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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LEANDRE DESHAWN BRADFORD,

Defendant and Appellant.

A137113

(Contra Costa County
Super. Ct. No. 1107861)

Leandre Deshawn Bradford (appellant) appeals from a judgment entered after a jury found him guilty of attempted murder (Pen. Code, §§ 187/664, count 1¹), second degree robbery (§ 211/212.5, count 2), and possession of a firearm as a felon (§ 12021, subd. (a)(1), count 3), and found true the allegations as to the first two counts that he personally and intentionally discharged a firearm that proximately caused great bodily injury during the commission of the crimes (§ 12022.53, subds. (b), (c), (d)), and that he personally inflicted great bodily injury during the commission of the crimes (§ 12022.7, subd. (a)). The trial court found a prior strike allegation to be true (§ 667, subds. (b)–(i)) and sentenced appellant to 43 years to life in state prison. Appellant contends: (1) his counsel provided ineffective assistance of counsel by not allowing him to take the stand to provide testimony in support of a self-defense theory, particularly where counsel had detailed the anticipated testimony in opening statements; and (2) the trial court erred in denying his request for new counsel. We reject the contentions and affirm the judgment.

¹All further statutory references are to the Penal Code.

FACTUAL AND PROCEDURAL BACKGROUND

On December 27, 2011, a first amended information was filed charging appellant with attempted murder (§§ 187/664, count 1), second degree robbery (§ 211/212.5, subd. (c), count 2), and possession of a firearm as a felon (§ 12021, subd. (a)(1), count 3). The information alleged as to counts one and two that appellant personally and intentionally discharged a firearm that proximately caused great bodily injury during the commission of the crimes (§ 12022.53, subds. (b), (c), (d)), and that he personally inflicted great bodily injury during the commission of the crimes (§ 12022.7, subd. (a)). The information further alleged that appellant had a prior strike conviction (§ 667, subds. (b)–(i)).

The information arose from an incident that occurred on January 17, 2011. In the early afternoon that day, appellant, his girlfriend Maria Morales, and their friend Keosha Getridge, were on the front porch of Morales’s house in El Pueblo, a housing project. The victim, Vijay Pal, was also in El Pueblo that day to visit a friend, Val, who had agreed to repair his laptop computer for him. When Pal arrived at Val’s house, Val told him to come back later, so Pal walked to his friend Reyna’s house, and smoked one “hit” of methamphetamine with her. Thereafter, as Pal was walking down the street in front of Morales’s house, holding a bag that contained his laptop, he saw appellant walking towards him.

Pal knew appellant from having met him twice before that day; appellant had arranged for one or two rides for Pal in the past. Pal had promised to pay for gas for those rides, and owed appellant \$20. Appellant said to Getridge and Morales, “I’ll be right back,” and walked up to Pal. Appellant then said to Pal, “Hey, partner, don’t you be owing me some money?” and Pal responded, “I owe your friend 20 dollars gas money.” Appellant asked Pal what was in the bag, and when Pal told him it was a laptop, appellant said, “I need that.” Pal said “No,” but also said he could get appellant his \$20 if appellant was willing to stick around and help Pal sell the laptop. Pal believed he could sell the laptop for \$100 or \$150.

Appellant did not say anything. Instead, he took a gun out of his sweatshirt and showed it to Pal. He held it close to his body, as though he did not want anyone else to see that he was pointing it at Pal. Pal thought the gun was fake and refused to give up his laptop, saying something like, “Then shoot me” and “I have children. You’re going to have to shoot me. I have kids.” Appellant paused, stretched out his right hand, and shot Pal in the chest. Pal fell to the ground, and appellant took the laptop and walked away. At trial, Morales testified that she did not see the shooting. Morales testified that she did not recall providing police with a pretrial statement that appellant pulled out a gun and shot Pal from five or six feet away.² She testified at trial that she did not see Pal with a gun.

Pal was taken to John Muir Hospital and was in critical condition. According to Dr. John Norris Childs, III, who cared for Pal in the trauma unit, Pal had lost a lot of blood and required multiple blood transfusions. There were eight holes in Pal’s small intestine and a bullet was lodged next to Pal’s spine. Childs was not able to remove the bullet from Pal’s body, and Pal required surgery to correct all of the damage to his internal organs.

