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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

NAHENDRA T. HUGHES,

Defendant and Appellant.

No. B285968

(Super. Ct. No. BA452555)

APPEAL from a judgment of the Superior Court of Los Angeles County. Terry A. Bork, Judge. Affirmed.

Rachel Lederman, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, Pamela C. Hamanaka, Deputy Attorney General, for Plaintiff and Respondent.

INTRODUCTION

A jury convicted defendant and appellant Nahendra Travon Hughes (defendant) of two counts of resisting an executive officer in violation of Penal Code section 69.¹ The trial court denied defendant's motion for new trial. On appeal, defendant argues the trial court abused its discretion in denying his motion for new trial because the officers illegally entered his home and detained him without a warrant. Defendant also asks us to conduct an independent review of the sealed portion of the record to determine whether the trial court abused its discretion and erroneously withheld discoverable information from the defense. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. The 911 call

On November 26, 2016, at about 12:40 a.m., Jacqueline Milan was asleep at home on West 64th Street in Los Angeles. She lived in the front house on the property. A driveway led to the rear house where defendant lived with his girlfriend, Rachel Reed.

Milan was awakened by noises from the rear house. She heard loud voices, a man cursing, flesh being slapped and hit, a woman whimpering, and something hitting a wall.

Milan waited for the noises to subside, but they did not. At 12:41 a.m., she called 911. She told the 911 operator, "There is a

¹ Unless otherwise indicated, all further section references are to the Penal Code.

guy beating up on a girlfriend or something uhm in the house” Milan told the operator the music was loud and she heard a woman screaming and crying over the music.

B. The officers respond and detain defendant

At about 1:00 a.m., Los Angeles Police Officers Matthew Clark and Cesar Valdez arrived at the house in response to a call about domestic violence between a man and a woman. Nothing seemed unusual when they arrived. They approached the property, where Officer Clark saw defendant walking between the front and rear houses. The officers approached defendant and asked if he had heard arguing or a woman screaming for help.

Defendant gave short responses, saying he did not hear anything unusual and that he was cleaning his carpet. He seemed agitated and annoyed by the officers’ presence. Over the police radio, Officer Clark requested that the reporting person be asked to step outside and meet them. As the officers waited for a response, Milan stepped onto her front porch and met the officers as they walked back up the driveway toward the street.

Milan told the officers she was the person who had called. She said she constantly heard defendant and the woman fighting and was tired of it. She said the woman was always crying and in fear. She told them defendant was not telling them the truth about what was going on, a woman was inside, and defendant was possibly keeping her hidden and intimidating her so she would not speak with the officers. Milan said she heard an argument and a possible struggle.

Officer Clark testified that, at this point, the officers had a reasonable suspicion that a crime had been committed and

Officer Clark wanted to talk to defendant further to establish if anyone else was inside defendant's residence.

The officers walked back toward the rear residence and defendant, who was extremely agitated, walked very quickly up the driveway to meet them. Defendant seemed angry the officers were still there and demanded to know why they had not left yet. He was yelling and seemed aggressive. The officers asked him if he had been arguing or fighting with his girlfriend or someone in the residence. Defendant did not answer. The officers told him they would have to conduct a domestic violence investigation based on what someone had told them. Defendant said he did not "give a fuck what nobody told you" and began to walk back towards the rear house.

Based on defendant's behavior, his agitation, and the fact he was walking back toward the house, the officers told him to place his hands behind his head. They were prepared to detain him so they could investigate and make sure there were no victims inside the residence.

Defendant continued to walk away from the officers. Suddenly, however, he turned back toward the officers with his hands in a fist and his feet in a fighting stance. Officer Valdez told him not to come any closer and Officer Clark drew his taser and continued to tell defendant to put his hands behind his head. Defendant cursed at the officers, told them they were stupid, and refused to talk to them. Defendant then turned around again and continued to walk back to the rear house.

Defendant walked onto the raised front porch of the rear house. The rear house had an exterior outward-opening black metal security screen door, which was open. Behind the security screen door, an inward-opening white wooden door was also open.

Defendant went inside the house and stood at the threshold. Officer Valdez saw a woman, Reed, standing inside behind defendant. Defendant kept Reed behind him and off to the side. Officer Valdez thought Reed looked upset, intimidated, and fearful.

