obstructing a peace officer in the performance of his or her duties (§ 148, subd. (a), count 6).[2] The trial court sentenced appellant to an aggregate state prison term of three years eight months, calculated as the upper term of three years on count 5 and a consecutive term of one-third the midterm or eight months on count 3. Appellant contends that the trial court abused its discretion by (1) denying probation and imposing a three-year eight-month prison sentence, and (2) improperly making dual use of a single factor in imposing both an upper term sentence and a consecutive sentence. Appellant also requests that we conduct an independent review of the in camera hearing on appellant's *Pitchess*[3] motion.

We affirm.

FACTUAL BACKGROUND

On June 26, 2009, uniformed Los Angeles Police Officers Jesus Carrillo and Thomas Redshaw were driving south on Crawford Street, in South Central Los Angeles, in an unmarked police car. They saw appellant on the sidewalk riding a bicycle toward them, on the wrong side of the street, and nearly colliding with two pedestrians. Appellant then rode into the street, in the wrong direction, nearly colliding with the patrol car.

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1 All further statutory references are to the Penal Code unless otherwise indicated. Section 12031, subdivision (a)(1) was repealed effective January 1, 2012 and has been readopted as section 25850, subdivision (a). We continue to refer to the former statute.

2 The jury failed to reach verdicts on counts 1 and 2 for assault with a firearm on a police officer (§245, subd. (d)(1)). The trial court declared a mistrial on those counts and subsequently dismissed them in the furtherance of justice (§ 1385).

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

Officer Redshaw stopped the patrol car, and Officer Carrillo exited the passenger side and ordered appellant to stop and put down his bicycle. Appellant did not comply, instead riding past the police car at a fast pace. Officer Carrillo chased appellant on foot. Officer Redshaw, who was driving parallel to appellant, radioed for help. When Officer Carrillo was about to grab appellant, appellant got off his bicycle and threw or pushed it at the officer's leg, hitting him. Officer Carrillo yelled, "Police, stop," repeatedly during the pursuit.

At some point, Officer Carrillo was running close behind appellant on the sidewalk. Appellant looked back at him, reached into his pants pocket with his right hand, pulled out a revolver and pointed it first at Officer Redshaw and then at Officer Carrillo. Officer Carrillo yelled, "Drop the gun. I'm, going to shoot you." Officer Redshaw fired four shots at appellant from the patrol car. Officer Carrillo heard the shots, and, thinking they were from appellant, took out his gun and fired one shot at appellant's torso. Appellant fell to the ground unconscious, bleeding profusely, his gun falling on the sidewalk.

The officers searched appellant and the area around him. They recovered appellant's wallet, containing $90 plus an additional $21.85 in his pockets, a baggie containing marijuana, a plastic bag containing another five baggies of marijuana, and additional baggies of methamphetamine. A loaded .22-caliber handgun, missing a clearly visible serial number, was also found. When the number was restored, it was determined that the handgun was not registered to appellant.

Based upon a hypothetical incorporating the facts adduced at the trial, a narcotics expert opined that the marijuana and methamphetamine were possessed for sale and were in usable quantities.

Appellant testified in his own defense. He claimed that he had purchased the marijuana and methamphetamine just before the charged incident. He was addicted to methamphetamine and was a constant marijuana user. The money he carried, he had received from his parents for his June 30th birthday. After purchasing the drugs, he

found a handgun at an abandoned house on Crawford Street, which he took to show his father.

Appellant claimed that he threw his bicycle between him and the officer to create an obstruction so he could get away. As appellant ran down Crawford Street, he threw everything, including the handgun, out of his pockets, except for the drugs.

Appellant called two witnesses, who testified that they did not see him point a gun at anyone.

DISCUSSION

I. Propriety of appellant's sentence

A. Denial of probation and imposition of upper term

1. Background

Appellant was convicted of carrying a loaded handgun that was not registered to him (count 5), possession of methamphetamine (count 3), possession of marijuana (count 4) and obstructing a peace officer (count 6). The jury deadlocked on two assault counts (counts 1 & 2), which the trial court dismissed.

