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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEREN MICHAEL MILLS,

Defendant and Appellant.

A145785

(Solano County
Super. Ct. No. FCR295093)

Based on an incident in which defendant and appellant Jeren Michael Mills fled a California Highway Patrol officer on a stolen motorcycle, appellant was convicted of evading an officer with willful disregard for the safety of persons or property (Veh. Code § 2800.2, subd. (a))¹ and the unlawful driving or taking of a vehicle (§ 10851, subd. (a)). On appeal, he asserts claims of instructional and other errors. We affirm.

PROCEDURAL BACKGROUND

In August 2012, the Solano County District Attorney filed an information charging appellant with evading an officer with willful or wanton disregard for the safety of persons or property (§ 2800.2, subd. (a); count one), unlawful driving or taking of a vehicle (§ 10851, subd. (a); count two), and receiving a stolen motor vehicle (Pen. Code § 496d, subd. (a); count three). The information also alleged a prior prison term enhancement (Pen. Code § 667.5, subd. (b)).

¹ All statutory references are to the Vehicle Code unless otherwise indicated.

A jury convicted appellant on counts one and two, and acquitted him of receiving a stolen motor vehicle. The trial court found true the prior prison term allegation. The court sentenced appellant to a total term of three years, eight months, including two years on the evading count, eight months on the unlawful driving count, and one year on the prior prison term allegation.

This appeal followed.

FACTUAL BACKGROUND

On July 25, 2012 at 3:06 p.m., California Highway Patrol Officer Anthony Blencowe (Blencowe) was on duty in a marked car with red and blue emergency roof lights, sirens, and an attached video camera. Blencowe was underneath the Allison Drive overpass on eastbound Interstate 80 in Solano County. He was parked perpendicular to the eastbound traffic moving from his left to the right.

Blencowe was using a laser device to measure the speed of the passing vehicles. He observed a bright blue motorcycle, later determined to be driven by appellant, traveling at a high rate of speed. He was unable to measure the motorcycle's speed with his device, but it was traveling faster than the other vehicles and Blencowe estimated the motorcycle was traveling at approximately 90 miles per hour. The officer saw the motorcycle driver look at him as the motorcycle passed. The motorcycle was in the far left lane of five lanes.

Blencowe began pursuing the motorcycle; he turned on the overhead lights and 20 seconds later activated the sirens. The motorcycle accelerated and moved right onto the shoulder where it continued to pass cars. Blencowe was about a half mile behind at that point. The officer accelerated to 110 miles per hour in an effort to catch up with the motorcycle, and he estimated the motorcycle was traveling even faster.

The motorcycle exited the freeway at Leisure Town Road, approximately three miles from where Blencowe first saw it. Blencowe was about a half mile to three-quarters of a mile behind. The motorcycle went through the light at Leisure Town Road without stopping and turned right. The officer could not see the traffic light at the

moment the motorcycle went through, but he saw other cars stopped at the light and saw the light was red when he got closer.

Blencowe continued pursuing the motorcycle, accelerating to 80 miles per hour on Leisure Town Road, where the speed limit was 40 miles per hour. Blencowe had turned off his front-facing lights and siren before exiting the freeway because he did not want other drivers to block him by pulling to the right in response to his lights.

Blencowe spotted the motorcycle again after driving about a half mile on Leisure Town Road. The motorcycle was traveling in the center two-way left-hand turn lane at approximately 80 miles per hour. The motorcycle crossed over the double yellow lines and drove in the oncoming traffic lane before turning left onto Maple Road. The officer had reactivated his front-facing lights when he spotted the motorcycle on Leisure Town Road, and he reactivated his siren when the motorcycle turned onto Maple.

Blencowe pursued the motorcycle on Maple Road; he was about a quarter or half a mile behind. The motorcycle was traveling at approximately 60 miles per hour in a 30 mile per hour zone. Maple Road ultimately came to a dead end at a field. When the motorcycle reached the end, it turned around and began driving back towards the patrol car. Blencowe moved his car back and forth and the motorcycle eventually came to a stop in front of a residence. The officer arrested the driver, who he identified as appellant.