Arnesha Bryant also lived in El Pueblo on January 17, 2011. Appellant, whom she considered a friend, occasionally visited her house. An audio recording of a police interview of Bryant was played for the jury, and the jury was given transcripts of the interview. During the interview, Bryant told police that after the shooting, appellant came over to her house with Pal’s laptop. Appellant was panicking and “just started taking shit out [of] his pockets like, two clips and the gun and the . . . laptop.” Appellant hid the gun near her clothes dryer and washed his hands with bleach. He then made some phone calls to arrange to get the gun out of the house. When a man, whom she did not know, came to her house, Bryant retrieved the gun and ammunition from the clothes dryer area and handed it to that man. Appellant then called Morales and asked her to

²Morales also said during the interview that Pal “reached over like that like he was gonna grab something and that’s when [appellant] pulled his gun out.” At trial, she testified she did not recall making this statement to police.

bring him a change of clothes and pick him up from the back of Bryant's house. Appellant left the laptop in Bryant's living room, and Bryant eventually moved it to an upstairs bedroom closet.³ Police later conducted a search of Bryant's house and seized the laptop.

Detective Kirk Sullivan arrived at the scene of the shooting at 2:10 p.m. on January 17, 2011. Two minutes later, Sullivan received an anonymous telephone tip that "Dre" was the suspect and that he was possibly trying to leave El Pueblo in a white Saturn that was being driven by his girlfriend. Sullivan, along with Officer Robert Thompson, located and stopped the car, which was occupied by Morales, Getridge, and a third woman. The occupants had a black bag that contained various items of appellant's clothing. Morales and Getridge were transported to the police station to be interviewed.

Morales denied she was in a relationship with appellant. Sullivan checked this information with Officer Donald Pearman, who was assigned to the El Pueblo housing division and knew the residents of El Pueblo. Pearman confirmed to Sullivan that appellant and Morales were dating. When Sullivan confronted Morales with this information, Morales began to cry and admitted she was in a relationship with appellant, and that he had called and asked her to bring some clothing and give him a ride out of the area. Morales relayed to Sullivan that appellant told her he shot Pal because Pal owed him money and had disrespected appellant's mother.

Sullivan viewed Getridge's cell phone and noted she had incoming and outgoing calls to and from Morales that took place moments before the stop. Officer Edgar Sanchez, who investigated the scene of the shooting, found two bullet casings and Pal's key chain with a key on it in the street. He also found and examined Pal's clothing that

³At trial, Bryant claimed she had lied in the recorded interview about appellant coming to her house with a gun, washing his hands with bleach, and attempting to hide evidence and escape. After Bryant testified, a senior inspector with the District Attorney's Office testified that he was party to a telephone conversation in which Bryant told the prosecutor that she was feeling some family pressure not to testify in this case, and was also scared because she saw Morales everyday in El Pueblo. Bryant said during this conversation that she planned to lie on the witness stand and deny having made statements to police incriminating appellant.

were on the ground. Deputy Sheriff Forensic Supervisor Chris Coleman testified that all of the cartridges found on the scene were fired from the same weapon. He also testified that the minimum range the shot was fired from was between four and six feet, but could have been a much greater distance away.

On January 31, 2011, Sullivan and another officer conducted a high-risk stop of a white Saturn in which Sullivan suspected appellant was hiding. Morales was in the driver's seat, her aunt was in the passenger seat, and her cousin was in the back seat. Appellant was found hiding in the trunk of the car. Morales was arrested for harboring a wanted person.

On March 14, 2012, a jury found appellant guilty of all counts and found true all allegations. On August 17, 2012, the trial court found the prior strike allegation true. The court sentenced appellant to 43 years to life in prison, and appellant timely appealed.

DISCUSSION

1. Ineffective Assistance of Counsel

a. Background

Before trial, defense counsel moved in limine to exclude a videotaped recording of a police interview during which appellant confessed he had shot Pal. Counsel argued the confession was the product of a coercive interrogation. The prosecution opposed the motion and detailed some of the contents of the recording, including appellant's statement denying knowledge of the shooting, his statement, "it seems like I should just admit to it," and his subsequent question, "What if it happened in self defense? . . . How can I prove that?" According to the prosecution,⁴ appellant then said there was no way he could prove he shot Pal in self defense. The prosecution claimed, "the People have the option of admitting defendant's statement in their case in chief and/or impeaching the defendant with these statements in the event he chooses to testify."