At the time it dismissed counts 1 and 2, the trial court commented that the shooting would not have happened "if it hadn't have been for [appellant's] really stupid and immature and criminal behavior." It tentatively believed "that a prison sentence [was] appropriate and not probation," and directed counsel to be prepared at the sentencing hearing to address the appropriate prison term. The trial court indicated that because appellant did not have a criminal record it "want[ed] to think about it. It would be easy if he had a record for guns or violence. Then it would be max him out."

A pre-conviction probation and sentencing report recommended that if appellant was convicted, he be denied probation and sentenced to state prison for the low term on the base count, due to the nature of the offense in which he "jeopardized the lives of two Los Angeles Police officers." As factors in aggravation, the probation report concluded that the crime involved great violence, great bodily injury, the threat of great bodily injury, and acts disclosing a high degree of cruelty.

At the probation and sentencing hearing, the prosecutor argued for the maximum prison term of four years eight months, as the jury had given appellant a "break" by convicting him of lesser offenses on several counts. Defense counsel argued for probation because appellant probably could have received a plea offer for probation if he had been charged only with the offenses of which he was ultimately convicted. Moreover, only appellant was hurt, he had strong family support, he had already served substantial custody time and, since the time he bailed out, he had been addressing his "responsibility to the court."

The trial court said that it remembered the trial evidence "vividly" and rejected both sides' arguments, because it would only sentence appellant based on the offenses of which appellant was convicted and the circumstances of those offenses. It therefore denied probation and sentenced appellant to the upper term of three years on count 5, to a consecutive one-third the middle term or eight months on count 3, and a concurrent one-year jail term on count 6. It imposed, but suspended, a $100 fine as punishment for count 4.

In explaining its imposition of the upper term, the trial court stated that by not submitting to authority, appellant "turned that situation into a potentially catastrophic situation. It wasn't just stupid. It was criminal. . . . He didn't just not submit to their authority. He—the minute the officer got out of the car, he flung his bike in their direction. I don't think he was assaulting them, I think he was creating an obstruction between them and him so he could run. And then he ran from them, ignored their authority, and recklessly with unbelievable criminal recklessness, whether he turned to shoot or not—I'm going to accept the jury verdict that he didn't, and in the heat of the situation . . . evolving very quickly over a very, very short period of time, he very recklessly exposed a gun to their view. You know, this is criminal behavior and this provoked an extraordinarily dangerous situation. I think this calls for punishment." "I think that's very aggravated, and those are the circumstances of the possession of a loaded weapon." "[A]ppellant created the situation where the police were chasing [him] because of [his] behavior and [he] showed a gun and they reacted."

The trial court did not articulate its reasons for imposing a consecutive term on count 3.

2. Contention

Appellant contends that the trial court abused its discretion by denying probation and imposing an "irrational and arbitrary" three-year, eight-month sentence. He argues that he was only 19 years old at the time of the offense, had no prior record, was the only person injured, and had residual disabilities from being shot. He further argues that the trial court's imposition of the upper term was based upon the aggravating circumstance of appellant showing a gun, which circumstance was rejected by the jury. This contention lacks merit.

3. Standard of review

We review an order denying probation and imposing a discretionary sentence for abuse of discretion and will not reverse such an order absent clear abuse. (*People v. Podesto* (1976) 62 Cal.App.3d 708, 723 [probation]; *People v. Jones* (2009) 178 Cal.App.4th 853, 860–861 [sentence]; *People v. Wilson* (2008) 164 Cal.App.4th 988, 992 [upper term]; section 1170, subd. (b).) Substantial deference must be accorded to the trial court's exercise of its broad discretion regarding probation because probation is almost wholly within the trial court's sound discretion. (*People v. Walker* (1960) 181 Cal.App.2d 227, 230.) Absent a showing that a sentence is irrational or arbitrary, it is presumed that the trial court acted to achieve legitimate sentencing objectives. (*People v. Superior Court (Du)* (1992) 5 Cal.App.4th 822, 831.

