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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

RICHARD CAMPBELL,

Defendant and Appellant.

B237021

(Los Angeles County  
Super. Ct. No. BA376935)

APPEAL from a judgment of the Superior Court of Los Angeles County, Clifford Klein, Judge. Affirmed in part and reversed in part.

Tracy A. Rogers, 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, Senior Assistant Attorney General, James William Bilderback II, Supervising Deputy Attorney General, and Mark E. Weber, Deputy Attorney General, for Plaintiff and Respondent.

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During a search of the home of appellant Richard Campbell, law enforcement officers found bullets in his bedroom. Officers found more ammunition in an outside storage container in Campbell's assigned carport. A jury found Campbell guilty of being a felon in possession of ammunition. He claims the trial court erred by not giving a unanimity instruction because the jurors may have amalgamated evidence of different criminal acts to reach a verdict without unanimously agreeing on a discrete crime. Campbell also contends the trial court abused its discretion when it denied his *Romero* motion.<sup>1</sup> Finally, Campbell asks us to independently review the trial court's determination on his *Pitchess*<sup>2</sup> motion and, if we find error, to order a conditional remand. We conclude that the trial court erred when it found no discoverable materials during its review of the *Pitchess* motion, and order a limited remand. Otherwise, we affirm.

### **PROCEDURAL BACKGROUND**

An amended information charged Campbell with possession of a firearm by a felon (Pen. Code, § 12021, subd. (a)(1);<sup>3</sup> count 1) and possession of ammunition by a felon (§ 12316, subd. (b)(1); count 2). The information also alleged that Campbell had one prior serious or violent felony strike conviction (§ 667, subds. (b)–(i); § 1170.12, subds. (a)–(d)), and that he had committed the alleged offenses within five years of his release from prison on a prior felony conviction (§ 667.5, subd. (b)).

Campbell pleaded not guilty and denied the special allegations.

Campbell's motion to suppress (§ 1538.5) was denied in mid-February 2011. An in camera *Pitchess* hearing was conducted in mid-March; no discoverable material was produced.

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<sup>1</sup> *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497 (*Romero*).

<sup>2</sup> *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

<sup>3</sup> Subsequent undesignated statutory references are to the Penal Code.

A jury trial commenced in early October 2011. The jury found Campbell not guilty as to count 1, and found him guilty on count 2. Campbell waived his right to a jury trial on the special allegations, which he admitted and the trial court found true.

Campbell moved unsuccessfully to strike his prior “strike” and to reduce the conviction to a misdemeanor pursuant to section 17, subdivision (b). The trial court denied probation, and imposed a low term of 16 months on count 2, doubled for the prior strike conviction, for a total of 32 months in prison on count 2. For sentencing purposes, the court struck the prison prior, under section 667.5, subdivision (b). Campbell received a total sentence of two years eight months in prison, was given 301 days of presentence custody credits, and was ordered to pay various fines and fees.

### **FACTUAL BACKGROUND**

#### *Prosecution case*

At 7:00 a.m. on August 4, 2010, Los Angeles Police Department (LAPD) Detective Darren Ehrenburg and Officer Paul Fedynich, and 10 other officers, executed a search warrant at Campbell’s apartment. Campbell and his wife, Angel Campbell, were present during the search. Officer Fedynich was the search team member responsible for collecting evidence found by other officers during the search.

Detective Ehrenburg testified that photographs were taken of the interior and exterior of Campbell’s apartment, both before after the search. The photos were put on a compact disc and placed in the case package. Those photos were not available at trial. Detective Ehrenburg believed they had fallen out of the case package, which had somehow torn before trial.

