

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

TIMOTHY DWAYNE BROCK,

Defendant and Appellant.

E053457

(Super.Ct.No. FSB1100170)

OPINION

APPEAL from the Superior Court of San Bernardino County. Ronald M. Christianson and Harold T. Wilson, Jr., Judges.* Affirmed.

Marilee Marshall, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Julie L. Garland, Senior Assistant Attorney General, and Peter Quon, Jr., and Christopher P. Beesley, Deputy Attorneys General, for Plaintiff and Respondent.

* Judge Christianson made the contested ruling on the *Pitchess* motion. Judge Wilson presided over the trial and sentencing.

A sheriff's deputy sent to do a "welfare check" found defendant Timothy Dwayne Brock and another man in a car parked near the address he had been given. He asked for their identification; defendant had none. While the deputy was checking the license plate, defendant started to get out of the car. The deputy told him to stay inside, but defendant did not comply. The deputy tried to restrain him. Defendant elbowed the deputy, though he landed only a glancing blow, then took off running. During the ensuing pursuit, defendant yelled, "[S]hoot him!" The officer tased defendant, pepper-sprayed him, and hit him with a baton before finally subduing him.

After a jury trial, defendant was found guilty of:

Count 1: Resisting an executive officer, as a misdemeanor. (Pen. Code, § 69.)

Count 2: Making a criminal threat, as a misdemeanor. (Pen. Code, § 422.)

Count 3: Simple assault (Pen. Code, § 240), a misdemeanor, as a lesser included offense of battery on a peace officer (Pen. Code, § 243, subd. (b)).

Defendant was placed on summary probation for three years, on terms including 210 days in jail.

Defendant contends:

1. There was insufficient evidence to support defendant's conviction for resisting an officer.
2. There was insufficient evidence to support defendant's conviction for making a criminal threat.

3. The trial court erred by denying defendant's *Pitchess* motion¹ without holding an in camera hearing.

We find no error. Hence, we will affirm.

I

FACTUAL BACKGROUND

A. *The Case Against Defendant.*

Defendant lived with his father² (and codefendant) Bruce Von Faulstich at 3436 Cajon Boulevard in Muscoy.

On January 11, 2011, around 9:00 p.m., Deputy John Meyers was dispatched to 3418 Cajon Boulevard to do a "welfare check." He was told that two "drug users" named Donald and Mickey Jones were "tak[ing] advantage" of a woman at that location.

When he arrived, he noticed a car parked "within a house or two" of 3418 Cajon. He pulled into a driveway immediately behind the car. He walked up to the passenger side. There were two men inside. The deputy intended to determine whether they were involved in the incident that he was there to investigate. As he admitted at trial, "I had no idea if they were involved in criminal activity or not."

¹ A "*Pitchess* motion" is a motion for discovery of a peace officer's confidential personnel records. (*Pitchess v. Superior Court* (1974) 11 Cal.3d 531.)

² Technically, Von Faulstich was defendant's stepfather; however, he had raised defendant since defendant was one year old.

He asked them for their identification. The driver, who was one Benny Juarez, showed the deputy his driver's license. Defendant, however, who was the passenger, said he did not have any identification, though he did give his name and birthdate.

Defendant started to open his door, but the deputy told him to close the door and to roll down the window instead so they could talk. Defendant complied. The deputy went to the back of the car to get the license plate number. Meanwhile, defendant's father came up to the fence next to the car and asked what was going on. The deputy replied that the occupants of the car would be with him momentarily.

At that point, defendant opened his door again. The deputy came back toward him and told him to close his door, but defendant got out and took a step, as if to run. The deputy yelled, "Hey, stop. What are you doing?" He reached for defendant's right arm.

The deputy intended to put defendant in a control hold and handcuff him. He wanted to detain defendant for safety reasons, because he did not know whether defendant was trying to flee or trying to assault him. So far, he did not intend to arrest defendant.

Defendant, however, was wearing a baggy jacket; the deputy caught hold of his jacket, rather than his arm. Defendant squirmed and pulled away. His right arm went forward, then came back with the elbow bent. The deputy ducked; defendant's elbow "glance[d] off the top of [his] head."