4. Factors to consider in deciding whether to grant probation

In determining whether a convicted person should be given probation, the trial court may consider the defendant's record and all the facts as disclosed by the evidence and the probation officer's report. (*People v. Hollis* (1959) 176 Cal.App.2d 92, 97.) California Rules of Court, rule 4.414 articulates some factors pertinent to the decision whether to grant probation, including, among others, the "nature, seriousness, and circumstances of the crime as compared to other instances of the same crime," and "[w]hether the defendant . . . used a weapon." The factors enumerated in rule 4.414 "do[]

not prohibit the application of additional criteria reasonably related to the decision being made." (Cal. Rules of Court, rule 4.408(a).)

5. Factors to consider in deciding whether to impose an upper term sentence

Section 1170 provides that trial courts have discretion to choose between upper, middle or lower term sentences. (§ 1170, subd. (b).) "In exercising his or her discretion in selecting one of the three authorized prison terms referred to in section 1170(b), the sentencing judge may consider circumstances in aggravation or mitigation, and any other factor reasonably related to the sentencing decision." (Cal. Rules of Court, rule 4.420(b).) Some of the factors in aggravation that may be considered by the trial court, include that the crime involved a threat of great bodily harm. (Cal. Rules of Court, rule 4.421.) Some of the factors in mitigation are set forth in California Rules of Court, rule 4.423, including that the defendant has no prior record.

"The court shall set forth on the record the reasons for imposing the term selected and the court may not impose an upper term by using the fact of any enhancement upon which sentence is imposed under any provision of law." (§ 1170, subd. (b).) "'[A] trial court is free to base an upper term sentence upon any aggravating circumstance that the court deems significant, subject to specific prohibitions.'" (*People v. Jones, supra,* 178 Cal.App.4th at p. 866.)

An aggravating circumstance is a circumstance that makes the offense "'distinctively worse than the ordinary'" and makes the defendant "deserving of punishment more severe than that merited for other offenders in the same category." (*People v. Black* (2007) 41 Cal.4th 799, 817.)

6. Denying probation and imposing an upper term sentence was not irrational or arbitrary

While this may be a close case, we cannot say that the trial court abused its discretion in denying appellant probation and sentencing him to the upper term. The trial court carefully considered the sentence it was imposing. At the hearing prior to the sentencing hearing, it indicated its inclination to sentence appellant to state prison and

told counsel it wanted to think about the proper sentence until the sentencing hearing. It properly rejected, the prosecutor's argument that appellant should be sentenced to the maximum term because he got "a break" from the jury by its finding him guilty of several lesser included offenses and appellant's argument that he should receive probation or a light sentence because he could have negotiated probation had he been charged with the offenses of which he was ultimately convicted. The trial court specifically indicated that it considered the fact that appellant had no criminal record and, were that not the case, it would have imposed the maximum sentence.

The principal factor articulated in support of imposing the upper term was appellant's showing of a weapon. There is no prohibition against using that same factor to deny probation and to impose the upper term. (*People v. Black*, *supra*, 41 Cal.4th at p. 817.) Appellant was apprehended possessing marijuana, methamphetamine and a loaded handgun. He admitted addiction to methamphetamine, a factor that could make it more difficult for him to adhere to any conditions of probation, if probation had been granted. (Cal. Rules of Court, rule 4.414(b)(4).) When testifying, appellant gave a very questionable explanation of how he came to possess the fully loaded handgun. He stated that he found it in an abandoned building as he was riding his bicycle home from having purchased drugs and took it out of "curiosity" to show it to his father.

When asked by Officer Carrillo to stop and drop his bicycle, not only did appellant disobey and attempt to run from the officers, he threw or pushed the bicycle at Officer Carrillo, hitting him in the leg, and during the chase pulled out a loaded gun. While the jury deadlocked on the assault charges which were premised on appellant's use of the firearm, and convicted him only of the lesser offense of resisting an officer without threat or violence, the trial court could well have concluded that the only reason for appellant to draw a loaded firearm under the circumstances presented was to use it if necessary to escape. Whether or not appellant aimed the gun at the officers, nonetheless displaying it when running from police is "distinctively worse than the ordinary" circumstance of violating section 12031, subdivision (a)(1) by simply carrying a loaded gun not registered to the person and makes appellant "deserving of punishment more severe than that

merited for other offenders in the same category." (*People v. Black, supra,* 41 Cal.4th at p. 817.)