In the course of the search Officer Fedynich found ammunition in Campbell’s bedroom. Specifically, he found one live Winchester .38-caliber bullet and six live nine-millimeter bullets inside a black plastic bag in a drawer of a bedroom storage container. Officer Fedynich also found Campbell’s California I.D. card near the bullets in the same drawer. A memory stick was found in a different drawer in the same storage container. Officer Fedynich recovered a larger memory stick from a camera on a kitchen counter. Photos from the larger memory stick revealed Campbell shooting guns at a shooting

range. Another officer found a white Winchester ammunition box containing eight live .38-caliber bullets in a storage cabinet directly above Campbell's parked car in the carport space assigned to Campbell's apartment.

In a later interview Campbell told Detective Ehrenburg that, in April or May 2010, he and his "girlfriend" went to the LAX shooting range.<sup>4</sup> Campbell rented three handguns and bought several rounds of ammunition. Campbell admitted the bullets found at his apartment were left over from that trip to the shooting range, and the photos the police recovered were taken that day. Campbell did not tell Detective Ehrenburg in that interview that the guns in the photographs were props, or that the ammunition found at his home belonged to his girlfriend.

It was stipulated that Campbell was convicted of a felony in June 2003.

#### *Defense case*

Kevin Daniels is a cofounder of Coudan Enterprises,<sup>5</sup> a company that seeks production deals with music companies. Daniels runs the business from his apartment. Coudan has four employees, one of whom is Daniels's girlfriend. Coudan is not yet a successful business.

Daniels and Campbell met through the music business, and have known one another and been friends for several years. They live in the same apartment building, where Daniels manages the apartment complex. Daniels employs Campbell. He is helping to further Campbell's career as a performer, and Campbell helps Coudan get production deals.

In March or April of 2010, Daniels was interested in producing a rap video with an antiviolence theme. He asked Campbell to look for suitable locations, and to take some

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<sup>4</sup> Detective Ehrenburg testified that Campbell referred to Angel Campbell as his girlfriend. We will refer to her as Ms. Campbell throughout this opinion. Ms. Campbell testified that she and Campbell married in late April 2010.

<sup>5</sup> Daniels testified the correct spelling of his company's name was Coudan, to which we adhere.

anti-violence related pictures for the project. In April 2010 Coudan's inventory included some fake or prop guns, one of which was checked out by Campbell.

Ms. Campbell testified that in March 2010 she and Campbell went to the LAX shooting range because Campbell was looking for a location to shoot a video or a commercial. They brought two of Coudan's prop guns with them. After she and Campbell took photographs at the shooting range, Ms. Campbell rented a .38-caliber revolver to shoot and bought a box of bullets. Ms. Campbell shot at a target at the LAX range. That was the first time Ms. Campbell had ever handled or fired a loaded gun. Campbell never touched the gun or helped his wife load bullets into it. When she was finished, she put the box containing bullets in the trunk of their car. The next day, Ms. Campbell put the box of bullets in a storage cabinet in the couples' carport. Campbell was not with her when she did so but she told him the box containing bullets was in the storage cabinet a week later. Both Campbell and Ms. Campbell had access to the carport storage cabinet. Ms. Campbell testified that the only ammunition on the premises was the box of bullets in the carport. There was no ammunition inside the apartment. She had no knowledge of any ammunition in a plastic bag in the couple's bedroom.

The Campbells had returned from a trip to New York the night before the LAPD search. They were asleep when the police arrived. Ms. Campbell testified that she had never seen the black plastic bag Officer Fedynich claimed to have found in a drawer in her room. Ordinarily, Campbell carried his I.D. card in his wallet. Ms. Campbell never saw him take it out of his wallet or put it in the drawer where Officer Fedynich said he found it.

Ms. Campbell testified that the smaller memory stick the LAPD found came from Campbell's camera, not the plastic storage unit. The larger memory stick was from a camera that had been in her purse, not on a kitchen counter. On cross-examination Ms. Campbell reviewed photographs from the memory stick containing pictures of the shooting range and other photographs. She was only able to point to a photograph of her inside an airplane and unable to identify any other photos from the New York trip. She said those photos were not on the exhibit she was shown.