Blencowe testified he observed appellant violate the following provisions of the Vehicle Code during the pursuit: speeding (§ 22349, subd. (a)); driving on the shoulder to pass (§ 21755, subd. (a)); running a red light (§ 21453, subd. (a)); driving in excess of 100 miles per hour (§ 22348, subd. (b)); driving on the left side of a double yellow line (§ 21460, subd. (a)); and driving at unsafe speeds on Leisure Town Road and Maple Road (§ 22350).²

The motorcycle driven by appellant was registered to Daniel Fulton, and it had been reported stolen. Fulton testified the motorcycle had been stolen in May 2012 from

² The trial court also instructed the jury it was a Vehicle Code violation to drive for more than 200 feet in a left turn lane (§ 21460.5).

the parking area of his condominium complex in Watsonville. Fulton did not know appellant and did not give him permission to drive the motorcycle.

DISCUSSION

I. *CALCRIM No. 2181 Does Not Create an Unconstitutional Mandatory Presumption*

Under section 2800.1, it is a misdemeanor to flee a uniformed peace officer in a marked patrol car with activated lights and sirens. Under section 2800.2, the offense is a felony if the evader drives with “willful or wanton disregard for the safety of persons or property.” (See also *People v. Mutuma* (2006) 144 Cal.App.4th 635, 641 (*Mutuma*).) Subdivision (b) of section 2800.2 provides that “a willful or wanton disregard for the safety of persons or property includes, but is not limited to, driving while fleeing or attempting to elude a pursuing peace officer during which time either three or more violations that are assigned a traffic violation point count under Section 12810 occur, or damage to property occurs.”

The trial court instructed the jury pursuant to CALCRIM No. 2181 that “Driving with willful or wanton disregard for the safety of persons or property includes, but is not limited to, causing damage to property while driving or committing three or more violations that are each assigned a traffic violation point.” (Italics omitted.) The instruction, as given in the present case, informed the jury that “Speeding in excess of 65 m.p.h. in violation of Vehicle Code § 22349(a), overtaking a vehicle in violation of Vehicle Code § 21755(a), failing to stop at a stop at a red light in violation of Vehicle Code § 21453(a), traveling at a speed unsafe for the conditions in violation of Vehicle Code § 22350, driving a motor vehicle more than 200 feet in a left turn lane in violation of Vehicle Code § 21460.5[(c)] and crossing over a double yellow line in violation of Vehicle Code § 21460(a) each are assigned one violation point. Operating a motor vehicle in excess of 100 m.p.h. in violation of Vehicle Code § 22348(b) is assigned two points.”

In the present appeal, appellant contends the rule set forth in section 2800.2, subdivision (b)—that three or more point violations constitute willful or wanton

disregard—is an unconstitutional mandatory presumption. We disagree. Instead, we follow those decisions that have concluded the rule “is not a mandatory rebuttable presumption but is instead a rule of substantive law.” (*People v. Laughlin* (2006) 137 Cal.App.4th 1020, 1025 (*Laughlin*); see also *Mutuma, supra*, 144 Cal.App.4th at p. 641; *People v. Williams* (2005) 130 Cal.App.4th 1440, 1445–1446 (*Williams*); *People v. Pinkston* (2003) 112 Cal.App.4th 387, 392–393; but see *Pinkston*, at pp. 395–398 (Klein, P.J., dissenting).)

“A mandatory presumption tells the trier of fact that if a specified predicate fact has been proved, the trier of fact *must* find that a specified factual element of the charge has been proved, unless the defendant has come forward with evidence to rebut the presumed connection between the two facts. [Citations.] In criminal cases, a mandatory presumption offends constitutional principles of due process of law because it relieves the prosecutor from having to prove each element of the offense beyond a reasonable doubt.” (*Williams, supra*, 130 Cal.App.4th at pp. 1444–1445.) However, the statutory rule that three or more violations constitute willful or wanton disregard is not a presumption at all. Rather, because the finding on the willful or wanton disregard element that follows from proof of three violations may not be undermined by other evidence suggesting a defendant in fact drove safely, the challenged rule “ “is more accurately described as a rule of substantive law rather than of evidence.” ’ ” (*Laughlin, supra*, 137 Cal.App.4th at p. 1026, quoting *People v. McCall* (2004) 32 Cal.4th 175, 185.) As *Laughlin* explained, “A rule of substantive law defines in precise terms conduct that establishes an element of an offense as a matter of law. [Citation.] There is no presumption and there is nothing to rebut.” (*Laughlin*, at p. 1026; see also *Williams*, at p. 1445 [“[T]here is no impermissible mandatory presumption when a statute creates a rule of substantive law by defining in precise terms conduct that establishes an element of the offense as a matter of law.”].)