Appellant's offense was extremely serious, causing substantial danger, not only to the officers, but to any bystanders in the area at the time. Having ignored the orders of the police officers, thrown a bicycle at one and hitting his leg, and running, the removal of a loaded gun was like throwing a match on a dried woodpile. Indeed, it did result in appellant suffering very severe injuries.[4] Appellant did not simply possess a loaded gun not registered to him, he displayed it in circumstances endangering himself, the officers and the public.

Given the severity of the situation created by appellant, we cannot say that the trial court abused its discretion in denying probation and imposing the upper term. While there were numerous factors in mitigation such as appellant's lack of a criminal record, balancing the mitigating factors against the aggravating factors is a qualitative, not simply a quantitative assessment left to the trial court.

Appellant argues that the trial court could not use as a factor supporting the upper-term sentence that appellant "showed a gun" because, presumably by not finding appellant guilty of the two assault charges and resisting a peace officer by force, the jury "rejected the testimony that appellant 'showed a gun.'" Two witnesses, he argues, testified that he did not point a gun towards the officers.

We agree with appellant that the trial court may not utilize as an aggravating factor any matter found not to be true by the jury because the constitutional guaranty of a jury trial and due process requires that the jury decide all material issues in support of the charges. (See *Sullivan v. Louisiana* (1993) 508 U.S. 275, 277–278; *People v. Flood* (1998) 18 Cal.4th 470, 479–480.) A jury's decision is undermined if a factor it found not to exist may still be considered by the trial court to increase the defendant's punishment. (See *People v. Gragg* (1989) 216 Cal.App.3d 32, 44–45 ["What is prohibited is the

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4 It is unclear why appellant believes that because he was the only one injured by virtue of his own conduct he deserves mitigation of his punishment.

unwarranted practice of imposing extra punishment on a defendant convicted of one charge based on a conclusion by the judge the jury erred in acquitting the defendant on any companion charges"].) However, we conclude that the trial court did no such thing.

Nothing in the jury verdicts supports appellant's conclusion that the jury found that appellant did not "show a gun." First, appellant was not acquitted of the assault charges. Rather, the jury was simply unable to reach a unanimous verdict on that question. That is tantamount to no finding at all. Second, even if one could contort the jury's failure to reach a verdict on the assault counts as a finding of anything, it was not a finding that appellant did not "show a gun." It was merely a finding that appellant did not assault the officers with the gun. Third, finding appellant guilty of the lesser offense of resisting a peace officer without force, simply suggests that the jury found that the gun was not used to resist the arrest, not that it was not displayed.

B. Dual use

1. Background

While the trial court articulated as the principal basis for imposing the upper-term sentence on the firearm possession charge that appellant "showed a gun," it failed to state reasons for imposing a consecutive sentence for possession of methamphetamine in count 3. Appellant objected to the imposition of the upper term on the ground that the low term or probation was warranted because of several mitigating factors. He did not object on the ground that the same factor had been subject to a dual use.

2. Contentions

Appellant contends that the trial court abused its discretion by using the single factor of "showing a gun" as justification for both the upper term and consecutive sentences. The People contend that appellant has forfeited his dual use claim by failing to object on that ground in the trial court.

3. Forfeiture

With narrow exceptions, sentencing issues are forfeited if not raised and preserved by the parties in the trial court. (*People v. Scott* (1994) 9 Cal.4th 331, 354.) While there is an exception for unauthorized sentences (*In re Ricky H.* (1981) 30 Cal.3d 176, 190–

191), "the waiver doctrine [applies] to claims involving the trial court's failure to properly make or articulate its discretionary sentencing choices. Included in this category are cases in which . . . the court purportedly erred because it *double-counted a particular sentencing factor* . . . or failed to state any reasons or give a sufficient number of valid reasons." (*People v. Scott, supra,* at p. 353, italics added.) Consequently, appellant's claim that the consecutive sentence was the result of double counting the same fact used to impose the upper term was forfeited because it was not raised in the trial court.

Appellant argues that he did object to the upper-term sentence by arguing that probation or a low-term sentence was appropriate. We do not view appellant's stated objection as encompassing an objection to the dual use of sentencing factors. Appellant's challenge went to the trial court's assessment of the proper severity of punishment, not to the dual use of aggravating factors.

