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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2711-13T3
A-4319-13T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

NATHAN N. SHAW, a/k/a DION SHAW,
a/k/a LEROY ANDERSON,

Defendant-Appellant.

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

KEON L. BOLDEN,

Defendant-Appellant.

Argued March 1, 2016 – Decided August 25, 2016

Before Judges Espinosa and Rothstadt.

On appeal from Superior Court of New Jersey, Law Division, Monmouth County, Indictment Nos. 12-03-0469 and 12-08-1442.

Margaret McLane, Assistant Deputy Public Defender, argued the cause for appellant Nathan N. Shaw in A-2711-13 (Joseph E. Krakora, Public Defender, attorney; Ms. McLane, of counsel and on the briefs).

Alyssa Aiello, Assistant Deputy Public Defender, argued the cause for appellant Keon L. Bolden in A-4319-13 (Joseph E. Krakora, Public Defender, attorney; Ms. Aiello, of counsel and on the briefs).

Jenny M. Hsu, Deputy Attorney General, argued the cause for respondent (John J. Hoffman, Acting Attorney General, attorney; Ms. Hsu, of counsel and on the brief).

Appellant Nathan Shaw filed a pro se supplemental brief.

PER CURIAM

Defendants Keon Bolden and Nathan Shaw pled guilty to drug offenses after the trial court denied their motions to suppress evidence. The two were charged after police discovered controlled dangerous substances (CDS) in a motel room registered to the driver of a vehicle in which they were passengers. As a result of the motel room's search, the police stopped the vehicle and ultimately discovered additional CDS inside. Prior to Bolden's and Shaw's trials, the court conducted a suppression hearing and concluded that the warrantless searches of the motel room and the vehicle were proper, and that statements made by Shaw to the police while being detained by them were admissible.

In their appeals, which we calendared back-to-back and consolidated for purposes of this opinion, Bolden challenges the warrantless search of the motel room. Shaw challenges the admission of a statement he made to police, arguing it was the

product of his unlawful arrest, and the search of the vehicle, based upon the invalidity of the driver's consent to the search and it not extending to a specific tote in which CDS was discovered located in the back of the vehicle.

We have considered defendants' arguments in light of the record and our review of applicable legal principles. We affirm in part, and vacate and remand in part the denial of their suppression motions.

I.

The facts developed at the suppression hearing based upon the testimony of the only two witnesses who appeared — Neptune Township Police Officer Jason Rademacher and Ocean County Sheriff's Officer Kurt Kroeper — are not contested, and can be summarized as follows. The circumstances leading to defendants' arrest began on Sunday, December 4, 2011, with the vehicle's driver, Jasmine Hanson, complaining to an employee of a motel where she was staying[1] that she had been bitten by bedbugs. In response, the motel's owner entered the room while it was unoccupied, pulled back the bed coverings, and discovered a plastic bag containing what he suspected to be CDS. He then called the police.

[1] Hanson checked in on December 2, 2011, at 3:06 a.m. and was to check out on December 9.

Officer Rademacher responded to the call at 2:34 p.m., and the motel owner let him into the still unoccupied room. The officer made no attempt to secure a warrant prior to entering the room. According to Rademacher, he had no familiarity with or understanding as to how to apply telephonically for a search warrant.

Once inside, the officer observed that the comforter on the bed had been pulled back, exposing a plastic bag that contained "two separate bags of a rock-like substance believed to be crack cocaine" and several "smaller cellophane[-]type bags with stamps" containing what he believed to be heroin. Upon further observation of the room, the officer also discovered a jar containing "what [he] believe[d] to be imitation" marijuana, a scale, a glass beaker, and other drug paraphernalia.

Rademacher contacted headquarters, and Sergeant William Kirchner responded to the scene. The officers collected the evidence and Rademacher ran a background check of Hanson,[2] which revealed an active warrant for her arrest and a traffic ticket recently issued to her while driving a black 2012 Chevrolet Tahoe.