As *Laughlin* further explained specifically as to subdivision (b) of section 2800.2, “Subdivision (b) does not contain a presumption. It sets forth a definition of conduct that is deemed to be the legal equivalent of willful or wanton disregard for purposes of section 2800.2. Subdivision (b) does not follow the common lay meaning of the term but is a

term of art for purposes of section 2800.2.” (*Laughlin, supra*, 137 Cal.App.4th at pp. 1027–1028; see also *Mutuma, supra*, 144 Cal.App.4th at p. 641 [“Three point violations are willful and wanton disregard by definition, so there is nothing other than their existence for the jury to find.”].) And, of course, the Legislature has broad powers “ ‘to define one thing in terms of another.’ ” (*Laughlin*, at p. 1028.) Accordingly, we reject appellant’s claim that section 2800.2, subdivision (b) establishes an unconstitutional mandatory presumption.

II. *Any Error in Failing to Instruct Sua Sponte on Reckless Driving and Failure to Yield as Lesser-Included Offenses Was Harmless*

Appellant contends the trial court erred in failing to sua sponte instruct on two lesser included offenses to the charge of evading an officer with willful or wanton disregard (§ 2800.2, subd. (a))—reckless driving (§ 23103, subd. (a)) and failure to yield to an emergency vehicle (§ 21806). Respondent agrees those are lesser included offenses to felony evading, but argues there was no sua sponte duty to instruct on those offenses because there was no substantial evidence appellant was “ ‘guilty of the lesser offense, but not the charged offense.’ ” (*People v. Moyer* (2009) 47 Cal.4th 537, 556.)

We need not decide whether there was substantial evidence requiring the trial court to instruct on reckless driving and failure to yield, because any error in failing to instruct on those lesser included offenses was harmless. In *People v. Breverman* (1998) 19 Cal.4th 142, the California Supreme Court held “the failure to instruct sua sponte on a lesser included offense in a noncapital case is . . . an error of California law alone, and is thus subject only to state standards of reversibility. . . . [S]uch misdirection of the jury is not subject to reversal unless an examination of the entire record establishes a reasonable probability that the error affected the outcome.” (*Id.* at p. 165.)³

³ Appellant argues the error was federal constitutional error, relying on *People v. Thomas* (2013) 218 Cal.App.4th 630. *Thomas* is distinguishable. There, the court held the failure to instruct the jury that provocation can reduce a killing to voluntary manslaughter was federal constitutional error because, where a defendant puts provocation in issue, the prosecution bears the burden of showing lack of sufficient provocation in order to show malice to support a murder conviction. (*Id.* at pp. 643–644.) Thus, the lack of an

A. *Reckless Driving*

In the present case, in order to convict appellant of reckless driving rather than evading with willful or wanton disregard, the jury would have needed to harbor reasonable doubt that appellant attempted to evade Officer Blencowe. That is because the offense of reckless driving is committed by “[a] person who drives a vehicle upon a highway in willful or wanton disregard for the safety of persons or property.” (§ 23103.) Thus, the difference between reckless driving and felony evading is that the latter offense also requires a showing the defendant was evading a peace officer at the time in question. Under section 2800.1, subdivision (a), which section 2800.2 references to define evasion, a person is guilty of the offense if he, with the intent to evade, “willfully flees” a peace officer where, among other things, the officer’s vehicle is “exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp” and “sounding a siren as may be reasonably necessary.”⁴

Appellant argues the jury could have found the evidence of intent to evade insufficient “given the officer’s testimony that he had turned his lights and siren on and off at various times throughout his pursuit of Mills, the fact that the officer was often a quarter to half a mile behind Mills and the fact that Mills ultimately stopped for Officer Blencowe shortly after exiting the highway.” We disagree. The evidence showed that the motorcycle rapidly accelerated on the freeway and passed cars on the shoulder in

instruction on provocation relieved the prosecution of the burden of proving beyond a reasonable doubt one of the elements of the charged murder offense. (*Id.* at p. 644.) Appellant has not shown the circumstances in the present case are analogous. (See *People v. Ngo* (2014) 225 Cal.App.4th 126, 158 [distinguishing *Thomas*].)