4. Factors in imposing consecutive sentences

Even if appellant had not forfeited his dual use claim, we would nonetheless affirm appellant's sentence. Section 669 states the general rule that when a person is convicted of two or more crimes, the sentences "shall run concurrently or consecutively." The trial court has discretion to decide whether to impose concurrent or consecutive sentences. (*People v. Morales* (1967) 252 Cal.App.2d 537, 547.) It is well settled that only a single aggravating factor is required to impose a consecutive term. (*People v. Osband* (1996) 13 Cal.4th 622, 728–729.)

Some of the factors in determining whether to impose consecutive or concurrent sentences are set forth in California Rules of Court, rule 4.425 and include, among others, whether the crimes and their objectives were predominantly independent of each other, whether they involved separate acts of violence or threats of violence, and whether the crimes were committed at different times and or places. Any circumstances in aggravation and mitigation may be considered, except that a fact used to impose the upper term or that is an element of the crime may not be used to impose consecutive sentences. (§ 1170, subd. (b); Cal. Rules of Court, rule 4.425(b)(1).) "'[T]he court cannot rely on the same fact to impose both the upper term and a consecutive sentence.'"

(*People v. Moberly* (2009) 176 Cal.App.4th 1191, 1197; *People v. Osband, supra,* 13 Cal.4th at p. 728.)

Appellant argues that there was an improper dual use of the "showing a gun" factor to impose both the upper term and the consecutive sentences. This contention is based upon a false premise resulting from appellant's misconstruction of the record. In connection with the imposition of the upper term, the trial court articulated the "showing a gun" factor. However, it did not indicate that it was relying on that same factor to impose consecutive sentences. In fact, it gave no reasons whatever for imposing a consecutive sentence.

Section 1170, subdivision (c) states: "The court shall state the reason for its sentence choice on the record at the time of sentencing. . . ." California Rules of Court, rule 4.406(b) provides that "Sentence choices that generally require a statement of a reason include [¶] . . . [¶] . . . (5) Imposing consecutive sentences." "'The decision to impose consecutive rather than concurrent sentences is a "sentence choice" within the meaning of this section. [Citations.] An express statement of reasons is required to support such a choice.'" (*People v. Powell* (2011) 194 Cal.App.4th 1268, 1297.)

Consequently, the error here was not that dual factors were used for both the upper term and consecutive term, but that we are wholly unable to even determine if the same factor was used because the trial court failed to articulate its reasons for imposing consecutive terms.

The trial court's error in failing to articulate its reason(s) for imposing a consecutive sentence is harmless if we can conclude that it is reasonably probable that appellant would not have received a more favorable sentence absent the error. (*People v. Tillotson* (2007) 157 Cal.App.4th 517, 545; *People v. Dreas* (1984) 153 Cal.App.3d 623, 636–637 ["In light of this record, even if we were to assume that error occurred, it would be harmless and it is not reasonably probable that a different sentence would have been reached by the trial court. [Citations.] As a consequence, a remand for resentencing is not warranted in this case. [Citations.]"].) Such error is harmless where it is not reasonably probable the trial court would have been unable to provide sufficient reasons

for consecutive sentences or that it would have imposed concurrent sentences. (*People v. Alvarado* (2001) 87 Cal.App.4th 178, 195–196.)

Here, it is not reasonably probable that the trial court would have been unable to provide adequate justification for the consecutive sentence, apart from the "showing a gun" factor, or that a more favorable sentence would have been obtained had the trial court stated its reasons for imposing a consecutive sentence. First, the trial court gave substantial consideration to the sentence it imposed. It refused to consider the arguments of both sides that did not go to appellant's offenses and the circumstances of those offenses; it rejected appellant's argument that he should get a reduced sentence because he would have been able to negotiate probation if he had been charged only with the offenses of which he was ultimately convicted and the People's argument that he got "a break" from the jury by its finding him guilty of three lesser included offenses. The trial court considered the fact that appellant did not have a criminal record and, if he did, the trial court would have "max[ed] him out." After the trial court tentatively concluded that a state prison sentence was appropriate, it stated that it "want[ed] to think about it," soliciting counsel's input on the length of any sentence.