Officer Valdez told defendant that he needed to speak to Reed to make sure she was okay and safe. The officers also asked Reed if she was okay and if she could step outside to speak with them. Officer Clark's goal was to get Reed or defendant to step outside so he could separate them and speak to each of them separately. From his training and experience, Officer Clark knew many domestic violence victims are reluctant to speak to the police, especially when in the presence of their abuser, for fear of retaliation.

Reed did not respond or move. When Officer Clark was trying to speak to Reed, defendant was shouting and cursing. At one point, defendant said the officers could talk to Reed but she was going to stay inside and stand right next to him. As Officer Valdez approached the doorway, however, defendant changed his mind and said, "Fuck you. You're not coming to talk to anybody." Defendant then tried to close the exterior black metal security door. Officer Valdez grabbed the edge of the door with both of his hands to prevent it from closing. Officer Clark ran up to help him. Together, the officers pulled the door out of defendant's grasp and pushed it to the right so they could both be in the doorway.

Defendant then tried to slam the white wooden door shut. Officer Valdez immediately stepped forward and put his foot on the door to prevent defendant from closing it. As Officer Valdez

kicked the door, Officer Clark put his right boot in between the door and the door frame so the door would not close.

Officer Clark testified he did not want to let defendant close the door because the officers still needed to conduct a domestic violence investigation, a victim was possibly being held inside against her will, and the defendant might retreat into the residence, where he could have weapons.

The white door swung open. Defendant was standing in the door frame, yelling and cursing at the officers and taking an aggressive fighting stance, with his feet apart, his knees slightly bent, his arms bent upward, and his fists clenched.

Officer Valdez drew his taser and told defendant to turn around, but defendant did not comply. Officer Clark reached inside the house, grabbed defendant's right arm with both his hands, and pulled him onto the front porch. Officer Clark tried to maneuver defendant's right arm behind his back to handcuff him, but defendant turned. Officer Valdez then reholstered his taser and grabbed defendant's left arm and guided that arm behind his back. Officer Clark tried to guide defendant's right arm behind his back, but defendant reached up and grabbed the metal window bars just to the left of the door. Officer Clark was able to get defendant's hand off the window bars and maneuver his right arm behind his back. Defendant continued to struggle with the officers. Officer Valdez handcuffed defendant's left wrist and the officers tried to handcuff his right wrist.

At some point, defendant told Reed to take a picture. Reed videotaped a 26-second portion of the handcuffing, which was played for the jury. The following exchange occurs on the video:

Officer Valdez: Relax

Defendant: [unintelligible] man just put the cuffs on man

Reed: Why are you hurting him?

Defendant: Just put them on

Reed: Stop, baby.

Defendant: Just put the cuffs on man

Officer Clark: Can I get backup?

Defendant: Just put the cuffs on man. Quit trying to make it like it's an issue

Officer Clark: Just relax.

Defendant: Just put the motherfucking cuffs on

Officer Valdez: Stop moving

Defendant: Stupid motherfuckers trying to play

Defendant: Babe go in the house and close the door. Babe go in the house and close the door. Lock the door. Go in the house, lock the door. So, so now what's [unintelligible]

Officer Clark testified he told defendant to relax because he was still rigid, was not putting his arm behind his back as he was instructed, was still flexing and trying to break the officers' grasp, and was trying to bring his arm back in front.

After the officers handcuffed him, defendant continued to flex and turn. He eventually sat down but continued to struggle on the porch in handcuffs. He also continued to curse and call the officers names.

In addition to handcuffing defendant, the officers restrained defendant using a "hobble," which is a device put around a combative detainee's legs to prevent him from kicking the officers. Officer Clark testified that he had seen defendant "kicking at" Officer Valdez. The officers testified that at this point defendant was detained but not under arrest.

C. Rachel Reed's testimony

Reed testified she loves defendant and does not want him to be convicted. On November 26, 2016, she and defendant had argued about their couches, defendant was in pain because Reed had dropped a couch on him, and both defendant and Reed were upset. At about 1:00 a.m., Reed saw flashlights and heard a knock on the door. She saw officers in uniform.

Defendant opened the door with Reed standing next to him. The officers said they had received a domestic violence call. Reed told them everything was okay and they left. Three minutes later, defendant and Reed saw another flashlight behind their house, so defendant went outside and walked down the driveway. The officers asked defendant to come over and speak to them, which he did. The officers explained they had received a domestic violence call from a neighbor and they were just checking to see if everything was okay. Defendant told them, "I guess y'all don't want to talk to me" and walked back to the house.