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[2] Rademacher learned Hanson's identity upon his arrival at the motel, when the owner provided him with a copy of the room registration information, which included a copy of her driver's license.

Kirchner instructed Rademacher to transport the evidence to headquarters, return in an unmarked vehicle, and park in the lot adjacent to the motel. Approximately twenty minutes after he stationed himself in the parking lot, Rademacher observed the black Tahoe, driven by Hanson, enter the lot and pull into a parking space. Once the vehicle was parked, the front passenger "immediately exited." The officer left his vehicle, "unholstered [his] duty weapon and kept it down at [his] side[,] and ordered [the passenger] back in to the vehicle." He observed that, in addition to the driver and front-seat passenger, there were two passengers in the back of the vehicle. Hanson rolled down her window and, in response to the officer's request, provided her license, registration, and rental agreement for the vehicle.[3] Rademacher then waited until several other officers arrived as backup on the scene.

Once the other officers arrived, Rademacher asked Hanson to step out of the vehicle and advised her that there was an active warrant for her arrest. She was then handcuffed, arrested, and placed in the rear of a marked patrol car. At that point, Rademacher "systematically removed each other occupant of the vehicle and spoke to them individually and identified them."

[3] The rental agreement listed Jasmine Hanson as the only renter; no other names were present on the document.

Rademacher identified one of the passengers in the rear of the vehicle as Shaw, and determined there were no outstanding warrants for his arrest. Rademacher then "detained him" and "secured [him] in the rear of . . . Kirchner's patrol vehicle."

The other individual located in the rear of the vehicle was later identified as Shakira Dickerson, though she initially provided the police with a false name. After Dickerson eventually provided her actual name, the police determined there was an outstanding warrant for her and arrested her.

Finally, the officers questioned Bolden, the front seat passenger. Bolden presented a driver's license, and, from that information, the police determined there were no outstanding warrants for his arrest. Bolden was then "detained," though not handcuffed, and placed in the back of another officer's patrol vehicle.

According to Rademacher, once all of the vehicle's occupants were secured in police vehicles, he asked Hanson if she would consent to a search of the vehicle. Hanson refused. In response, Rademacher and Kirchner "explained that a K-9 dog would be brought to the location to perform an exterior sniff of the vehicle." Although the officers did not explain the reason for the canine sniff to Hanson, Rademacher testified that

> [i]t was being done because of the drugs that were originally found in [the motel

> room], and . . . in addition to her and the rear passenger of the vehicle having outstanding warrants for their arrest, lying about their name, [he] believed that criminal activity was possibly afoot. . . . Possibly the transportation of narcotics.

According to Rademacher, the other occupants were secured in separate vehicles and, to his knowledge, did not hear his conversation with Hanson. To Rademacher's knowledge, none of the officers present engaged the Tahoe's occupants in conversation during the time that elapsed between the occupants' detainment and the conclusion of the K-9 sniff.

Rademacher explained that "it was probably around half an hour" from the time he requested a K-9 unit to the time it arrived because they had to "call surrounding towns to ask whether or not there [was] a K-9 dog available" and eventually request one from the Monmouth County Sheriff's Office. During that time, the occupants remained secured in separate marked patrol cars. According to the Monmouth County Sheriff's Office field report, the K-9 unit was requested at 4:00 p.m. and arrived twenty minutes later, and the K-9 unit left the scene at 5:20 p.m. Therefore, the police detained the vehicle's occupants for at least eighty minutes.

Officer Kroeper arrived at the scene with his dog to perform the exterior sniff of the vehicle. During the execution of the sniff, an unidentified officer told Rademacher that Shaw

"uttered to [the unidentified] officer[] that he had marijuana inside of the vehicle," specifically, "on the floor[] in the rear passenger seat." As a result, Shaw was arrested and handcuffed.