The deputy decided to arrest defendant for battery and for resisting an officer. Defendant ran toward the fence. The deputy yelled, "Stop. Get on the ground," but defendant did not comply. Instead, he ran through the gate, which his father had opened

for him; his father then closed the gate. Defendant ran around the left side of a building and out of sight.

The deputy tried to push the gate open, but defendant's father held it shut. Defendant's father asserted that the deputy was "trespassing" and "in violation of federal laws" The deputy responded that he was in fresh pursuit, and defendant's father was "interfering with [him] and [his] duties."

Meanwhile, defendant came back around the right side of the building. He was yelling obscenities. He started moving "very quickly" toward the fence. His hands were raised; it was too dark to see if he had a weapon. Again, the deputy told defendant to stop and get on the ground, but defendant did not comply.

The deputy then tased defendant. However, defendant continued to walk toward him. The deputy therefore pepper-sprayed defendant.

Next, after arcing the taser, as a warning, the deputy tased defendant's father. Defendant's father stepped back. The deputy opened the gate and went in.

Defendant ran back toward the right side of the building; the deputy ran after him. Defendant yelled, "Dad, shoot him." Defendant then went around the corner of the building, and the deputy lost sight of him. The deputy was "afraid for [his] life." He drew his gun and went around the corner cautiously.

The deputy found defendant in a fighting stance, with his arms up and his fists clenched. He pointed his gun at defendant and told him yet again to get on the ground.

Defendant said, “No” and moved toward the deputy instead. The deputy warned him, “You’re fixing to get shot.” Defendant replied, “Just shoot me.”³

The deputy kicked defendant in the thigh, which made defendant fall to one knee. Because the deputy could now see that defendant did not have a weapon, he reholstered his gun. He pepper-sprayed defendant again.

The deputy kept telling defendant to get on the ground, but defendant still did not comply. He also told defendant not to raise his hands, but defendant nevertheless assumed a fighting stance again, clenching his fists, and took a step forward. The deputy drew his baton and hit defendant with it five or six times. Defendant fell to the ground.

The deputy repeatedly told defendant to put his hands behind his back, but defendant did not comply. The deputy tried to cuff him, but defendant was “flailing around, . . . kicking his feet, swinging his arms.” Defendant grabbed the cuffs and tried to pull them away. At one point, defendant yelled, “Shoot the motherfuckers!” The deputy managed to cuff defendant only after a San Bernardino police officer arrived and helped him.

The deputy deemed defendant under arrest “for . . . throwing the elbow at me”

³ Defendant claimed that he actually said, “*You can’t just fucking shoot me.*” (Italics added.)

The officer’s sound recording was played in court, but it was inconclusive on this point; the transcript says, “(unintelligible) . . . fuckin[’] shoot me!”

B. *The Defense Case.*

Benny Juarez testified that the deputy “beat the hell out of [defendant].” He never saw defendant hit or try to hit the deputy. He also never heard defendant say, “Dad, shoot him.”

Defendant testified on his own behalf. He admitted, “I didn’t comply at all.” In his view, however, his actions were justified because he had done nothing wrong, “it was just a harassment stop,” and the deputy had no right to demand his identification or to use force.

According to defendant, he told the deputy, “I live here.” When his father came up to the fence, he confirmed that defendant lived there.

When defendant first started to get out of the car, the deputy shoved him into the door jamb, pulled his arms behind his back, and started patting him down. The deputy was about to handcuff him when he broke free and ran. He denied moving his elbow back or toward the deputy.

Defendant also denied clenching his fists or taking a fighting stance. When the deputy pulled out his baton, defendant put up his hands and said, “Whoa.” The deputy replied, “Don’t put your hands up to hit me,” then hit defendant with the baton.

Defendant denied saying, “Dad, shoot him.” He admitted saying, “Shoot the motherfuckers,” because at that point, he “had exhaust[ed] all diplomatic resolutions” However, he knew that his father would not actually shoot.

II

THE SUFFICIENCY OF THE EVIDENCE THAT THE DEPUTY WAS LAWFULLY PERFORMING HIS DUTIES

Defendant contends that there was insufficient evidence to support his conviction for resisting an officer because the deputy detained him unlawfully.

“In reviewing a criminal conviction challenged as lacking evidentiary support, “the court must review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence — that is, evidence which is reasonable, credible, and of solid value — such that a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt.” [Citation.]’ [Citation.]” (*People v. Streeter* (2012) 54 Cal.4th 205, 241.)