## DISCUSSION

### 1. *No unanimity instruction was required*

Campbell maintains the trial court had a sua sponte obligation to instruct the jury it was required to reach unanimous agreement regarding which ammunition Campbell possessed, because he might have been convicted either for possessing the bullets found in his bedroom or those in his carport.

The jury's verdict in a criminal case must be unanimous. (*People v. Russo* (2001) 25 Cal.4th 1124, 1132 (*Russo*).) In addition, "the jury must agree unanimously the defendant is guilty of a *specific* crime." (*Ibid.*) The "cases have long held that when the evidence suggests more than one discrete crime, either the prosecution must elect among the crimes or the court must require the jury to agree on the same criminal act. [Citations.]" (*Ibid.*) The purpose of the requirement of the rule of unanimity is to "eliminate the danger that the defendant will be convicted even though there is no single offense which all the jurors agree the defendant committed." [Citation.]" (*Ibid.*) "On the other hand, where the evidence shows only a single discrete crime but leaves room for disagreement as to exactly how that crime was committed . . . , the jury need not unanimously agree on the basis or, as cases often put it, the "theory" of the defendant's guilt. (*Ibid.*; *People v. Wolfe* (2003) 114 Cal.App.4th 177, 183–184 (*Wolfe*).) When deciding whether to give the unanimity instruction, the trial court must determine whether "there is a risk the jury may divide on two discrete crimes and not agree on a particular crime," or whether the evidence presents a possibility the jury could divide, or be uncertain about the manner in which the defendant is guilty of one discrete crime. Only in the first situation should the instruction be given. (*Russo, supra*, 24 Cal.4th at p. 1135; *People v. Sanchez* (2001) 94 Cal.App.4th 622, 631.) We review a claim of instructional error de novo. (*People v. Posey* (2004) 32 Cal.4th 193, 218.)

Campbell's argument fails. So long as the jurors agreed the ammunition was in his possession, it was unnecessary for them to agree whether it was found in his bedroom or in his carport. The unanimity instruction is required only if the evidence supports two or more discrete crimes. (*Wolfe, supra*, 14 Cal.App.4th at p. 185 [six firearms found in

trailer, but evidence showed they were owned by various individuals]; *People v. King* (1991) 231 Cal.App.3d 493, 501–502 [unanimity instruction required where there was conflicting evidence as to ownership of three baggies of methamphetamine found in different locations inside and outside of residence].)

*People v. Crawford* (1982) 131 Cal.App.3d 591 is an example of a case in which the unanimity instruction was required. There, guns were found in four different areas of the house, and ownership was disputed. There was evidence that at least three of the four guns belonged to people other than the defendant. (*Id.* at p. 598.) The court concluded that the unanimity instruction “should be given where the acts of possession were not factually identical. Conversely, where the acts were substantially identical in nature, so that any juror believing one act took place would inexorably believe all acts took place, the instruction is not necessary to the jury’s understanding of the case.” (*Id.* at p. 599.)

The latter situation applies here. Campbell was charged with and convicted of one count of felon in possession of ammunition. All the ammunition was found within Campbell’s actual or constructive possession, either in his bedroom or in a carport storage bin to which he unquestionably had access. It is immaterial that some jurors may have believed Campbell possessed the bullets in his bedroom, but not in the carport, while others believed he possessed the bullets in the carport, but not the ones found inside his home. (See *Wolfe, supra*, 114 Cal.App.4th at p. 184.) If Campbell knew the bullets were in the carport storage cabinet and had access to it—and his wife said she told him the bullets were in the storage cabinet to which they both had access. there was no issue as to whether appellant possessed the carport bullets; he did. Possession may be actual or constructive. Possession is “actual” if an object is in the defendant’s immediate possession or control. “Constructive possession means [an] object is not in the defendant’s physical possession, but [he or she] knowingly exercises control or the right to control the object.” (*In re Daniel G.* (2004) 120 Cal.App.4th 824, 831.) Campbell’s acts of possession were substantially identical in nature, rendering a unanimity instruction unnecessary. (*Crawford, supra*, 131 Cal.App.3d at p. 599.)