Second, had the trial court articulated its reasons for the consecutive sentence, there were numerous factors, other than the "showing a gun" factor, on which it could have relied. These included the seriousness of the offense, the risk of great bodily injury to police and bystanders created by appellant's conduct, and appellant's provoking an "extraordinarily dangerous situation." Consequently, a remand for resentencing is unnecessary.

II. Review of in camera *Pitchess* hearing

A. Background

Appellant filed a *Pitchess* motion seeking complaints against Officers Carrillo and Redshaw for "acts of aggressive behavior, violence, excessive force, or attempted violence or excessive [*sic*], racial bias, gender bias, ethnic bias, sexual orientation bias, coercive conduct, violation of constitutional rights, fabrication of charges, fabrication of evidence, fabrication of reasonable suspicion and/or probable cause, illegal

search/seizure; false arrest, . . . of false police reports to cover up the use of excessive force, planting of evidence, false or misleading internal reports including but not limited to false overtime or medical reports, and any other evidence of misconduct amounting to moral turpitude."

At the hearing on the motion the trial court ruled: "Having read the police report, the defense motion and declaration, and the opposition of the People—real party in interest rather, I'll grant the *Pitchess* motion. It will be granted as against both Officers Redshaw and Carrillo for excessive force and false reporting last five years."

B. Contention

Appellant requests that we independently examine the sealed transcript of the in camera hearing "to determine if any police personnel record documents were incorrectly withheld."

C. Pitchess review

The trial court conducted an in camera hearing as to the contents of the documents from Officers Carrillo's and Redshaw's personnel records and provided appellant with information regarding the relevant complaints. Appellant does not challenge the trial court's ruling regarding the scope of the disclosure required, but rather requests us to make an independent review of the sealed transcript of the in camera proceeding to determine if any of the documents reviewed should have been turned over to the defense, but were not.

In *Pitchess*, the California Supreme Court held that a criminal defendant is entitled to discovery of officer personnel records if the information contained in the records is relevant to his ability to defend against the charge. Later-enacted legislation implementing the court's decision permitting discovery (§§ 832.5, 832.7, 832.8; Evid. Code, §§ 1043–1047) balanced the accused's need for disclosure of relevant information against a law enforcement officer's legitimate expectation of privacy in his or her personnel records. The Legislature concluded that a defendant, by written motion, may obtain information contained in a police officer's personnel records if it is material to the facts of the case. (Evid. Code, § 1043, subd. (b)(3).) When presented with such a

motion, the trial court rules as to whether there is "good cause" for disclosure. (Evid. Code, §§ 1043, 1045.) If the court orders disclosure, the custodian of the officer's records brings to court all the potentially relevant personnel records and, in camera, the trial court determines whether any of the records are to be disclosed to the defense. During the in camera hearing, neither the defense nor the prosecution is present. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1226–1227, 1229 (*Mooc*).)

Mooc requires that, at the time of the in camera hearing, the trial court facilitate appellate review of its in camera rulings as follows. "The trial court should . . . make a record of what documents it examined before ruling on the *Pitchess* motion. . . . If the documents produced by the custodian are not voluminous, the court can photocopy them and place them in a confidential file. Alternatively, the court can prepare a list of the documents it considered, or simply state for the record what documents it examined. Without some record of the documents examined by the trial court, a party's ability to obtain appellate review of the trial court's decision, whether to disclose or not to disclose, would be nonexistent. Of course, to protect the officer's privacy, the examination of documents and questioning of the custodian should be done in camera in accordance with the requirements of Evidence Code section 915, and the transcript of the in camera hearing and all copies of the documents should be sealed." (*Mooc, supra,* 26 Cal.4th at p. 1229, fn. omitted.)

We have independently reviewed the sealed reporter's transcript of the in camera hearings regarding the *Pitchess* discovery of Officers Carrillo's and Redshaw's records. The trial court's findings during that review, as reflected in the sealed transcript, are sufficient to permit appellate review of its rulings. (See *Mooc, supra,* 26 Cal.4th at pp. 1229, 1232.) The trial court properly exercised its discretion in determining the documents to be disclosed.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
ASHMANN-GERST

We concur:

_____, Acting P. J.
DOI TODD

_____, J.
CHAVEZ