“We ““presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.” [Citation.]’ [Citation.]” (*People v. Clark* (2011) 52 Cal.4th 856, 943.) ““Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends.’ [Citation.] Unless it describes facts or events that are physically impossible or inherently improbable, the testimony of a single witness is sufficient to support a conviction. [Citation.]” (*People v. Elliott* (2012) 53 Cal.4th 535, 585.)

“When the circumstances reasonably justify the jury’s findings, a reviewing court’s opinion that the circumstances might also be reasonably reconciled with contrary

findings does not warrant reversal of the judgment. [Citation.]” (*People v. Mendoza* (2011) 52 Cal.4th 1056, 1069.)

Resisting an officer can be committed by:

1. “[A]ttempt[ing], by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon such officer by law”; or
2. “[K]nowingly resist[ing], by the use of force or violence, [an executive] officer, in the performance of his duty” (Pen. Code, § 69; see also *In re Manuel G.* (1997) 16 Cal.4th 805, 814.)

“The first form of a violation of section 69 ‘encompasses attempts to deter either an officer’s immediate performance of a duty imposed by law or the officer’s performance of such a duty at some time in the future.’ [Citation.] The second form of violating section 69 ‘assumes that the officer is engaged in such duty when resistance is offered,’ and ‘the officers must have been acting lawfully when the defendant resisted arrest.’ [Citation.]” (*People v. Nishi* (2012) 207 Cal.App.4th 954, 966, italics omitted.)

“The long-standing rule in California and other jurisdictions is that a defendant cannot be convicted of an offense against a peace officer “‘engaged in . . . the performance of . . . [his or her] duties’” unless the officer was acting lawfully at the time the offense against the officer was committed. [Citations.] ‘The rule flows from the premise that because an officer has no duty to take illegal action, he or she is not engaged in “duties,” for purposes of an offense defined in such terms, if the officer’s conduct is unlawful. . . . [¶] . . . [T]he lawfulness of the [officer]’s conduct forms part of the corpus delicti of the offense.’ [Citation.]” (*In re Manuel G., supra*, 16 Cal.4th at p. 815.)

“‘Under California law, an officer is not lawfully performing her duties when she detains an individual without reasonable suspicion or arrests an individual without probable cause.’ [Citation.]” (*Garcia v. Superior Court* (2009) 177 Cal.App.4th 803, 819, italics omitted.)

Defendant therefore argues that, at the moment when he first offered violent resistance — by trying to elbow the deputy — he had already been detained. He further argues that the detention was unlawful, because at that point the deputy had no reasonable suspicion that he had committed a crime. The People respond that, when defendant tried to elbow the deputy, the deputy *did* have reasonable suspicion.

In our view, the question of whether defendant was lawfully detained *before* he tried to elbow the deputy is beside the point. We may assume, without deciding, that he was not. In California, however, there is no privilege to use force to resist an arrest or a detention, regardless of whether it is legal or illegal. (*People v. Curtis* (1969) 70 Cal.2d 347, 351, disapproved on other grounds in *People v. Gonzalez* (1990) 51 Cal.3d 1179, 1222; *Evans v. City of Bakersfield* (1994) 22 Cal.App.4th 321, 326-333.)

Although forcible resistance to an illegal detention is a crime, it is punished less severely than forcible resistance to a legal detention. As already discussed, the crime could not be resisting an executive officer. (Pen. Code, § 69.) It also could not be assault on a police officer (Pen. Code, § 241, subd. (c)) or battery on a police officer. (Pen. Code, § 243, subds. (b), (c).) However, the crime could still be simple assault (Pen. Code, § 241, subd. (a)) or simple battery (Pen. Code, § 243, subd. (a)). (See generally

People v. Curtis, supra, 70 Cal.2d at pp. 355-356; *People v. Henderson* (1976) 58 Cal.App.3d 349, 356.)

Accordingly, when defendant tried to elbow the deputy, he committed a crime. If he made contact, the crime was a battery; even if he missed, however, it was still an attempted battery. And either way, it was (as the jury found) an assault.