According to Reed, the police followed defendant back to the house. One officer moved a couch and defendant, who was now inside, cracked open the black security gate and told them to "get the fuck off" his porch. One of the officers grabbed the black security gate and tried to open the door some more. Defendant let go of the door and one of the officers used his foot to stop the door from closing. The police stepped inside the house and one of the officers pulled his taser out. One of them grabbed defendant, pulled him out the door onto the porch, and twisted his arm.

Reed testified the struggle on the porch lasted about seven or eight minutes, but also testified the officers had defendant

handcuffed within three minutes. She videotaped the end of the handcuffing.

After the videotaping, Reed went back into the house and locked the door, but came outside when a detective wanted to interview her. She told the detective that no domestic violence had occurred that night, and that she and defendant had been arguing. She denied that defendant had hit her that night.

The parties stipulated that when Reed spoke with the defense investigator on January 19, 2017, she told him that when the police came to the front of their house, defendant did not answer and the police left. She also told him that defendant said he did not want to talk to the police and did not have to step outside. Also, when the police pulled defendant onto the front porch, there was a two- to three-minute scuffle before they handcuffed defendant.

During her testimony, Reed said she told the defense investigator that both she and defendant talked to the police when the officers initially asked about domestic violence, and that defendant was willing to put his hands behind his back the entire time he was on the porch. She denied telling the defense investigator that defendant did not answer the police when they asked about domestic violence, or that defendant refused to speak with the police and said he did not have to talk to them.

D. The People's expert witness

The People called Los Angeles Police Officer Anthony Pack as an expert witness. Pack is a police academy instructor who trains officers to respond to domestic violence calls. He testified that domestic violence calls are unpredictable. A large majority

of them involve weapons, raising safety concerns for everyone involved, including officers.

Pack testified that domestic violence suspects and victims should not be interviewed together. Batterers control their victims physically and psychologically, and a batterer could give a certain look or make a certain movement to deter his or her victim from telling the truth. If a domestic violence suspect attempts to close the residence door to responding officers, leaving the suspect and the potential victim inside, the victim could be further victimized or a hostage situation could occur, requiring officers to obtain backup. Officers try their best to prevent this from happening.

According to Pack, exigent circumstances can arise in domestic violence situations, forcing an officer to act quickly. Exigent circumstances exist when the officers have evidence that someone has been battered or when officers believe the suspect could be armed or there could be additional victims inside a dwelling.

E. Jury verdict, new trial motion and sentencing

On September 7, 2017, a jury convicted defendant of two counts of resisting an executive officer in violation of section 69.

Defendant moved for a new trial, arguing, among other things, the evidence was insufficient to establish the exigent circumstances required to allow the officers to enter defendant's home and arrest him. The trial court denied the motion, stating: "I have reviewed the evidence independently. I agree with the jurors in this case. There was sufficient evidence produced during the course of the trial. There was substantial evidence of

each element of proof. . . . [¶] So accordingly the motion for new trial, although considered, is respectfully denied.”

The court imposed and suspended a three-year sentence, comprised of two concurrent upper terms of three years for each count, and placed defendant on formal probation for three years, provided he serve 364 days in county jail and abide by certain terms and conditions.

DISCUSSION

A. Standard of review

The trial court may grant a new trial “[w]hen the verdict or finding is contrary to law or evidence.” (§ 1181, subd. (6).) The court “independently examines all the evidence to determine whether it is sufficient to prove each required element beyond a reasonable doubt *to the judge*, who sits, in effect, as a ‘13th juror.’” (*Porter v. Superior Court* (2009) 47 Cal.4th 125, 133, original emphasis.)

We review the trial court’s ruling on a new trial motion for abuse of discretion. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 127.) As our Supreme Court has explained: ““The determination of a motion for a new trial rests so completely within the court’s discretion that its action will not be disturbed unless a manifest and unmistakable abuse of discretion clearly appears.” [Citations.] “[I]n determining whether there has been a proper exercise of discretion on such motion, each case must be judged from its own factual background.” [Citation.]” (*People v. Delgado* (1993) 5 Cal.4th 312, 328.) Where an abuse of discretion is found, “article VI, section 13 of the California Constitution obliges the appellate court to conduct an independent

examination of the proceedings to determine whether a miscarriage of justice occurred. As in any appeal from a final judgment, the reviewing court must determine for itself whether errors denied a fair trial to the party against whom the judgment was entered.” (*People v. Ault* (2004) 33 Cal.4th 1250, 1261-1262, fns. omitted.)