When the police advised Hanson of Shaw's statement, she gave consent for the officers to search the vehicle. Rademacher provided Hanson with a "standard . . . consent to search form," which he also read to her. At 4:40 p.m., Hanson initialed almost all of the advisements and signed the bottom of the form, which was witnessed by Rademacher and Kirchner. However, she did not initial the statement on the form that read "I have given this permission voluntarily of my own free will, without coercion, fear, or threat," which Rademacher "did not realize . . . until way after the fact, and there[was] nothing [he could] do."

Once Hanson signed the form, Rademacher conducted a search of the vehicle's interior.[4] Rademacher immediately searched the floor of the rear passenger seat and found a brown bag containing suspected marijuana. In the center console cup holder, Rademacher found a box of plastic sandwich bags and a container of what he "believe[d] to be imitation marijuana."

[4] The K-9 was not used for the search and was secured in one of the patrol cars.

Returning his attention to the back of the vehicle, Rademacher observed a large, green, fabric tote bag standing up on the middle seat. The bag was open, and inside were two black plastic bags containing what appeared to be "decks"[5] of heroin bearing the same stamp as those found in the motel room. Specifically, the search yielded:

> 113 glassine bags containing suspected heroin, 24 stamped Limit 50 in red ink, 5 stamped Ride It in black ink, 84 stamped with pink dots, [a] Ziploc bag containing a rock-like substance believed to be crack cocaine, and a plastic twist bag containing a rock-like substance believed to be crack cocaine from the green and white bag on the rear passenger seat of the vehicle.

Upon discovering the CDS, the police secured the vehicle and transported its four occupants individually to police headquarters, as "[t]hey were all under arrest for the items found constructively within the vehicle."[6]

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[5] A "deck" of heroin is understood to be between one and fifteen grams, packaged in glassine bags.

[6] A Monmouth County Grand Jury later indicted and charged the vehicle's occupants under Indictment No. 12-03-0469 with third-degree possession of CDS (heroin), N.J.S.A. 2C:35-10(a)(1) (count one); two counts of third-degree possession of CDS (cocaine), N.J.S.A. 2C:35-10(a)(1) (count two and three); first-degree possession of CDS (cocaine) with intent to distribute, N.J.S.A. 2C:35-5(b)(1) (count four); third-degree possession of CDS (heroin), N.J.S.A. 2C:35-10(a)(1) (count five); and third-degree possession of CDS (heroin) with intent to distribute, N.J.S.A. 2C:35-5(b)(3) (count six).

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After considering Rademacher's and Kroeper's testimony, the trial court entered orders denying Shaw's and Bolden's motions to suppress, and issued a written decision explaining its reasons for doing so.

In its decision, the court began by reciting the facts it found from the officers' testimony and the evidence admitted during the hearing, and determined that both defendants had standing to challenge the search of the motel room. However, relying on our holding in State v. Premone, 348 N.J. Super. 505 (App. Div. 2002), the court concluded that the search was lawful because the motel owner's entry into Hanson's room was a "private action" and therefore fell beyond the protections of the federal and state constitutions.

Addressing the search of Hanson's vehicle, the court found the police were justified in stopping her based on their knowledge of the outstanding warrant for her arrest. As to the other occupants, the court cited State v. Carty, 170 N.J. 632, 640 (2002), and concluded that "the inquiries of the passengers

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In connection with an unrelated incident, Bolden was later charged under Monmouth County Indictment No. 12-08-1442 with third-degree possession of CDS (cocaine), N.J.S.A. 2C:35-10(a)(1) (count one); third-degree possession of CDS (cocaine) with intent to distribute, N.J.S.A. 2C:35-5(b)(3) (count two); and third-degree possession of CDS (cocaine) with intent to distribute while on or within 500 feet of a public park, N.J.S.A. 2C:35-7.1 (count three).