Thus, *after* defendant tried to elbow the deputy, the deputy had probable cause to arrest him. There was ample evidence that defendant continued to resist after this point. Admittedly, it does not appear that he ever tried to hit the deputy again. However, at least twice, he walked toward the deputy in a fighting stance, with clenched fists. This was an attempt to deter, by means of a gestural threat. In addition, defendant called out to his father to shoot the deputy. This was an attempt to deter by means of a verbal threat. Thus, there was sufficient evidence of resisting an officer under the first prong, i.e., by threat.

In closing argument, the People argued precisely this theory: “[T]his sixty-nine charge . . . occurred from the point that he struck Deputy Meyers’ head and ran away, and Deputy Meyers had to chase him down. At that point Deputy Meyers was going to arrest him for that physical strike on his head, on his person. What did . . . Mr. Brock do? He . . . ran past the gate. He took a fighting stance. He charged the officer at one point, took a fighting stance more than once. . . . [H]e made a threat: ‘Shoot him.’ He made a second threat: . . . ‘Shoot the M-F’er.’ Those are all attempts by Mr. Brock to willfully and unlawfully use violence or the threat of violence against Deputy Meyers who was attempting to arrest him.”

We are at a loss to know why, in this appeal, the People are not arguing the same theory that they argued below. Despite this lapse, however, it does not present an unbriefed issue. (See Gov. Code, § 68081.) Understandably, defendant does not want to highlight this theory; however, at pages 28 through 29 of his brief, he does attempt, albeit tersely, to refute it. He argues that he was entitled to hit the deputy with his elbow to defend himself against an unlawful detention or arrest; as already discussed, however, that is not the law. He also argues that, by finding him not guilty of battery and guilty only of the lesser included offense of assault, the jury must have determined that he did not actually make contact with the deputy. Even if so, however, as already discussed, he still committed a crime and thus gave the deputy probable cause to arrest him.

We therefore conclude that there was sufficient evidence that defendant resisted an officer at a time when the officer was making a lawful attempt to arrest him.

III

THE SUFFICIENCY OF THE EVIDENCE

THAT DEFENDANT MADE A CRIMINAL THREAT

Defendant contends that there was insufficient evidence to support his conviction for making a criminal threat.

This conviction was based on the deputy's testimony that defendant yelled, "Dad, shoot him." While there was evidence that defendant also said, "Shoot the motherfuckers," the prosecutor told the jury, "That's not the threat we're addressing for that charged [in] Count Two."

The elements of the crime of making a criminal threat are “(1) that the defendant “willfully threaten[ed] to commit a crime which will result in death or great bodily injury to another person,” (2) that the defendant made the threat “with the specific intent that the statement . . . is to be taken as a threat, even if there is no intent of actually carrying it out,” (3) that the threat . . . was “on its face and under the circumstances in which it [was] made, . . . so unequivocal, unconditional, immediate, and specific as to convey to the person threatened, a gravity of purpose and an immediate prospect of execution of the threat,” (4) that the threat actually caused the person threatened “to be in sustained fear for his or her own safety or for his or her immediate family’s safety,” and (5) that the threatened person’s fear was “reasonabl[e]” under the circumstances.’ [Citation.]” (*In re George T.* (2004) 33 Cal.4th 620, 630, fn. omitted.)

Preliminarily, defendant notes that the evidence that he even made the alleged threat was in conflict. He denied making it. Juarez denied hearing it. The deputy’s sound recorder did not pick it up (because, according to the deputy, he had not turned it on yet). However, as noted earlier (see part II, *ante*), we do not resolve credibility issues. The jury necessarily found that defendant did say these words, and the deputy’s testimony constitutes sufficient evidence to support that finding.

Next, defendant argues that he was speaking to his father, not to the deputy. The statute, however, does not require that the threat be made directly to the victim, or even in the victim’s presence. (*In re David L.* (1991) 234 Cal.App.3d 1655, 1659-1660.) The jury evidently found that defendant intended the deputy to take his words as a threat. That finding is supported by substantial evidence. Defendant knew that the deputy was

nearby and would hear him. Moreover, as the deputy was chasing defendant at the time, there was substantial evidence that defendant was trying to intimidate him.

We do *not* understand defendant to be relying on the fact that he told his father to shoot the deputy, rather than threatening to shoot the deputy personally. We deem him to have forfeited any such argument. If only out of an excess of caution, however, we will address it briefly.