B. The trial court acted within its discretion in denying the new trial motion

1. Section 69.

Penal Code section 69, subdivision (a) provides: “Every person who attempts, by means of any threat or violence, to deter or prevent an executive officer from performing any duty imposed upon the officer by law, or who knowingly resists, by the use of force or violence, the officer, in the performance of his or her duty, is punishable by a fine not exceeding ten thousand dollars (\$10,000), or by imprisonment pursuant to subdivision (h) of Section 1170, or in a county jail not exceeding one year, or by both such fine and imprisonment.”² (Pen. Code, § 69, subd. (a).)

“[S]ection 69 ‘sets forth two separate ways in which an offense can be committed. The first is attempting by threats or violence to deter or prevent an officer from performing a duty imposed by law; the second is resisting by force or violence an officer in the performance of his or her duty.’” (*People v. Smith*

² “Police officers are ‘executive officers’ under section 69.” (*People v. Carrasco* (2008) 163 Cal.App.4th 978, 984, fn. 2 (*Carrasco*).)

(2013) 57 Cal.4th 232, 240 (*Smith*), quoting *In re Manuel G.* (1997) 16 Cal.4th 805, 814.)

Here, the jury was instructed that, to establish defendant resisted an officer in the performance of his duty, the People must prove (1) “[t]he defendant unlawfully used force or violence to resist an executive officer;” (2) “[w]hen the defendant acted, the officer was performing his lawful duty;” and (3) “[w]hen the defendant acted, he knew the executive officer was performing his duty.”³ (See CALCRIM No. 2652.)

A defendant may not be convicted of an offense against an officer engaged in the performance of his or her duties unless the officer was acting lawfully when the offense was committed. (*In re Manuel G., supra*, 16 Cal.4th at p. 815.) An officer is not

³ The People asked the court also to instruct the jury on the lesser included offense of violation of section 148, subdivision (a)(1), which provides that “[e]very person who willfully resists, delays, or obstructs any public officer, peace officer, or an emergency medical technician . . . in the discharge or attempt to discharge any duty of his or her office or employment, when no other punishment is prescribed, shall be punished by a fine not exceeding one thousand dollars (\$1,000), or by imprisonment in a county jail not to exceed one year, or by both that fine and imprisonment.” Defense counsel objected to the instruction and the court declined to give it. (See *Smith, supra*, 57 Cal.4th at p. 242 [§ 148, subd. (a)(1) “was a necessarily included lesser offense of section 69” as alleged in an information that pleaded both ways of violating § 69]; *Carrasco, supra*, 163 Cal.App.4th at p. 985 [trial court properly refused to instruct jury on lesser included offense of § 148, subd. (a)(1) where, “if appellant resisted the officers at all, he did so forcefully, thereby ensuring no reasonable jury could have concluded he violated section 148, subdivision (a)(1) but not section 69”].)

lawfully performing his or her duties if he or she unlawfully arrests or detains someone. (*People v. Jenkins* (2000) 22 Cal.4th 900, 1020.)

In general, a peace officer may legally detain someone if (1) “[s]pecific facts known or apparent to the officer lead him or her to suspect that the person to be detained has been, is, or is about to be involved in activity relating to crime” and (2) “[a] reasonable officer who knew the same facts would have the same suspicion.” (CALCRIM No. 2670; see *People v. Celis* (2004) 33 Cal.4th 667, 674 (*Celis*) [to justify an investigative detention, there must be ““some objective manifestation” that criminal activity is afoot and that the person to be stopped is engaged in that activity.’ [Citations.]”].) In determining whether a detention is lawful, a factfinder considers evidence regarding the officer’s training and experience, as well as the circumstances known to the officer when he or she detained the person. (CALCRIM No. 2670; *People v. Lilienthal* (1979) 22 Cal.3d 891, 898-899.)