did not infringe upon any of [their] constitutional rights[, as t]he police were entitled to ask the . . . passengers to be identified and [to] check for warrants." The court specifically rejected the contention that their detention became a de facto arrest "because the officers' conduct was not more intrusive than necessary for an investigative stop." Citing Carty, the court concluded that the continued detention of the passengers after background checks were completed was justified because the police had "a reasonable and articulable basis [to believe] that criminal activity was afoot . . . based on the totality of the circumstances[,] including[] the motel room filled with suspected narcotics, the out-of-state driver's license, and the brief duration of the [vehicle's] rental agreement." Although the court initially found that the occupants were removed from the vehicle and placed in police vehicles, it stated that Kroeper arrived before they were removed, and any "delay [in their detention] was minimal." Thus, the court concluded, "the investigative stop did not exceed the scope of a permissible Terry[7] stop."

Finally, the court addressed the issue of Hanson's consent to the vehicle's search. The court reviewed the applicable law

[7] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889, (1968).

governing consent searches, quoted State v. Johnson, 68 N.J. 349, 354 (1975), and noted "[t]he State ha[d] the 'burden of showing that the consent was voluntary, an essential element of which is knowledge of the right to refuse consent.'" Relying on State v. Chapman, 332 N.J. Super. 452, 467 (App. Div. 2000), the court concluded the State proved Hanson gave her consent to search the vehicle by signing the consent form and consenting to the search of "all of [its] contents," including the tote bag, especially as there was nothing to identify the bag as belonging to anyone else.

After the court entered its orders denying the suppression motions, both Bolden and Shaw pled guilty. Shaw pled guilty to one count of third-degree possession of CDS with intent to distribute, N.J.S.A. 2C:35-5(b)(3), in exchange for dismissal of the other charges and a recommended sentence of five years imprisonment with a three-year period of parole ineligibility. Bolden pled guilty to one count of first-degree possession of CDS, N.J.S.A. 2C:35-5(b)(1), under Indictment No. 12-03-0469, and one count of possession of CDS with intent distribute within five hundred feet of certain public property, N.J.S.A. 2C:35-7.1, under Indictment No. 12-08-1442, in exchange for the dismissal of the remaining charges and a recommended aggregate sentence of ten years imprisonment, subject to a five-year

period of parole ineligibility. The two were later sentenced in accordance with their plea agreements. These appeals followed.

II.

On appeal Shaw argues:

> POINT I
>
> THE DEFENDANT'S STATEMENT MUST BE SUPPRESSED AS THE FRUIT OF HIS UNLAWFUL ARREST.
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> POINT II
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> THE DRIVER'S CONSENT TO SEARCH WAS INVALID AS THE FRUIT OF DEFENDANT'S UNLAWFUL ARREST AND BECAUSE IT WAS NOT VOLUNTARY. IN THE ALTERNATIVE, THE DRIVER COULD NOT CONSENT TO THE SEARCH OF THE PASSENGER'S BAG.

In a pro se supplemental brief, Shaw also argues:

> POINT I
>
> [SHAW'S] ARREST WAS UNLAWFUL ABSENT FINDINGS OF PROBABLE CAUSE.
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> POINT II
>
> THE TRIAL COURT ERRED IN ITS DECISION BY DENYING DEFENDANT'S MOTION TO SUPPRESS BECAUSE OF HOTEL MANAGER'S "LACK OF KNOWLEDGE OF THE INTRICACIES OF THE FOURTH AMENDMENT."

Bolden presents the following argument:

> POINT I
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> OFFICER RADEMACHER'S WARRANTLESS ENTRY INTO [THE MOTEL ROOM] VIOLATED THE FEDERAL AND STATE CONSTITUTIONS. THEREFORE, THE TRIAL COURT'S ORDER DENYING BOLDEN'S MOTION TO SUPPRESS EVIDENCE MUST BE REVERSED AND HIS

CONVICTION UNDER INDICTMENT NO. 12-03-0469 VACATED.