⁴Although a transcript of the videotaped recording is not a part of the record on appeal, appellant does not dispute the prosecution's summary of the videotaped recording.

The jury trial began and counsel made their opening statements to the jury before the court had ruled on appellant's motion to exclude his videotaped confession. After discussing some of the anticipated evidence and witness testimony in his opening statement, defense counsel stated, "And in all likelihood you're going to hear from the defendant. I don't have to tell you whether he's going to testify or not. He may or may not. It's his right to testify. He'll have an opportunity to make that decision, but I have a strong suspicion that you're going to hear from him." He also stated that appellant and "other witnesses" were going to tell the jury that appellant had the gun in his possession in order to protect himself and Morales from Morales's ex-boyfriend. He then said, "You're gonna hear Mr. Bradford tell you, in all likelihood—and if he doesn't, shame on me then—that he shot in self-defense . . . that when . . . a gun was pulled on him, he responded in kind."

After opening statements, the trial court held a hearing on the admissibility of the statements appellant made in the videotaped interview. After a thorough discussion, the court ruled it would allow the videotape to be admitted into evidence, and allow testimony by the detective who conducted the interview. At one point, the court stated its impression that appellant "change[d] his version of events on several different occasions throughout the interview, telling the detective that first he did not shoot the victim or did not know the victim or was not at the scene."

At the close of the prosecution's case, defense counsel attempted to put on a defense witness. However, after the witness took the stand outside the presence of the jury and responded to defense counsel's question in a way that revealed he would not be helpful to the defense,⁵ defense counsel chose not to call the witness. The court adjourned for the day to give defense counsel "time to talk with your client about what you would like to do tomorrow morning." Defense counsel agreed, stating, "Cause,

⁵It appears the witness, who shared a jail cell with appellant, had previously informed defense counsel that he had witnessed the January 17, 2011 shooting. The witness testified, however, that it was a "mistake" and that he was not a witness to the shooting.

obviously, this has a significant impact on decisions that my client will [make] . . . [¶] . . . and I will hopefully be able to assist him in making at this time.” Appellant did not testify at trial.

In closing, defense counsel told jurors that what the lawyers said was not evidence, that the opening statements explained “what we believed the evidence would show, at the beginning,” but that “the only thing that matters is what happened as you folks determine it to be.” He reviewed Morales’s statement to police and pointed out that while she said, “Uh-huh, uh-huh, uh-huh” “over 90 times” in response to lengthy questions by the detective, by contrast, she was very clear in stating, “Yeah, and then he reached over like he was going to grab something, and that’s when [appellant] pulled his gun out.” Counsel stated in conclusion, “if you’re not convinced beyond a reasonable doubt that you know what happened out there that day, if you say, well, probably or maybe, then the only verdict you can reach . . . unless you’re sure, that you don’t have a doubt based on reason, is that Mr. Leandre Bradford is not guilty.”

b. Legal Principles

To demonstrate ineffectiveness of counsel, a defendant must show that “(1) counsel’s representation was deficient, i.e., it fell below an objective standard of reasonableness under prevailing professional norms; and (2) counsel’s representation subjected the defendant to prejudice, i.e., there is a reasonable probability that, but for counsel’s failings, the result would have been more favorable to the defendant.” (*People v. Mitcham* (1992) 1 Cal.4th 1027, 1058; see *Strickland v. Washington* (1984) 466 U.S. 668, 687–688 [104 S.Ct. 2052, 80 L.Ed.2d 674].) “ ‘ “Reviewing courts defer to counsel’s reasonable tactical decisions,” ’ ” and a conviction will be reversed only if there could be no conceivable reasons for counsel’s acts or omissions. (*People v. Jones* (2003) 29 Cal.4th 1229, 1254.) Tactical errors are generally not reversible and defense counsel’s tactical decisions should be evaluated in the context of available facts, not in the “ ‘ “harsh light of hindsight.” ’ ” (*People v. Hinton* (2006) 37 Cal.4th 839, 876.)

“In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel’s assistance was reasonable considering all the circumstances.”