As noted, the statute requires that the defendant “willfully threaten[] to commit a crime which will result in death or great bodily injury to another person” (Pen. Code, § 422, subd. (a).) Here, the threat was that defendant’s father would shoot the deputy. If the father had actually fired, however, *defendant* would have been guilty of assault with a firearm, attempted murder, or murder *as an aider and abettor*. Criminal threats cannot be made with impunity simply by having one person make a threat to be carried out by another person — e.g., “If you don’t pay up, Charlie here will break your kneecap.”

Finally, defendant argues that the deputy was not in sustained fear. In this context, “sustained” fear means fear “that extends beyond what is momentary, fleeting, or transitory.” (*People v. Allen* (1995) 33 Cal.App.4th 1149, 1156.) The deputy testified that he was afraid someone would shoot him; that was why he drew his gun. Admittedly, after he went around the corner of the building and saw that *defendant* did not have a weapon, he reholstered his gun. It is fairly inferable, however, that he was still afraid that *defendant’s father* would shoot him. Indeed, while he was struggling with defendant, defendant’s father did, in fact, approach them. Defendant yelled, “Dad!! Get this guy off

me!” He also yelled, “Shoot the motherfuckers!!” The jury could reasonably conclude that the officer remained in fear at least until he was able to subdue and cuff defendant.

We therefore conclude that there was sufficient evidence to support defendant’s conviction for making a terrorist threat.

IV

THE DENIAL OF DEFENDANT’S *PITCHESS* MOTION

Defendant contends that the trial court erred by denying his *Pitchess* motion without holding an in camera hearing.

A. *Additional Factual and Procedural Background.*

Before trial, defendant filed a written *Pitchess* motion, seeking Deputy Meyers’s personnel records. In support of the motion, he submitted a copy of the police report, along with a declaration by defense counsel stating:

“Mr. Brock disputes the truthfulness of the allegations as set forth in the police reports and testimony presented at the preliminary hearing. At trial, defendant intends to show that the officer used excessive force. In addition, Mr. Brock will present evidence at trial that the [d]eputies fabricated events.”

In their opposition, the People argued that defense counsel’s declaration failed to offer “a specific factual scenario to support an intrusion into a confidential personnel file.”

After hearing argument, the trial court ruled:

“[T]he declaration as presented in the motion is insufficient to justify an in camera hearing, not that it couldn’t be beefed up and made sufficient. . . . So the motion is

denied without prejudice [to] a more extensive declaration if that's what the defense wants to do."

Defendant never submitted another declaration.

B. *Analysis.*

“[O]n a showing of good cause, a criminal defendant is entitled to discovery of relevant documents or information in the confidential personnel records of a peace officer accused of misconduct against the defendant. [Citation.] Good cause for discovery exists when the defendant shows both “‘materiality’ to the subject matter of the pending litigation and a ‘reasonable belief’ that the agency has the type of information sought.” [Citation.] A showing of good cause is measured by “relatively relaxed standards” that serve to “insure the production” for trial court review of “all potentially relevant documents.” [Citation.] [Citation.]” (*People v. Sanderson* (2010) 181 Cal.App.4th 1334, 1339-1340 [Fourth Dist., Div. Two].)

“Defense counsel must file a declaration that ‘describe[s] a factual scenario supporting the claimed officer misconduct. That factual scenario, depending on the circumstances of the case, may consist of a denial of the facts asserted in the police report.’ [Citation.] ‘[T]he trial court . . . will have before it defense counsel’s affidavit, and in addition a police report, witness statements, or other pertinent documents. The court then determines whether defendant’s averments, “[v]iewed in conjunction with the police reports” and any other documents, suffice to “establish a plausible factual foundation” for the alleged officer misconduct and to “articulate a valid theory as to how the information sought might be admissible” at trial. [Citation.] . . . *What the defendant*

must present is a specific factual scenario of officer misconduct that is plausible when read in light of the pertinent documents. [Citations.] [Citation.] ‘[A] plausible scenario of officer misconduct is one that might or could have occurred. Such a scenario is plausible because it presents an assertion of specific police misconduct that is both internally consistent and supports the defense proposed to the charges.’ [Citation.]” (*People v. Galan* (2009) 178 Cal.App.4th 6, 11-12, italics added.)