Our review of the denial of a suppression motion is limited. See State v. Handy, 206 N.J. 39, 44 (2011). A trial court's findings are entitled to deference if supported by sufficient credible evidence. See State v. Scriven, __ N.J. __, __ (2016) (slip op. at 12-13). We "must uphold the factual findings underlying the trial court's decision so long as those findings are supported by sufficient credible evidence in the record." State v. Elders, 192 N.J. 224, 243 (2007) (citation omitted). We will "not disturb the trial court's findings merely because '[we] might have reached a different conclusion' . . . or because 'the trial court decided all evidence or inference conflicts in favor of one side' in a close case." Id. at 244 (quoting State v. Johnson, 42 N.J. 146, 162 (1964)). It is only where we are "thoroughly satisfied that the finding is clearly a mistaken one and so plainly unwarranted that the interests of justice demand intervention and correction [that we will] appraise the record as if [we] were deciding the matter at inception and make [our] own findings and conclusions." Johnson, supra, 42 N.J. at 162.

Issues of law, however, are reviewed de novo. State v. Gandhi, 201 N.J. 161, 176 (2010). The question of whether the trial court's judicially-found facts warrant suppression is

purely legal, and the trial court's decision is subject to plenary review. Handy, supra, 206 N.J. at 45.

A.

We turn our attention first to Bolden's challenge to the search of Hanson's motel room. He asserts that the trial court improperly denied the motion to suppress and erred in (1) failing to distinguish that he had a reasonable expectation of privacy; (2) applying the private search or third-party intervention doctrine to the instant matter; and (3) determining that the warrantless entry and search of the hotel room by the officer was permissible under the aforementioned exception.

Both the United States and New Jersey constitutions guarantee "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7; see also Scriven, supra, __ N.J. at __ (slip op. at 12). However, a defendant seeking to invoke the protections afforded by these constitutional provisions must first "show that a reasonable or legitimate expectation of privacy was trammeled by government authorities." State v. Evers, 175 N.J. 355, 369 (2003); see also State v. Taylor, 440 N.J. Super. 515, 522 (App. Div. 2015) ("Absent a reasonable expectation of privacy in the place or thing searched, an individual is not entitled to

protection under either the Fourth Amendment or Article I, Paragraph 7 of the New Jersey Constitution."). "Unlike the federal test,[8] the New Jersey constitutional standard does not require the defendant to prove a subjective expectation of privacy. . . . Instead, Article I, Paragraph 7 . . . 'requires only that an expectation of privacy be reasonable.'" State v. Hinton, 216 N.J. 211, 236 (2013) (quoting State v. Hempele, 120 N.J. 182, 200 (1990)).

It is well-established that "a person can have a legally sufficient interest in a place other than his own home[, such] that the Fourth Amendment protects him from government intrusion into that place." State v. Stott, 171 N.J. 343, 357 (2002) (quoting Rakas v. Illinois, 439 U.S. 128, 142, 99 S. Ct. 421, 430, 58 L. Ed. 2d 387, 401 (1978)); see also State v. Rose, 357 N.J. Super. 100, 103 (App. Div.), certif. denied, 176 N.J. 429 (2003); State v. Alvarez, 238 N.J. Super. 560, 571 (App. Div. 1990). Applying that principle, the Court has recognized that hotel guests have a reasonable expectation of privacy in their

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[8] To be entitled to protection under the Fourth Amendment, a defendant "must establish that he had both 'an actual (subjective) expectation of privacy[]' [in the object of the challenged search,] and 'one that society is prepared to recognize as reasonable.'" Evers, supra, 175 N.J. at 369 (quoting Katz v. United States, 389 U.S. 347, 361, 88 S. Ct. 507, 516, 19 L. Ed. 2d 576, 588 (1967) (Harlan, J., concurring)).

rooms, Hoffa v. United States, 385 U.S. 293, 301, 87 S. Ct. 408, 413, 17 L. Ed. 2d 374, 381 (1966); see also State v. Hathaway, 222 N.J. 453, 468 (2015); Alvarez, supra, 238 N.J. Super. at 571, and that "overnight guests have the same or similar expectation of privacy in the homes of their hosts as do the hosts or owners." Stott, supra, 171 N.J. at 357 (citing Minnesota v. Olson, 495 U.S. 91, 98, 110 S. Ct. 1684, 1689, 109 L. Ed. 2d 85, 94 (1990)). Therefore, "a warrantless search [by police] of a suspect's [hotel] room is unreasonable and improper unless it falls within the scope of an exception to the general rule requiring the issuance of a search warrant." Rose, supra, 357 N.J. Super. at 103; see also Hathaway, supra, 222 N.J. at 468.