Campbell's case is distinguishable from *King*, *supra*, 231 Cal.App.3d 493, on which he relies. In *King*, methamphetamine was found in the purse of one occupant, not the defendant. Methamphetamine also was concealed inside a statue located in the house and another occupant claimed ownership of the statue. (*Id.* at pp. 497–498.) Defendant was convicted of possession of methamphetamine for sale. Defendant asserted that the trial court should have given a unanimity instruction. (*Id.* at p. 499.) Under the circumstances the appellate court agreed, holding that “in a prosecution for possession of narcotics for sale, where actual or constructive possession is based upon two or more individual units of contraband reasonably distinguishable by a separation in time and/or space and there is evidence as to each unit from which a reasonable jury could find that it was solely possessed by a person or persons other than the defendant,” a unanimity instruction should be given. (*Id.* at p. 501.)

Unlike *King*, this case did not involve multiple acts of possession of contraband. There was only one discrete act of possession at issue here. Where “multiple . . . acts may form the basis of a guilty verdict on one discrete criminal event,” a unanimity instruction need not be given. (*Russo*, *supra*, 25 Cal.4th at p. 1135.) It was for the jury to determine whether the ammunition that was found was in Campbell's possession, whether active or constructive. These facts did not warrant a unanimity instruction.

2. *The trial court did not abuse its discretion by denying the Romero motion*

Campbell next asserts the trial court erred when it denied his *Romero* motion requesting that it strike his prior strike conviction for sentencing purposes or, alternatively, reduce the offense to a misdemeanor pursuant to section 17.

A trial court's decision to strike a prior felony conviction is limited to those instances “in furtherance of justice.” (§ 1385, subd. (a); *Romero*, *supra*, 13 Cal.4th at p. 530.) The Supreme Court “has established stringent standards that sentencing courts must follow to dismiss a strike conviction. (*People v. Carmony* (2004) 33 Cal.4th 367, 377 (*Carmony*)).” When contemplating a defendant's request to strike a prior felony conviction the court “must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the



particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies.”

(*People v. Williams* (1998) 17 Cal.4th 148, 161 (*Williams*); accord, *Carmony*, at p. 377.)

The Three Strikes law “establishes a sentencing norm, . . . circumscribes the trial court's power to depart from [that] norm and requires the trial court to explicitly justify its decision to do so.” By doing so, “the law creates a strong presumption that any sentence that conforms to these sentencing norms” is appropriate. (*Carmony*, at p. 378.)

Accordingly, trial courts are advised not to dismiss a career criminal's strike conviction unless the circumstances are “extraordinary.” (*Ibid.*; *People v. Strong* (2001) 87 Cal.App.4th 328, 338 (*Strong*).)

We review a trial court's refusal to strike a prior conviction allegation for abuse of discretion. (*Carmony, supra*, 33 Cal.4th at p. 374.) “[A] trial court does not abuse its discretion unless its [sentencing] decision is so irrational or arbitrary that no reasonable person could agree with it.” (*Id.* at p. 377.) Reversal is justified if the court was unaware of its discretion to strike a prior strike or refused to do so at least in part for impermissible reasons. (*Id.* at p. 378.) But where the trial court, aware of its discretion, “balanced the relevant facts and reached an impartial decision in conformity with the spirit of the law, we shall affirm the trial court's ruling, even if we might have ruled differently in the first instance” [citation].” (*Ibid.*) If the court grants a *Romero* motion, it must state its reasons for dismissing a strike conviction. (§ 1385, subd. (a); *Carmony, supra*, 33 Cal.4th at p. 376.) It is not, however, required to state its reasons for refusing to dismiss one. This difference “reflects the legislative presumption that a court acts properly whenever it sentences a defendant in accordance with the three strikes law.” (*Carmony*, at p. 376.)