(*Strickland v. Washington*, *supra*, 466 U.S. at p. 688 [104 S.Ct. at p. 2065].) “Judicial scrutiny of counsel’s performance must be highly deferential.” (*Id.* at p. 689 [104 S.Ct. at p. 2065].) “It is all too tempting for a defendant to second-guess counsel’s assistance after conviction or adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” (*Ibid.*) “Because of the difficulties inherent in making the evaluation, a court must indulge a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance; that is, the defendant must overcome the presumption that, under the circumstances, the challenged action ‘might be considered sound trial strategy.’ ” (*Ibid.*)

“Surmounting *Strickland*’s high bar is never an easy task.” (*Harrington v. Richter* (2011) __ U.S. __ [131 S.Ct. 770, 788, 178 L.Ed.2d 6427].) “To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, [courts] affirm the judgment unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation.” (*People v. Maury* (2003) 30 Cal.4th 342, 389.) The reviewing court’s inability to understand counsel’s action or inaction is no basis for finding ineffective assistance, because the reasons, which may include the defendant’s communications with counsel, may not appear on the record. (*People v. Jenkins* (1975) 13 Cal.3d 749, 755.)

c. Contention

Appellant contends his trial counsel provided ineffective assistance by not allowing him to take the stand to provide testimony in support of a self-defense theory, particularly where counsel had detailed the anticipated testimony in opening statements. We reject the contention.

At the time counsel made their opening statements, the trial court had not yet ruled on appellant’s motion to exclude his videotaped confession. Thus, counsel’s opening statement—in which he stated that “in all likelihood” the jury would be hearing from appellant—was therefore reasonably based on the unresolved status of the admissibility of the confession. Counsel also stated that while he had “a strong suspicion” that

appellant was going to testify, he also had no obligation to tell the jury whether appellant was going to testify, and that he in fact “may or may not” testify. Thus, appellant’s argument that counsel abandoned his “promises” to the jury that appellant would testify “for reasons that were apparent at the time the promises were made” is incorrect. Had the court subsequently ruled that the confession was not admissible for impeachment, defense counsel may well have encouraged appellant to testify in his defense. However, given that the videotaped confession was ruled admissible, counsel had a tactical reason to advise appellant not to testify, as appellant would undoubtedly have been impeached with the profoundly damaging videotape, and his testimony would have been damaging to his defense.⁶ Accordingly, counsel made the reasonable tactical decision not to have appellant provide testimony in support of a self-defense theory, but instead to emphasize in closing that Morales told police, “Yeah, and then [Pal] reached over like he was going [to] grab something, and that’s when [appellant] pulled his gun out.” Appellant has failed to show that there could be no conceivable tactical reasons for counsel’s decision. (See *People v. Jones, supra*, 29 Cal.4th at p. 1254.)

While not required to address the second prong, we note that appellant’s claim fails for the additional reason that he has failed to show a reasonable probability that he was prejudiced by counsel’s actions.⁷ Appellant has not presented any facts showing that

⁶As discussed below, during a subsequent hearing on appellant’s request for new counsel under *People v. Marsden* (1970) 2 Cal.3d 118 (*Marsden* hearing), defense counsel stated that the videotape was “very, in my opinion, damaging—and your Honor saw it—interview of the defendant with the law enforcement community would very likely be presented for impeachment purposes. It was an interview that I showed [appellant] in custody, at least a portion of, and quite frankly, we got part of the way through and he said he’s seen enough.”

⁷Appellant asserts that under *United States v. Cronin* (1984) 466 U.S. 648, 659 [104 S.Ct. 2039, 80 L.Ed.2d 657], he is not required to show prejudice because defense counsel entirely failed to subject the prosecutor’s case to meaningful adversarial testing. The case is inapposite because here, the record shows that defense counsel competently represented appellant by, among other things, arguing motions in limine, giving an opening statement and closing argument, thoroughly cross-examining the prosecution’s witnesses, objecting to testimony, and attempting to present a witness on appellant’s behalf.

had he testified, he could have presented a meritorious self-defense claim. For instance, forensic testimony that the minimum range from which appellant fired on Pal was between four and six feet undermined the suggestion that appellant fired at point blank range in self-defense as Pal reached toward him. Moreover, appellant would have been impeached by the prosecution with his highly damaging videotaped confession in which he specifically discussed the possibility of concocting a self-defense explanation for shooting Pal and then rejected such an explanation as not believable or supported by the facts. Finally, the evidence against appellant was overwhelming and included detailed testimony from Pal about appellant shooting him, and Morales's and Bryant's statements to police. Appellant has not identified any exonerating evidence defense counsel could have introduced at trial—through appellant's testimony or with other evidence or argument—to support the otherwise incredible self-defense theory. There is no reasonable probability that, but for counsel's purported deficiencies, the result would have been more favorable to appellant.