As conceded by the State at oral argument in this case, the "third-party intervention" or "private search" doctrine[9] did not

[9] As the Supreme Court recently explained:

> The doctrine originally addressed situations like the following: Private actors search an item, discover contraband, and notify law enforcement officers or present the item to them. The police, in turn, replicate the search without first getting a warrant. See, e.g., United States v. Jacobsen, 466 U.S. 109, 104 S. Ct. 1652, 80 L. Ed. 2d 85 (1984). Because the original search is carried out by private actors, it does not implicate the Fourth Amendment. And if the officers' search of

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create an exception to the requirement that law enforcement obtain a warrant before searching a guest's hotel room, absent exigent circumstances. See Wright, supra, 221 N.J. at 460 ("Residents . . . run the risk that any private actor they invite into their home may tell the police what they have seen. And the police, in turn, can use that information to apply for a search warrant."). Rather than relying on the third-party intervention doctrine, the State argues that there was no evidence adduced at the suppression hearing establishing that any person, other than Hanson, had a reasonable expectation of privacy in the motel room or the items seized therefrom.

Although the trial court concluded that Bolden had standing to challenge the search of the motel room, having determined the third-party intervention doctrine justified the police search and seizure, it never addressed whether he had a reasonable expectation of privacy in the room. As we have previously explained, the issue of standing is distinct from whether a defendant maintained a reasonable expectation of privacy in the object of a search. We stated:

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> the item does not exceed the scope of the private search, the police have not invaded a defendant's protected privacy interest and do not need a warrant.
>
> [State v. Wright, 221 N.J. 456, 459 (2015).]

> In New Jersey, "a criminal defendant [has standing] to bring a motion to suppress evidence obtained in an unlawful search and seizure if he has a proprietary, possessory or participatory interest in either the place searched or the property seized." [State v. Alston, 88 N.J. 211, 228 (1981)]; accord [State v. Brown, 216 N.J. 508, 548-49 (2014)]. "[S]tanding to seek suppression of evidence" is a "separate issue" from "the existence of a reasonable expectation of privacy," which pertains to the merits of the police action. [Hinton, supra, 216 N.J. at 235]. Defendant's automatic standing to contest the constitutional validity of the seizure "does not equate to a finding that he . . . has a substantive right of privacy in the place searched that mandates the grant of that motion." Ibid. "[A]lthough we do not use a reasonable expectation of privacy analysis for standing purposes in criminal cases, we do apply that analysis to determine whether a person has a substantive right of privacy in a place searched or an item seized." [Id. at 234] (quoting [State v. Johnson, 193 N.J. 528, 547 (2008)]). "[T]he objective reasonableness of the defendant's expectation of privacy in that property, for purposes of Article I, Paragraph 7, turns in large part on his or her legal right to occupy the property at issue." [Id. at 236].
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> [State v. Randolph, 441 N.J. Super. 533, 548-49 (App. Div. 2015) (first, fourth, sixth, and ninth alterations in original), certif. granted, 224 N.J. 529 (2016).]

The burden of proof to establish a reasonable expectation of privacy is on the defendant seeking to suppress evidence. See Hinton, supra, 216 N.J. at 233.