⁴ Section 2800.1, subdivision (a) provides: “Any person who, while operating a motor vehicle and with the intent to evade, willfully flees or otherwise attempts to elude a pursuing peace officer’s motor vehicle, is guilty of a misdemeanor punishable by imprisonment in a county jail for not more than one year if all of the following conditions exist: [¶] (1) The peace officer’s motor vehicle is exhibiting at least one lighted red lamp visible from the front and the person either sees or reasonably should have seen the lamp. [¶] (2) The peace officer’s motor vehicle is sounding a siren as may be reasonably necessary. [¶] (3) The peace officer’s motor vehicle is distinctively marked. [¶] (4) The peace officer’s motor vehicle is operated by a peace officer . . . and that peace officer is wearing a distinctive uniform.”

response to Officer Blencowe's pursuit, and the way the motorcycle was driven after exiting the freeway further confirmed appellant's intent to evade the officer. (See *People v. Copass* (2009) 180 Cal.App.4th 37, 41 (*Copass*) [manner in which the defendant drove gave rise to inference of intent to evade].) Appellant only stopped for the officer when he became trapped down a dead-end street.

Appellant's only other argument as to prejudice is that the officer failed "to explain the absence of video or audio evidence to confirm the deployment of lights and sirens." However, Officer Blencowe testified he confirmed the lights and siren were functioning at the start of his shift and he testified in great detail regarding when the lights and/or sirens were on and why he turned one or the other off at several points during the pursuit. (See *Copass, supra*, 180 Cal.App.4th at p. 41 ["Section 2800.1, subdivision (a) does not require that the pursuing officer continuously activate the emergency lights and siren."].) It is not likely appellant's arguments about the absence of reflection of the officer's lights in the video and absence of the siren on the audio recording would have carried much weight with the jury absent clear evidence there *should have been* reflections of the lights in the video or sirens on the audio recording.

As to the video, defense counsel pointed out that lights of a tow truck that came to pick up the motorcycle were reflected on the hood of the patrol car. The prosecutor pointed out the patrol car's lights were differently located in the center of the roof, and also pointed out it was the middle of the day. The video shows blinking rear and roof lights of a tow truck parked nearby reflected on the small portion of the patrol car hood visible in the video. The video itself gives no reason to expect that the patrol car's lights would be reflected on the small portion of the hood of the patrol car visible on the video, or reflected on cars passed by the patrol car during the pursuit, particularly given the time of day and the front-placement of the camera.

As to the audio, Officer Blencowe testified the audio recorder was inside the car and the sirens were audible inside the car through the closed window but "not really loud." On the video that is part of the record on appeal, there is audio in only approximately the last 20 seconds of the pursuit. Appellant points to no evidence the

sirens should have been audible in that portion of the recording, and no basis to conclude there were no sirens during other portions of the pursuit.

In light of the absence of any reason to think that Officer Blencowe would have failed to turn on his lights or siren, or any indication the jury doubted the officer's credibility, we conclude it is not reasonably likely the jury would have credited appellant's speculative arguments over Officer Blencowe's clear and specific testimony.⁵

B. *Failure to Yield*

In the present case, the jury was instructed on felony evading as well as misdemeanor evading as a lesser included offense; as explained previously, the felony charge required proof appellant drove in willful or wanton disregard for the safety of persons or property. As the parties agree, failure to yield (§ 21806) is a lesser included offense that requires only proof that a defendant failed to yield “[u]pon the immediate approach of an authorized emergency vehicle which is sounding a siren and which has at least one lighted lamp exhibiting red light . . .” (§ 21806; see also *People v. Diaz* (2005) 125 Cal.App.4th 1484, 1489 [“Obviously, a motorist cannot flee from a pursuing peace officer's vehicle without also failing to pull over to the curb and stop for it.”].) The difference between failure to yield and both misdemeanor and felony evasion is the evasion offenses require, of course, intent to evade an officer.