On appeal, our review is guided by “two fundamental precepts.” (*Carmony, supra*, 33 Cal.4th at p. 376.) “First, “[t]he burden is on the party attacking the sentence to clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve legitimate sentencing objectives, and its discretionary determination to impose a particular sentence

will not be set aside on review.” [Citation.]” (*Id.* at pp. 376–377.) “Second, a ““decision will not be reversed merely because reasonable people might disagree. ‘An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.’” [Citation.]” (*Id.* at p. 377.)

According to the standards above, this record does not reflect the extraordinary circumstances required to overturn the trial court’s decision to deny Campbell’s motion to strike a prior strike. (*Carmony, supra*, 33 Cal.4th at p. 378; *Strong, supra*, 87 Cal.App.4th at p. 338.)

Campbell also criticizes the trial court for describing his present offense as one which involves ““serious danger to the public,”” and tries to minimize the unlawful possession of ammunition by characterizing it as an “innocent” offense. Far from it. He seeks to minimize his current offense, arguing that he offered an explanation for the presence of the bullets that was “wholly consistent with innocent and lawful . . . use,” and at the very least, that he lacked any “malevolent purpose.” His argument ignores the fact that by finding him guilty of the charged offense, the jury necessarily rejected such an explanation. Possession of ammunition by a felon is a serious matter that may lead to violence. Moreover, Campbell is a convicted armed robber. Possession of ammunition by such a person is a serious problem that can lead to violence. In addition, the fact that Campbell possessed ammunition suggests he also had access to or intended to acquire a weapon.

Campbell asserts that the trial court relied on incorrect information and failed to consider all the *Williams* factor when it denied his motion. He insists the court mischaracterized his record when it observed that his strike prior “was only a couple years ago” and said he had not led a conviction free life since then. The court was not mistaken. It was 2002 when Campbell committed the armed robbery that led to his strike conviction in 2003. The fact that Campbell’s prior conviction was less than a decade before the current conviction is of little import. He cites no authority for the proposition that the age of a strike alone requires the court to depart from the three-strike sentencing scheme, and we are aware of none. (See *People v. Humphrey* (1997) 58 Cal.App.4th

809, 813 [noting that “a prior conviction may be stricken if it is remote in time,” but that “[i]n determining whether a prior conviction is remote, the trial court should not simply consult the Gregorian calendar with blinders on”].) And the trial court was correct that the instant action is evidence Campbell has not led a blameless life since his conviction for armed robbery in 2003.

Campbell also has an extensive criminal history. At the time of sentencing, he was a 29-year-old current or former gang member. He had a criminal record stretching back to when he was 15 years old and had a sustained petition for possession of marijuana. That was followed in rapid succession between the ages of 16 and 17 by three sustained petitions for taking a vehicle without the owner’s consent, burglary and trespass. When he was 19 years old, Campbell committed armed robbery. He was sentenced to six years in prison in mid-2003, and released sometime in 2008. He was arrested for the present offense in August 2010.

Campbell claims the court failed to consider “the particulars of his background, character, and prospects” (*Williams, supra*, 17 Cal.4th at p. 161) including his marriage, parenting, employment and work ethic. He also argues the court unreasonably rejected his *Romero* motion because it was displeased with his comments during the sentencing hearing.<sup>6</sup> The record does not support either claim. The court read the probation report,

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<sup>6</sup> During the hearing, Campbell told the court that he believed the penalties for the current offense based on the prior strike was a form of double jeopardy, he claimed innocence as to the current offense, stating there were no bullets inside his house, and that he had not known about the presence of the bullets his wife put in the carport. He then expressed his hope that the court would “reduce[ the prior strike] to a misdemeanor, so it won’t really ruin my life. I actually had a lot of things going for myself. Hopefully I still have my job, which I do want. But I can’t really continue in my life—I haven’t been in trouble since that charge. I had no violations on parole. I’m not a bad guy. It’s not like I do a lot of crimes or anything. This is really just like an unfortunate event and really could be an accident. I don’t know if that what you call a wobbler, but I’m hoping you take this into consideration and my life can go on.”