“We review the denial of a *Pitchess* motion for abuse of discretion. [Citations.]” (*People v. Moreno* (2011) 192 Cal.App.4th 692, 701 [Fourth Dist., Div. Two].)

Here, defense counsel’s declaration could by no stretch of the imagination be described as specific. It simply asserted that Deputy Meyers had “used excessive force” and “fabricated” evidence. That is simply a statement of the defense or theory, not a “specific factual scenario” supporting that defense or theory. The trial court had no way to determine whether defendant’s scenario was “plausible” or not.

Defendant argues that the necessary factual scenario may consist of a denial of the facts asserted in the police report. That “depend[s, however,] on the circumstances of the case” (*People v. Galan, supra*, 178 Cal.App.4th at p. 11.) *Galan* relied on *Warrick v. Superior Court* (2005) 35 Cal.4th 1011; *Warrick*, in turn, relied on *People v. Husted* (1999) 74 Cal.App.4th 410, which the Supreme Court described as follows: “[A] defendant facing a charge of felony evasion of arrest brought after a high-speed automobile chase sought *Pitchess* discovery of whether the pursuing officer had ‘a history of misstating or fabricating facts’ in police reports. [Citation.] In support of the motion, the defense declaration denied that the defendant had driven in the way or along

the route described by the officer. [Citation.] . . . *Hustead*[] concluded that the defendant had met his burden of making ‘an initial showing that the information he is seeking is material to the case at hand.’ [Citation.] In other words, defense counsel’s declaration in *Hustead* made allegations sufficient to ‘establish a plausible factual foundation’ for a defense that the defendant did not drive in the fashion described in the police report and that the officer’s report was untrue. [Citation.]” (*Warrick*, at p. 1025.)

The declaration in *Hustead*, then, did not consist of a denial of *all* of the facts in the police report. Rather, defense counsel specifically denied “that the defendant had driven in the way or along the route described by the officer.” (*Warrick v. Superior Court, supra*, 35 Cal.4th at p. 1025.) By contrast, in this case, defense counsel’s blanket claim that defendant “disputes the truthfulness of the allegations as set forth in the police reports” lacked such specificity.

Defendant was present throughout the incident detailed in the police report; he would have had personal knowledge of the details of any excessive force or fabrication of evidence. Thus, under the circumstances of this case, the trial court could reasonably insist on greater specificity.

Defendant points out that, according to the police report itself, he was tased, pepper-sprayed, and struck with a baton. He argues that this supported his claim of excessive force. The police report, however, if true, indicated that this force was *not* excessive. Defense counsel asserted that the police report was false and that the level of force used *was* excessive. However, he never offered any facts supporting this assertion.

Thus, as the People aptly argue, this case is governed by *People v. Thompson* (2006) 141 Cal.App.4th 1312. There, the defendant allegedly sold cocaine to an undercover officer. When he was arrested, the police recovered the undercover officer's two \$5 bills, which they "had photocopied for later identification." (*Id.* at p. 1315.) In a *Pitchess* motion, defense counsel asserted that the police had arrested defendant simply because he was in the area, and, once they realized that he had a criminal history, they decided to frame him, using their cocaine and their money. (*Thompson*, at p. 1317.)

The court held: "This showing is insufficient because it is not internally consistent or complete. . . . [I]t does not present a factual account of the scope of the alleged police misconduct, and does not explain [the defendant's] own actions in a manner that adequately supports his defense. [The defendant], through counsel, denied he was in possession of cocaine or received \$10 But he does not state a nonculpable explanation for his presence in an area where drugs were being sold, sufficiently present a factual basis for being singled out by the police, or assert any 'mishandling of the situation' prior to his detention and arrest. Counsel's declaration simply denied the elements of the offense charged." (*People v. Thompson, supra*, 141 Cal.App.4th at p. 1317.)

In sum, then, in *Thompson*, defense counsel at least explained what was supposedly false in the police reports and offered an alternative account; this was still insufficient, however, because he did not support his account with enough explanatory detail. Here, defense counsel did not even offer an alternative account. Thus, a fortiori, defendant's showing was insufficient.

We therefore conclude that the trial court did not abuse its discretion by denying defendant's *Pitchess* motion.

V

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

HOLLENHORST
Acting P. J.

McKINSTER
J.