It is not reasonably likely the jury would have convicted appellant of failure to yield but not felony evading had the jury been instructed on that lesser included offense. As noted previously, and contrary to appellant's arguments, the evidence of intent to evade was strong. Moreover, the jury was instructed on the lesser included charge of misdemeanor evading but instead convicted appellant of felony evading. If the jurors

⁵ Appellant also suggests the jury might have doubted he ran a red light at Leisure Town Road because Officer Blencowe did not witness the moment appellant went through the light and instead inferred appellant ran the light due to the fact that other cars were stopped. However, appellant does not challenge the seven other Vehicle Code violations shown by the evidence (the officer identified six other violations and the jury was instructed on driving in a left turn lane), so any doubt as to the red light violation would not have resulted in a more favorable outcome to appellant.

doubted appellant's guilt but felt compelled to convict him of *something*, it is likely they would have convicted appellant of misdemeanor evading. (See *People v. Woods* (1991) 226 Cal.App.3d 1037, 1052 [instructions on lesser included offenses avoid forcing jury to make "all or nothing choice"].) Any error in failing to instruct on failure to yield was harmless.

III. *Trial Counsel Did Not Provide Ineffective Assistance of Counsel In Failing to Request the CALCRIM No. 376 Instruction*

Appellant was convicted of the unlawful driving or taking of a vehicle (§ 10851, subd. (a))⁶ but was acquitted of receiving a stolen motor vehicle (Pen. Code § 496d, subd. (a)). CALCRIM No. 376 instructs a jury that possession of recently stolen property is insufficient alone to convict a defendant of a theft-related crime.⁷ The parties agree the trial court had no sua sponte duty to give the instruction. (See *People v. Najera* (2008) 43 Cal.4th 1132, 1136 [no "sua sponte duty to instruct on the limited significance of possession of recently stolen property in theft-related prosecutions"].) However, appellant contends his trial counsel's failure to request the instruction was ineffective assistance of counsel.

We reject appellant's claim. Even assuming trial counsel provided "professionally unreasonable" assistance in failing to request the CALCRIM No. 376 instruction, there is

⁶ Section 10851 provides in relevant part, "Any person who drives or takes a vehicle not his or her own, without the consent of the owner thereof, and with intent either to permanently or temporarily deprive the owner thereof of his or her title to or possession of the vehicle, whether with or without intent to steal the vehicle, or any person who is a party or an accessory to or an accomplice in the driving or unauthorized taking or stealing, is guilty of a public offense"

⁷ CALCRIM No. 376 states in part, "If you conclude that the defendant knew (he/she) possessed property and you conclude that the property had in fact been recently (stolen/extorted), you may not convict the defendant of <insert crime> based on those facts alone. However, if you also find that supporting evidence tends to prove (his/her) guilt, then you may conclude that the evidence is sufficient to prove (he/she) committed <insert crime>.[¶] The supporting evidence need only be slight and need not be enough by itself to prove guilt. You may consider how, where, and when the defendant possessed the property, along with any other relevant circumstances tending to prove (his/her) guilt of <insert crime>."

no “reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” (*Strickland v. Washington*, 466 U.S. 668, 691, 694; see also *id.* at p. 697 [“If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, which we expect will often be so, that course should be followed.”].) CALCRIM No. 376 would have instructed the jury that it could not convict appellant of the two theft-related offenses based on his possession of the stolen motorcycle alone, in the absence of other evidence supporting a finding of guilt. The instruction would have further explained that “[t]he supporting evidence need only be slight and need not be enough by itself to prove guilt” and that the jury could “consider how, where, and when [appellant] possessed the property, along with any other relevant circumstances tending to prove [appellant’s] guilt.” (*Ibid.*)

“Possession of recently stolen property is so incriminating that to warrant a conviction of unlawful taking there need only be, in addition to possession, slight corroboration in the form of statements or conduct of the defendant tending to show his guilt.” (*People v. Clifton* (1985) 171 Cal.App.3d 195, 199–200; see also *People v. Hopkins* (1963) 214 Cal.App.2d 487, 491 [“Mere possession of a stolen car under suspicious circumstances is sufficient to sustain a conviction of unlawful taking.”].) In the present case, it is undisputed the motorcycle had been stolen and appellant was driving it without the owner’s consent. Officer Blencowe testified appellant drove by on the stolen motorcycle at a high rate of speed, looking at the patrol car as he passed. Appellant then accelerated to 110 miles per hour and crossed several lanes of traffic to continue to pass cars on the right shoulder before exiting the freeway and continuing to drive in an evasive fashion. Those circumstances, viewed in light of the fact that the motorcycle was stolen, strongly supported a conclusion appellant was guilty of driving the motorcycle unlawfully. (*Hopkins*, at p. 491 [“Flight is a factor tending to connect the accused with the commission of an offense and may be indicative of guilt.”].)