The court responded:

received the written *Romero* motion and reference letters, listened to argument and Campbell's own statement, which together presented the particulars of Campbell's background, character, and prospects. The court's failure to mention all of these particulars does not mean that it failed to consider them, or that it did not understand it had the discretion to do so. And, contrary to Campbell's assertion, we find nothing in the record that indicates the court was definitively inclined to dismiss the prior strike before he spoke at the sentencing hearing. To the contrary, the court's remarks indicate it was not initially inclined to grant the motion ("... *any leanings I would have had on Romero just went away . . . because [Campbell's statement] . . . was truly not very candid, and certainly not a remorseful statement . . .*" (first italics added), and nothing Campbell said made it question the wisdom of that inclination. In any event, we cannot say the trial court failed to consider or balance the factors Campbell deemed important. Essentially, Campbell invites us to reweigh the evidence and substitute our judgment for that of the trial court. We decline to do so. (*Carmony, supra*, 33 Cal.4th at p. 377.)

Here, the circumstances evaluated by the trial court—including Campbell's character and prospects, the specifics of his current offense, the nature of the prior strike, his failure to accept full responsibility or to express remorse for the crime, and the evidence of his criminal record—led to its conclusion that Campbell did not fall outside of the letter and spirit of the three strikes sentencing scheme. The record does not show

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"Well, any leanings I would have had on *Romero* just went away with that because it was truly not very candid, and certainly not a remorseful statement he just made. So I'm going to deny the *Romero* motion. The prior conviction that he had was certainly a very serious one, and he has not led a conviction free life since then. It was only a couple years ago. Both crimes do involve potential acts and serious danger to the public. Obviously the first one was far more dangerous than this one. But I don't know he had the bullets for hunting or any other lawful purpose.

"The defendant of course did receive a state prison sentence in the prior conviction. It was somewhat serious. He was not a very young age, so he's certainly had another standing when he committed the robbery. And the bottom line is it was a robbery with a gun, and I think possession of ammunition is potentially a very serious case."

that the court based its decision on any improper factors or that it failed to properly consider the factors enunciated in *Williams*. Put simply, the circumstances here were not “extraordinary.” In the absence of such extraordinary circumstances, we cannot say that the trial court abused its discretion by refusing to strike Campbell’s prior strike offense. (*Carmony, supra*, 33 Cal.4th at p. 378.)

3. *The trial court erred when it found no discoverable Pitchess materials*

Campbell filed a pretrial motion for *Pitchess* discovery seeking personnel information for complaints against Detective Ehrenburg and Officer Fedynich “relating to acts of moral turpitude, lying and/or fabrication and planting of evidence, and fabricating police reports.” The court granted the motion, conducted an in camera review, and concluded there was no discoverable material to be disclosed.

Campbell has asked that we independently review the sealed transcript of the in camera proceeding to determine whether the court properly exercised its discretion in denying the discovery he sought. (See *People v. Mooc* (2001) 26 Cal.4th 1216, 1229–1232 (*Mooc*); *People v. Guevara* (2007) 148 Cal.App.4th 62, 67–68.) We review denial of a *Pitchess* discovery motion for abuse of discretion. (*Mooc, supra*, 26 Cal.4th at p. 1228.)

We have conducted an independent review of the sealed reporter’s transcript of the in camera hearing, and the trial court’s decision regarding the discoverability of material in the officers’ personnel files. We conclude the trial court’s decision was an abuse of discretion, and reverse its ruling. (See *Mooc, supra*, 26 Cal.4th at p. 1232.)