Applying that standard to the evidence adduced at the suppression hearing, we conclude the trial court misapplied the third-party intervention doctrine and failed to determine whether Bolden maintained a reasonable expectation of privacy in the room registered to Hanson. Having said that, we recognize there was no proof presented establishing that Bolden had any connection to the motel room.[10] The evidence presented established only that Hanson was the registered guest and was staying in the room, as demonstrated by the motel's registration records and her complaint to the motel employee about being bitten by bedbugs. Nothing indicated that the motel room was also Bolden's residence, temporarily or otherwise.

However, because the inapplicability of the third-party intervention doctrine was not clear before Wright, which was decided after the suppression hearing, we vacate the denial of Bolden's motion to suppress and remand the matter to the trial court for a new hearing at which Bolden must make a threshold showing that he had a reasonable expectation of privacy in the

[10] Bolden asserts that evidence presented to the grand jury that was considered in an earlier motion to dismiss the indictment included video tapes of his staying in the motel room. However, as this evidence was not produced at the suppression hearing, we cannot consider it in our review. See Randolph, supra, 441 N.J. Super. at 543 n.1 (citing State v. Robinson, 200 N.J. 1, 15 (2009)).

motel room.[11] If the trial court determines that he did, Bolden is to be afforded an opportunity to withdraw his plea, and, if he does, the evidence seized by law enforcement from the motel room must be suppressed at trial.

B.

We turn our attention to Shaw's arguments. On appeal, he asserts that the trial court improperly denied the motion to suppress and erred in: (1) finding his detention and subsequent arrest lawful; (2) concluding that the statement uttered by Shaw was not a result of his unlawful seizure; and (3) failing to conclude that Hanson's consent to the search was neither involuntary nor "fruit of the poisonous tree." We address each argument in turn.

i.

Shaw first contends that his continued detention by Rademacher was a seizure that was not supported by reasonable suspicion or probable cause, and "amounted to an arrest because it was more than minimally intrusive." He argues that his detention was unlawful and violated the Fourth Amendment because the stop was an "unreasonable" seizure that exceeded the measures dictated by Terry. We agree.

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[11] See Taylor, supra, 440 N.J. Super. at 525.

"Temporary detention during an investigatory traffic stop, even if brief and limited, constitutes a seizure of persons." State v. Sloane, 193 N.J. 423, 430 (2008) (citation omitted). While the "warrantless seizure of a person is 'presumptively invalid as contrary to the United States and the New Jersey Constitutions,'" State v. Coles, 218 N.J. 322, 342 (2014) (quoting State v. Mann, 203 N.J. 328, 337 (2010)), there remains a critical "balance to be struck between individual freedom from police interference and the legitimate and reasonable needs of law enforcement." Id. at 343. A reviewing court must determine whether the State has met its burden to establish by a preponderance of the evidence that the warrantless seizure of an individual was justified in light of the totality of the circumstances. Mann, supra, 203 N.J. at 337-38.

The Terry exception to the warrant requirement permits a police officer to detain an individual for a brief period and to pat him or her down for the officer's safety if that stop is "based on 'specific and articulable facts which, taken together with rational inferences from those facts,' give rise to a reasonable suspicion of criminal activity." State v. Rodriguez, 172 N.J. 117, 126 (2002) (quoting Terry, supra, 392 U.S. at 21, 88 S. Ct. at 1880, 20 L. Ed. 2d at 906); see also State v. Williams, 192 N.J. 1, 9 (2007) (stating a Terry pat down is

constitutionally permissible when the police officer believes the suspect "may be armed and presently dangerous" (quoting Terry, supra, 392 U.S. at 30, 88 S. Ct. at 1884, 20 L. Ed. 2d at 911)).

> [A]n investigatory detention must, first, be based upon sufficient evidence to demonstrate that a particular crime has occurred, that the crime is unsolved and that it is under active investigation. Second, the police must demonstrate a reasonable and well-grounded basis to believe that the individual sought as the subject of the investigative detention may have committed the crime under investigation. Additionally, it must be shown that the results of the detention will significantly advance the criminal investigation and will serve to determine whether or not the suspect probably committed the crime. Further, it must also appear that these investigative results cannot otherwise practicably be obtained.
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> [State v. Hall, 93 N.J. 552, 562, cert. denied, 464 U.S. 1008, 104 S. Ct. 526, 78 L. Ed. 2d 709 (1983).]