2. Marsden Motion

a. Background

Appellant stated at his *Marsden* hearing, “My attorney, he stipulated that I shouldn't get on the stand. And at first, I wanted to get on the stand, but he made it clear to me that if I didn't get on the stand, I had a better chance of winning my case. [¶] Then when he told me that you was gonna be our judge—I understand that we have a chance to contest our judges? And he told me I shouldn't contest, that he's good, he knows you, and that he paid your husband. I'm not sure if it was for my case. [¶] And I'm willing to take a lie detector test if I'm not believed. And from my understanding, if he paid your husband or whoever he stipulated that he paid, you or your husband, that my case was gonna be okay. The reason I'm bringing this to light right now because at first I was gonna accept all the consequences of whatever happens, but once I started looking into what's going on with my case, I decided not to, and decided to speak up. So I feel like it's a conflict.”

The judge asked him to clarify why he initially wanted a new judge, and appellant explained, “the first judge I’m gonna get, I’m gonna contest it,” since “[m]ost people say the first judge you get’s probably not gonna be good, being you don’t know whose side they gonna be on.” Appellant then stated, “he told me that he knew you, and don’t worry, your husband was doing bad or something where he needed some money, and he loaned him a large sum of money” and “I was under the impression that whatever money he gave your husband, that him knowing you and coming to your house or whatever, that everything was gonna be all right with my case.” The court asked appellant whether he talked to his attorney “about the good things about you testifying and maybe some bad things that could have happened if you testified.” Appellant responded, “To a certain extent, yes.”

Defense counsel denied advising his client that he had loaned any money to the judge’s husband and noted that he may have mentioned having contributed money to his campaign when he ran for District Attorney, then judge, but that he did not say the contribution would have any impact on appellant’s trial. As to whether appellant should take the stand in his own defense, counsel explained that he had “a couple of conversations” with appellant on that issue, including on the morning that he was scheduled to possibly testify, and told appellant that the decision whether to testify was “a personal decision” for appellant to make. Counsel recalled telling appellant that “the good news” was that the court had already ruled it was going to provide the jury with self-defense instructions based on another witness’s statement, and that appellant therefore did not have to testify in order to establish the facts needed for a self-defense instruction. Counsel informed the court that he also explained to appellant that “it would be very likely that that interview tape [of appellant’s confession],” which was “very, in my opinion, damaging,” would be used against him and shown to the jury if he testified, “which I don’t think would have been advantageous to his defense at all.”

Counsel stated that ultimately, he “le[ft] that ultimate decision to the client because I tell them very specifically throughout my representation that it is their case. It is their life. I go home afterwards. They don’t. ¶¶ So when it comes to making

decisions as to . . . whether or not a defendant testifies on his or her own behalf, that is a decision that they have to make. I will give them as much advice and guidance as I can, but I would never and have never told a client not to testify or to testify on their own behalf because I believe that's a very personal decision after I give them, you know, the pros and cons of that decision making process. [¶] I don't believe anything different than that occurred in this case, and I don't believe that I ever convinced or tried to convince him not to testify.”

Appellant responded: “I did tell [defense counsel] my best defense is if I get on the stand, and I would like to get on the stand. He told me not to. [¶] Now, he did tell me that it's up to me, and I told him, like, strongly told him that I want to get on the stand. He told me not to again. He said, “ ‘Do not get on the stand. You will not win the case.’ ” And once again, he went back to telling me about how good of friends you guys are, and not really stipulating you, but I guess your husband.”