In the case of a warrantless detention within a home, however, officers must have more than a reasonable suspicion that the person is involved in criminal activity. The officers must have probable cause to believe the person to be detained has committed a crime *and* there must be exigent circumstances justifying a warrantless entry. (See *People v. Lujano* (2014) 229 Cal.App.4th 175, 183 (*Lujano*) [“to fall within the exigent circumstances exception to the warrant requirement, an arrest or detention within a home . . . must be supported by *both* probable cause *and* the existence of exigent circumstances”].) “[T]he exception to the warrant requirement for investigative detentions for the purpose of investigating possible criminal activity, approved in *Terry v. Ohio* (1968) 392 U.S. 1, ‘does not apply to in-

home searches and seizures.’ (*U.S. v. Struckman* (9th Cir. 2010) 603 F.3d 731, 738).” (*Lujano, supra*, 229 Cal.App.4th at pp. 182-183.) A warrantless arrest within the home likewise requires probable cause and exigent circumstances. (CALCRIM 2670; *People v. Wilkins* (1993) 14 Cal.App.4th 761, 777.)

We must determine, therefore, whether the trial court was within its discretion in concluding the officers’ warrantless entry into defendant’s home and subsequent detention or arrest of defendant were supported by probable cause and exigent circumstances.⁴

2. Probable cause

“Probable cause exists when the facts known to the arresting officer would persuade someone of ‘reasonable caution’ that the person to be arrested has committed a crime. [Citation.] ‘[P]robable cause is a fluid concept—turning on the assessment of probabilities in particular factual contexts’ [Citation.] It is incapable of precise definition. [Citation.] “‘The substance of all the definitions of probable cause is a reasonable ground for belief of guilt,’” and that belief must be ‘particularized with respect to

⁴ “The distinction between a detention and an arrest ‘may in some instances create difficult line-drawing problems.’ [Citations.]” (*Celis, supra*, 33 Cal.4th at p. 674.) Here, for example, counsel disputed whether the officers detained defendant or arrested him when they removed him from his home and handcuffed him on his porch. Because we conclude that the officers had probable cause and that exigent circumstances existed to justify the officers’ actions, we need not decide whether the officers detained or arrested defendant.

the person to be . . . seized.’ [Citation.]” (*Celis, supra*, 33 Cal.4th at p. 673.)

Officers Clark and Valdez attempted to detain defendant when they told him to put his hands behind his head, when he was still in the driveway and walking away from them. By then, they reasonably suspected defendant had committed domestic violence. Milan had told them she heard an argument, a possible struggle, and a woman crying. She said defendant had not told them the truth, a woman was there, and defendant might be hiding her or intimidating her into not speaking with the officers. In addition, defendant became agitated and angry when the officers told him they were there to perform a domestic violence investigation. He told them he did not “give a fuck what nobody told you,” turned around, and walked away.

Defendant failed to comply with the officers’ command to put his hands behind his head. Instead, he continued to walk away before turning around to face the officers while taking a “fighting stance” with his fists clenched and turned upward. At that point, the officers had probable cause to believe defendant was, at the very least, threatening violence in an unlawful attempt to deter them from investigating the reported domestic violence. (See § 69, subd. (a); *District of Columbia v. Wesby* (2018) 583 U.S. ___, 138 S.Ct. 577, 584, fn. 2 [“Because probable cause is an objective standard, an arrest is lawful if the officer had probable cause to arrest for any offense,” whether or not that offense is cited at the time of booking]; *In re Manuel G., supra*, 16 Cal.4th at pp. 814-815 [threat of unlawful violence used in attempt to deter officer from performance of duty may support conviction for first type of offense under § 69, even if threat is unaccompanied by physical force].)

Defendant then turned around again, walked into the rear house, and stood at the threshold. Officer Valdez saw Reed standing inside behind defendant. Defendant kept Reed behind him and off to the side. Officer Valdez thought Reed looked upset, intimidated, and fearful.

At this point, the officers had probable cause to arrest defendant for domestic violence based on Milan's report, defendant's demeanor, and Reed's demeanor.

