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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDOLPH FLORES,

Defendant and Appellant.

2d Crim. No. B257741
(Super. Ct. No. BA416402)
(Los Angeles County)

Randolph Flores appeals judgment entered after a plea of no contest to possessing a firearm by a felon. (Pen. Code, § 29800, subd. (a)(1).)¹ He admitted two prison prior terms. (§ 667.5, subd. (b).) The trial court sentenced him to two years state prison.

Flores contends that the court erred in denying his motion to suppress (§ 1538.5) and that the record fails to show

¹ Further unspecified statutory references are to the Penal Code.

the documents that the trial court evaluated in the *Pitchess*² hearing. We affirm.

Facts

Sheriff's Deputy Frank Alvarado and Sergeant Mark Marbauch were patrolling a high crime neighborhood in Los Angeles around 9:00 p.m. The officers saw Flores rummaging through a parked car in an alleyway. He had a firearm in his left hand. When the officers drove closer, Flores ran into a nearby home and locked the door behind him.

The officers followed Flores and knocked on the front door. Rebecca Hernandez opened the door and identified herself as Flores's girlfriend. Flores had run into an "add-on bedroom" to the house, and Hernandez became concerned because her one-year-old child was also in the bedroom.

Hernandez opened the front door wide and took a few steps back. The officers entered the home and stepped into an enclosed patio area, where there was a second locked door leading to the add-on bedroom. Hernandez knocked on the bedroom door and pleaded with Flores to open it. Flores eventually opened the bedroom door, and the officers handcuffed him and escorted him out of the home. Hernandez's older son moved the one-year-old child from the bedroom. Alvarado asked Hernandez if there were other individuals present. Hernandez responded that she and Flores had other children, but they were all in the main portion of the house. Hernandez's mother was also in the home, but outside the bedroom.

Alvarado searched the bedroom to retrieve the gun because he had just seen Flores run into the house with the gun; a one-year-old had been in the same room as Flores; and there

² *Pitchess v. Superior Court* (1974) 11 Cal.3d 531 (*Pitchess*).

were several other children who had access to the room. He “didn’t want them to get hurt.” Alvarado also did not know if there was anybody else in the bedroom at the time.

Alvarado found a loaded firearm inside a cupboard above a closet. The gun was wrapped in a blue bandanna.

Motion to Suppress

Flores filed a motion to suppress the evidence (§ 1538.5), which the trial court denied. The court stated that in light of the officers’ observation that Flores had a gun, there was a “clear and present danger” justifying the search of the bedroom.

Flores contends the trial court erred by denying his motion to suppress evidence because exigent circumstances did not justify the warrantless search of the bedroom. We disagree.

In reviewing a trial court’s ruling on motions to suppress, we “uphold any factual finding, express or implied, that is supported by substantial evidence, but we independently assess, as a matter of law, whether the challenged search or seizure conforms to constitutional standards of reasonableness.” (*People v. Hughes* (2002) 27 Cal.4th 287, 327.)

Warrantless searches in a home are presumptively unreasonable. (*Payton v. New York* (1980) 445 U.S. 573, 590; *People v. Celis* (2004) 33 Cal.4th 667, 676 (*Celis*).) However, exigent circumstances may justify a warrantless search. (*Warden, Maryland Penitentiary v. Hayden* (1967) 387 U.S. 294, 299 (*Hayden*); *Celis, supra*, at p. 676.)

“[E]xigent 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. There is no ready litmus test for determining whether such circumstances exist,

and in each case the claim of an extraordinary situation must be measured by the facts known to the officers.” (*People v. Ramey* (1976) 16 Cal.3d 263, 276.)

Exigent circumstances exist when there is probable cause to believe that entry or search of a home is necessary to protect the police or other persons inside or outside the home. (*Minnesota v. Olson* (1990) 495 U.S. 91, 100; *Hayden, supra*, 387 U.S. at pp. 298-299 [delay in the search for persons or weapons endangered the safety of the police and the public]; *Celis, supra*, 33 Cal.4th at p. 676.) Recognizing the dangers firearms pose to police and the public, California courts have upheld warrantless intrusions in homes based on the exigent circumstances exception. (See *In re Elizabeth G.* (2001) 88 Cal.App.4th 496, 507 (*Elizabeth G.*); *People v. Ngaue* (1992) 8 Cal.App.4th 896 (*Ngaue*); *People v. Daughhetee* (1985) 165 Cal.App.3d 574, 578 (*Daughhetee*)). In *Ngaue*, the court held that an officer’s reentry into a home to retrieve a gun that was in plain view was justified, in part, by “exigent circumstances of officer safety.” (*Ngaue, supra*, at p. 905.) The court noted that because there were other people in the vicinity and there was a possibility of occupants in the house having access to the gun, “until the gun was retrieved the deputies were at risk.” (*Id.* at pp. 904-905.)

Exigent circumstances also exist where evidence could be destroyed before the police could obtain a warrant to search a home. (*Elizabeth G., supra*, 88 Cal.App.4th at p. 505; *People v. Hull* (1995) 34 Cal.App.4th 1448, 1456; *Daughhetee, supra*, 165 Cal.App.3d at p 578.) In *Elizabeth G.*, the court upheld a warrantless seizure of a home where there was a reasonable possibility of other occupants destroying or hiding

firearms in anticipation of a search. (*Elizabeth G.*, *supra*, at p. 505.)

Similar exigent circumstances exist here that justify the warrantless search of Flores's bedroom. The officers knew Flores had a gun, which was not recovered during the arrest. After Flores was removed from the home, two adults and several children were still inside the home and had access to the gun. There was a risk that the occupants could use the gun, endangering their safety and the officers' safety. (See *Ngaue*, *supra*, 8 Cal.App.4th at p. 905.) There was also a risk the occupants could destroy or hide the gun. (*Elizabeth G.*, *supra*, 88 Cal.App.4th at p. 505.) Hernandez and her mother were present during the arrest, knew the police saw Flores with the gun, and knew the gun was inside the bedroom.

The federal decisions cited by the parties do not control or suggest otherwise. (*United States v. Antwine* (8th Cir. 1989) 873 F.2d 1144; *Sturdivant v. United States* (D.C.Ct.App. 1988) 551 A.2d 1338; *United States v. Gooch* (9th Cir. 1993) 6 F.3d 673; *Walker v. King County* (W.D.Wash. 2009) 630 F.Supp.2d 1285; *United States v. Weidul* (D.Me. 2002) 227 F.Supp.2d 161.)

Exigent circumstances justify the warrantless search of Flores's bedroom. The trial court did not err in denying the motion to suppress.

Pitchess

Flores moved for disclosure of Alvarado and Marbauch's personnel records. The trial court conducted an in camera hearing and ordered certain disclosures. Flores claims that the record fails to indicate what documents were evaluated by the court and that it prevents a meaningful review on appeal.

The record is adequate. To permit appellate review, a trial court shall make a record of what documents it has examined in camera before ruling on a *Pitchess* motion. The trial court may do so by stating on the record what documents it examined. (*People v. Mooc* (2001) 26 Cal.4th 1216, 1229.) We have the sealed transcript, which shows that the trial court described all the documents it had evaluated and its reasons for denying or granting the disclosure. Based on our independent review of the in camera hearing transcript, the trial court followed proper procedures and did not abuse its discretion. (*Id.* at pp. 1229-1232.)

Disposition

The judgment is affirmed.

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TANGEMAN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Robert J. Perry, Judge

Superior Court County of Los Angeles

Alex Coolman, under appointment by the Court of Appeal, for Defendant and Appellant.

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