The court ruled as follows: “Well, Mr. Bradford, about the choice to testify or not, basically I just don't believe you. Sorry. And I think that [counsel] gave you the pros and cons, told you that you were getting in your defense of self-defense, which you were even without your testimony, and that it was up to you. And I know that he didn't force you to testify, and it was your choice, so I find you to be not credible in that regard, and I find [counsel's] rendition to be very credible. [¶] And so I don't believe that allegation with regard to giving my husband a loan or paying my husband of some sort. Again, I feel that either you misunderstood it or you're lying about that as well. I do believe [counsel's] position that, if anything, he gave him money for a campaign some time ago for District Attorney, and possibly even before that, years before, which would have been eight years, nine years before that, when he ran for judge. [¶] And so I—I don't find that that in any way affected, you know, your actions in this trial or [counsel's] or in any way affected the choices that you had about what judge to have or what to do. A lot of those choices are also up to the attorney to decide as far as what judge to take, although I don't think for a minute that [counsel] wouldn't very intently listen to his clients with regard to what judge he might prefer, but in this instance I don't find that your statements are

credible. [¶] I do find that [counsel] has represented you effectively and to the best of the ability of any attorney presented with this case, and that you haven't met your burden with regard to the *Marsden* hearing. So with regard to that, the *Marsden* is denied, and we'll go forward with the sentencing, and certainly you have all these issues preserved for you on appeal.”

b. Legal Standards

The standards for evaluating a postconviction *Marsden* motion are the same as preconviction motions. (See *People v. Smith* (1993) 6 Cal.4th 684, 690–696.) “ ‘A defendant “may be entitled to an order substituting appointed counsel if he shows that, in its absence, his Sixth Amendment right to the assistance of counsel would be denied or substantially impaired.” [Citation.] The law governing a *Marsden* motion “is well-settled. ‘When a defendant seeks to discharge his appointed counsel and substitute another attorney, and asserts inadequate representation, the trial court must permit the defendant to explain the basis of his contention and to relate specific instances of the attorney’s inadequate performance. [Citation.] A defendant is entitled to relief if the record clearly shows that the first appointed attorney is not providing adequate representation [citation] or that defendant and counsel have become embroiled in such an irreconcilable conflict that ineffective representation is likely to result.’ ” ” ” (*People v. Jackson* (2009) 45 Cal.4th 662, 682.)

“Although the decision whether or not to appoint new counsel rests with the sound discretion of the trial court [citation], it is an abuse of discretion for the court to do so absent a showing the appointed attorney does not or cannot adequately represent the defendant.” (*Ng v. Superior Court* (1997) 52 Cal.App.4th 1010, 1022–1023.)

“[D]isagreement as to tactics does not provide a basis for ordering appointment of new counsel.” (*Id.* at p. 1022.) A defendant’s lack of trust in his attorney is also insufficient for substitution. (*People v. Jackson, supra*, 45 Cal.4th at p. 688.)

c. Contention

Appellant contends the trial court erred in denying his request for new counsel because it “failed to make an adequate inquiry regarding the reasons why counsel failed

to call appellant to testify. Even absent that inquiry, the record was more than sufficient to trigger a duty to appoint substitute counsel to investigate and litigate a motion for a new trial, based on the strong evidence that counsel's failure to call appellant constituted ineffective assistance." The record shows, however, that the court did ask counsel to state his position, and that counsel thoroughly explained what took place before appellant made the ultimate decision not to testify. Appellant claims—as he did below—that counsel “dissuaded him from [testifying], essentially telling appellant that he would be convicted if he testified.” However, the court discredited appellant's representation of what had occurred and believed counsel's position that he had not exerted any pressure. “To the extent there was a credibility question between defendant and counsel at the hearing, the court was ‘entitled to accept counsel's explanation.’ ” (*People v. Smith, supra*, 6 Cal.4th at p. 696; *In re Carpenter* (1995) 9 Cal.4th 634, 646 [the power to judge the credibility of witnesses and to resolve conflicts in the testimony is vested in the trial court, and its findings of fact must be upheld if supported by substantial evidence].)

Moreover, as noted, a disagreement about tactics, by itself, is insufficient to compel discharge of counsel and a defendant may not “ ‘force the substitution of counsel by his own conduct that manufactures a conflict.’ ” (*People v. Smith* (2003) 30 Cal.4th 581, 606.) Here, the record supports a finding that while appellant and defense counsel disagreed as to whether appellant should testify, appellant could have done so, despite his counsel's tactical advice. In fact, appellant informed the court that counsel did, “[t]o a certain extent,” explain the pros and cons of testifying to him, and that he also told him “that it's up to me.” The record shows nothing more than a disagreement about tactics, which the trial court found was insufficient to warrant substitution of counsel. The court did not abuse its discretion in denying appellant's *Marsden* motion.

DISPOSITION

The judgment is affirmed.

McGuinness, P.J.

We concur:

Siggins, J.

Jenkins, J.