3. Exigent circumstances

Defendant argues the officers' warrantless entry into the curtilage of his home, and the home itself, was unlawful because it was not justified by exigent circumstances.⁵

"'Exigent circumstances' means an emergency situation requiring swift action to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or destruction of evidence." (*People v. Ramsey* (1976) 16 Cal.3d 263, 276 (*Ramsey*); see *Brigham City v. Stuart* (2006) 547 U.S. 398, 403 (*Brigham City*) [""The need to protect or preserve life or avoid serious injury is justification for what would be otherwise illegal absent an exigency or emergency. [Citations.]""].) "Absolute proof of an imminent emergency is not required: A warrantless entry will be justified if there is probable

⁵ The "curtilage," or the area "immediately surrounding and associated with the home," is "intimately linked to the home, both physically and psychologically," and therefore forms part of the home for Fourth Amendment purposes. (*Florida v. Jardines* (2013) 569 U.S. 1, 6-7.) "The front porch is the classic exemplar of an area adjacent to the home and 'to which the activity of home life extends.' [Citation.]" (*Id.* at p. 7.)

cause to believe there is a risk of danger to persons inside the dwelling.” (*People v. Seminoff* (2008) 159 Cal.App.4th 518, 528.) The inquiry is factual. “There is no ready litmus test for determining whether [exigent] circumstances exist, and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.” (*Ramsey, supra*, 16 Cal.3d at p. 276.)

“Two steps are involved in deciding whether exigent circumstances existed to justify a warrantless entry: ‘[F]irst, factual questions as to what the officer knew or believed and what action he [or she] took in response; second, a legal question whether that action was reasonable under the circumstances. [Citation.] On appeal, a reviewing court must affirm the trial court’s determinations of the factual questions if they are supported by substantial evidence, but must take the ultimate responsibility for deciding the legal question according to its independent judgment. [Citation.]’” (*People v. Higgins* (1994) 26 Cal.App.4th 247, 251 (*Higgins*)).

Here, defendant argued in his motion for new trial that the evidence was insufficient to establish the exigent circumstances required to allow the officers to enter his home and arrest him. In denying the motion, the trial court stated: “There was sufficient evidence produced during the course of the trial. There was substantial evidence of each element of proof.” We have reviewed the record and we agree that substantial evidence supports the trial court’s implicit factual determination crediting the officers’ testimony about the events leading up to their warrantless entry. The officers testified that, after talking to Milan, they walked to the rear residence and were met by defendant, who appeared agitated and angry at their presence.

When the officers told defendant they would be conducting a domestic violence investigation, defendant said he did not “give a fuck what nobody told you” and began to walk back towards the rear house. As the officers followed, defendant suddenly turned toward them and stood in a fighting stance with his fists up. He refused to follow instructions to put his hands behind his head and instead continued walking toward the rear house. He went inside and the officers could see a woman standing next to him, looking upset, fearful, and intimidated. The officers said they needed to speak to Reed to make sure she was okay, but defendant kept Reed close to him, off to the side. Defendant initially told the officers they could talk to Reed there but, as the officers approached, defendant screamed, “fuck you” and said Reed was not going to talk to them. Defendant then tried to slam the security gate and door on the officers.

In light of what Milan had told them, defendant’s angry and agitated demeanor, and Reed’s fearful and intimidated appearance, the officers had reason to believe Reed was in danger of continued violence if they permitted defendant to shut the door and remain inside the house with Reed. The People’s expert witness Officer Pack testified that officers should do their best not to allow a domestic violence suspect to shut a residence door with the suspect and victim inside, as the victim could be further victimized or a hostage situation could occur. Based on what Officers Clark and Valdez knew at the time, both scenarios were plausible. (See *Higgins, supra*, 26 Cal.App.4th at pp. 249-250, 255 [warrantless entry justified where officers responding to domestic violence call were met by woman who appeared extremely frightened and had red mark under her eye; even though woman claimed she was alone and had just fallen down

stairs, officers reasonably believed she was lying and at risk of continued violence].) Therefore, exercising our independent judgment, we conclude a reasonable person in the officers' position would have "believe[d] the entry was necessary to prevent physical harm to . . . other persons." (*Brigham City, supra*, 547 U.S. at p. 402; see also *Georgia v. Randolph* (2006) 547 U.S. 103, 118 [police had authority to enter dwelling to protect a resident from domestic violence if they have good reason to believe such a threat exists].)

People v. Ormonde (2006) 143 Cal.App.4th 282 (*Ormonde*), on which defendant relies, involved a very different set of facts. There, officers arrived at a home to arrest a domestic violence suspect and found the suspect standing outside next to a car. (*Id.* at p. 286.) While one of the officers assumed responsibility for arresting the suspect, the other officer walked to the front door, which was open. (*Ibid.*) He could see the living room and part of the kitchen, but a closed door blocked his view of the rest of the residence. (*Id.* at p. 287.) The officer testified he felt "vulnerable" because he did not know if someone would come out of the closed door, so he entered the residence. (*Ibid.*) Inside the residence, the officer encountered the defendant, who was later convicted on drug and firearm charges based on evidence the officers found while searching his home. (*Id.* at pp. 285, 287-290.)