In arguing the evidence was “far from overwhelming,” appellant primarily focuses on the lack of evidence the motorcycle’s ignition had been tampered with and the fact that appellant had a key to the motorcycle. But appellant fails to explain how those

circumstances are inconsistent with a finding he was aware the motorcycle was stolen. For example, appellant points to no evidence that it would have been impossible to make a key for the stolen motorcycle or that he had a basis to believe he was lawfully in possession of the motorcycle. In light of the persuasive evidence of appellant's consciousness of guilt and the absence of any evidence to the contrary, it is not reasonably probable the outcome would have been more favorable to appellant had the jury been instructed pursuant to CALCRIM No. 376 of the need for "slight" corroborating evidence.

IV. *Appellant's Claim of Prosecutorial Misconduct Fails*

During the prosecutor's closing rebuttal at trial, in arguing that appellant was aware of Officer Blencowe's pursuit, she stated, "The defendant knew [the officer] was there. There is no question about that. It's frankly comical to say otherwise." Trial counsel objected on the ground the comment was disparaging of him, and the trial court responded, "Again, Ladies and Gentleman, counsel's comments at this point are argument. Counsel, let's refrain from talking about [the] other person's arguments." On appeal, appellant contends the comment was disparagement of trial counsel that constituted prejudicial prosecutorial misconduct. We reject the claim.

In arguing the prosecutor's "comical" comment was prosecutorial misconduct, appellant relies on *People v. Sandoval* (1992) 4 Cal.4th 155, 183–184 (*Sandoval*), where the Supreme Court stated a "defendant's conviction should rest on the evidence, not on derelictions of his counsel. [Citation.] Casting uncalled for aspersions on defense counsel directs attention to largely irrelevant matters and does not constitute comment on the evidence or argument as to inferences to be drawn therefrom." We disagree the prosecutor's comment was misconduct. Even if use of the word "comical" was somewhat disrespectful, the comment was clearly meant to convey that defense counsel's argument was flimsy, not to cast aspersions on defense counsel himself. (See, e.g., *People v. Mendoza* (2007) 42 Cal.4th 686, 701 [prosecutor's "needlessly sarcastic" comment not misconduct]; *People v. Zambrano* (2007) 41 Cal.4th 1082, 1154–1155 [prosecutor's use of "pungent language" not improper where "[i]t was clear the

prosecutor's comment was aimed solely at the persuasive force of defense counsel's closing argument, and not at counsel personally"], disapproved of on another ground by *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) There is no "reasonable likelihood" the jurors understood it otherwise. (*Mendoza*, at p. 701.)

Moreover, even if the prosecutor's comment were improper, it was harmless. The passing comment was "clearly recognizable as an advocate's hyperbole." (*Sandoval*, *supra*, 4 Cal.4th at p. 184.) The trial court admonished the prosecutor to refrain from commenting on defense counsel's arguments. There is no "reasonable probability that the jury would have reached a more favorable result absent the objectionable comments." (*Ibid.*)

V. *The Trial Court Did Not Abuse Its Discretion Regarding The Pitchess Motion*

Prior to trial, the trial court granted appellant's *Pitchess*⁸ motion seeking discovery of information in the confidential personnel records of Officer Blencowe relating to any "instances of fabrication or falsification of police reports." The California Highway Patrol provided personnel records to the trial court for in camera review and the court found there were no discoverable records. Appellant now asks this court to conduct a de novo review of the documents reviewed by the trial court to determine if the court exercised proper discretion. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1228 [review of trial court's decision on the discoverability of police personnel files is for abuse of discretion].)

We granted appellant's motion to augment the record with the sealed transcript of the *Pitchess* hearing and the documents reviewed in camera by the trial court. The court provided the transcript of the hearing but reported it was unable to locate the personnel records reviewed by the court in its files. This court granted appellant's motion for an order directing the trial court to settle the record and directed the trial court to conduct a hearing to identify the personnel records reviewed at the June 1, 2015 *Pitchess* hearing. Subsequently, this court received the requested records from the trial court, filed under

⁸ *Pitchess v. Superior Court* (1974) 11 Cal.3d 531.

seal. Having reviewed the transcript and records, we conclude the trial court did not abuse its discretion in concluding there were no discoverable records.

DISPOSITION

The judgment is affirmed.

SIMONS, Acting P.J.

We concur.

NEEDHAM, J.

BRUINIERS, J.

(A145785)