The premise of Campbell’s *Pitchess* motion was to uncover acts of misconduct on the part of the officers who searched his home which would enable him to challenge their credibility at trial. Campbell’s defense at trial was, not just that the ammunition found in the carport belonged to his wife, but also that there was never any ammunition inside his apartment at all. The officer’s claim to the contrary was pivotal to establishing the presence of ammunition in Campbell’s possession. Moreover, Detective Ehrenburg testified that Campbell told him during an interview that he had purchased the ammunition the day he and Ms. Campbell went to the shooting range, and never

mentioned that the gun he was holding in the photos was a fake. Detective Ehrenburg also testified that photos were taken before and after the search of Campbell's home, but those photos disappeared before trial. Thus, the jury would be left to evaluate the credibility of the police officers' uncorroborated testimony over that of the witnesses offered by Campbell.

The sealed transcript of the *Pitchess* hearing reveals one open complaint against Detective Ehrenburg relevant to the issue of lying or the fabrication of evidence. That complaint must be disclosed.<sup>7</sup>

The sealed transcript of the *Pitchess* hearing reveals four citizen complaints against Officer Fedynich relevant to the issue of lying, fabrication of evidence or that suggest dishonesty. On remand, those complaints must be disclosed. On remand, the trial court shall order disclosure to the defense of the following citizen complaints against Officer Fedynich: No. 07-004107; No. 08-004151; No. 09-003474; No. 10-000394.<sup>8</sup>

The trial court's erroneous denial of a *Pitchess* motion is not reversible error per se. "Rather, the failure to disclose relevant information in confidential personnel files,

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<sup>7</sup> This court has determined that an undated, open complaint against Detective Ehrenburg, No. 11-000382, properly should have been disclosed. On remand, the trial court shall order disclosure to the defense of citizen complaint, No. 11-000382, as relevant to Campbell's request for records which does or may raise issues regarding false statements and complaints of dishonesty. (See *Warrick v. Superior Court* (2005) 35 Cal.4th 1011, 1023–1024.)

<sup>8</sup> The court found good cause did not exist to review Officer Fedynich's personnel files for eight other complaints, including several for excessive or unauthorized force, as they were not material to the charge against him. This determination was in the court's discretion, because the charge against Campbell related to his possession, as a felon, of ammunition, not to anything regarding resisting arrest or use of force, and so the information was not material. (*Warrick, supra*, 35 Cal.4th at p. 1021 [showing of good cause must be linked to pending charge against defendant]; see *City of Santa Cruz v. Municipal Court* (1989) 49 Cal.3d 74, 85–86 [complaints regarding excessive use of force relevant in case where defendant charged with resisting arrest].) The court also found no good cause for disclosure for a complaint against Officer Fedynich of planting evidence, among other things. That complaint, although relevant, has been refuted.

like other discovery errors, is reversible only if there is a reasonable probability of a different result had the information been disclosed.” (*People v. Gaines* (2009) 46 Cal.4th 172, 176.) The appropriate remedy is a conditional reversal and remand to the trial court with instructions to order disclosure of the discoverable material. The trial court must then conduct proceedings to give Campbell an opportunity to demonstrate prejudice, i.e., a reasonable probability that the outcome would have been different had the information been disclosed earlier. (*Id.* at p. 181.) If on remand Campbell is unable to demonstrate a reasonable probability of a different outcome, the court shall reinstate the judgment. (*Id.* at pp. 181–182.)

### **DISPOSITION**

The judgment is reversed in part. The trial court is directed to order disclosure of citizen complaint No. 11-000382 against Detective Ehrenburg, and citizen complaint Nos. 07-004107, 08-004151, 09-003474, No. 10-000394 against Officer Fedynich, allow Campbell an opportunity to demonstrate prejudice, and to order a new trial if there is a reasonable probability the outcome would have been different had the information been disclosed. In all other respects, the judgment is affirmed.

NOT TO BE PUBLISHED.

JOHNSON, J.

We concur:

ROTHSCHILD, Acting P. J

CHANEY, J.