The Court of Appeal held the warrantless entry violated the defendant's Fourth Amendment rights. (*Ormonde, supra*, 143 Cal.App.4th at p. 295.) The domestic violence suspect was arrested outside the home and the officers articulated no reason to believe there were victims or suspects inside the home. (*Id.* at p. 291.) The officers knew the domestic violence victim was not in the home because they had just talked to her at a different

location and she had directed them to the home. (*Id.* at pp. 291-292.) The Court of Appeal acknowledged that domestic violence scenes often involve family members or friends who are not happy about police involvement and want to protect the victim or the suspect. (*Id.* at p. 295.) “Nevertheless, to say that the warrantless entry into defendant’s home in this case was justified because of a police officer’s past experience with domestic violence arrests would be tantamount to creating a domestic violence exception to the warrant requirement. This we cannot do.” (*Ibid.*)

Unlike the officers in *Ormande*, Officers Clark and Valdez reasonably believed a possible domestic violence victim – Reed – and her abuser – defendant – were inside the home. Defendant was aggressive and agitated, Reed looked fearful and intimidated, and defendant was trying to slam the door on the officers. Had the officers permitted defendant to shut the door, defendant and Reed would have been left inside, alone and out of the officers’ sight. While the officers in *Ormande* were reasonably certain the domestic violence victim was not at risk of immediate harm and they had no information that any other potential victims or aggressors were inside the home, Officers Clark and Valdez had no such assurances. Substantial evidence and applicable law support the trial court’s finding of exigent circumstances.

C. The *Pitchess* motion

The trial court granted defendant’s motion requesting material from the personnel files of two officers concerning complaints of misconduct relating to the officers’ honesty and use of excessive force. (See *Pitchess v. Superior Court* (1974) 11

Cal.3d 531 (*Pitchess*).) The motion was based on counsel's declaration that (1) defendant's account of his detention and handcuffing conflicted with the officers' version of events, as reflected in the police report, and (2) defendant stated the officers used excessive force in handcuffing him.

After conducting an in camera review of the documents presented by the custodian of records, the trial court found no discoverable material to be turned over to the defense. Defendant, who lacks access to the sealed transcript of the in camera hearing, requests our independent review of the sealed portion of the record and the People do not oppose the request. Accordingly, we must determine whether the trial court abused its discretion and erroneously withheld discoverable information from the defense.

A criminal defendant is entitled to discovery of officer personnel records if the information contained in the records is relevant to his ability to defend against the charge. (*Pitchess*, *supra*, 11 Cal.3d at pp. 537-538.) Legislation implementing the rule permitting discovery (§§ 832.5, 832.7, 832.8; Evid. Code, §§ 1043–1047) balances the accused's need for disclosure of relevant information against a law enforcement officer's legitimate expectation of privacy in his or her personnel records. A defendant, by written motion, may obtain information contained in a peace officer's personnel records if it is material to the facts of the case. (Evid. Code, § 1043, subd. (b)(3).) When presented with such a motion, the trial court decides whether there is good cause for disclosure. (Evid. Code, §§ 1043, 1045.) If the court orders disclosure, the custodian of the officer's records brings to court all the potentially relevant personnel records, and, in camera, the trial court determines whether any part of the record

must be disclosed to the defense. “A trial court’s ruling on a motion for access to law enforcement personnel records is subject to review for abuse of discretion.” (*People v. Hughes* (2002) 27 Cal.4th 287, 330; accord *Haggerty v. Superior Court* (2004) 117 Cal.App.4th 1079, 1086, citing *People v. Samayoa* (1997) 15 Cal.4th 795, 827; *People v. Gill* (1997) 60 Cal.App.4th 743, 749.)

We have reviewed the sealed transcript of the in camera hearing. “The hearing transcript contains an adequate record of the court’s review and analysis of the documents provided to it. It reveals no abuse of discretion.” (*People v. Myers* (2007) 148 Cal.App.4th 546, 553, citing *People v. Mooc* (2001) 26 Cal.4th 1216, 1228.)

DISPOSITION

The judgment is affirmed.

JASKOL, J.*

We concur:

BAKER, Acting P. J.

MOOR, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.