When reviewing whether the State has shown a valid basis for an investigative detention, consideration of the totality of the circumstances requires we "give weight to 'the officer's knowledge and experience' as well as 'rational inferences that could be drawn from the facts objectively and reasonably viewed in light of the officer's expertise.'" State v. Citarella, 154 N.J. 272, 279 (1998) (quoting State v. Arthur, 149 N.J. 1, 10-11 (1997)). "The fact that purely innocent connotations can be

ascribed to a person's actions does not mean that an officer cannot base a finding of reasonable suspicion on those actions as long as 'a reasonable person would find the actions are consistent with guilt.'" Id. at 279-80 (quoting Arthur, supra, 149 N.J. at 11). "However, an officer's hunch or subjective good faith – even if correct in the end – cannot justify an investigatory stop or detention." State v. Shaw, 213 N.J. 398, 411 (2012).

Whether police conduct has violated constitutional protections is measured by its "reasonableness." Hathaway, supra, 222 N.J. at 476 (quoting State v. Judge, 275 N.J. Super. 194, 200 (App. Div. 1994)). The reasonableness of police conduct is assessed with regard to circumstances facing the officers, who must make split second decisions in a fluid situation. See State v. Bruzzese, 94 N.J. 210, 228 (1983), cert. denied, 465 U.S. 1030, 104 S. Ct. 1295, 79 L. Ed. 2d 695 (1984).

> Such encounters are justified only if the evidence, when interpreted in an objectively reasonable manner, shows that the encounter was preceded by activity that would lead a reasonable police officer to have an articulable suspicion that criminal activity had occurred or would shortly occur. No mathematical formula exists for deciding whether the totality of circumstances provided the officer with an articulable or particularized suspicion that the individual in question was involved in criminal

> activity. Such a determination can be made only through a sensitive appraisal of the circumstances in each case.
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> [State v. Davis, 104 N.J. 490, 505 (1986).]

"A court must first consider the officer's objective observations." Id. at 501. This "analysis proceeds with various objective observations, information from police reports, if such are available, and consideration of the modes or patterns of operation of certain kinds of lawbreakers." United States v. Cortez, 449 U.S. 411, 418, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621, 629 (1981). "Second, a court must determine whether the evidence 'raise[s] a suspicion that the particular individual being stopped is engaged in wrongdoing.'" Davis, supra, 104 N.J. at 501 (alteration in original) (quoting Cortez, supra, 449 U.S. at 418, 101 S. Ct. at 695, 66 L. Ed. 2d at 629). In considering these factors, courts must take "a realistic approach to reviewing police behavior in the context of the ever-increasing violence in society." State v. Valentine, 134 N.J. 536, 545 (1994). The focus must be narrow and fixed on the defendant, "the officer's observations, in view of the officer's experience and knowledge, taken together with rational inferences drawn from those facts," to determine whether they "warrant a limited intrusion upon the individual's freedom."

State v. Stovall, 170 N.J. 346, 361 (2002) (quoting State v. Caldwell, 158 N.J. 452, 459 (1999)).

Courts have identified various factors that may help support a "reasonable suspicion": presence in a high crime area, see State v. Richards, 351 N.J. Super. 289, 307 (App. Div. 2002); nervousness and implausible responses coupled with other factors constituting suspicious behavior, see Mann, supra, 203 N.J. at 339-340; flight following a good faith police command to stop, see Williams, supra, 192 N.J. at 10-13; unresponsiveness to police questions or commands, though only when coupled with other factors, see Shaw, supra, 213 N.J. at 410; characteristics contained in "drug courier profiles," see Stovall, supra, 170 N.J. at 358-360; and warrants, see Caldwell, supra, 158 N.J. at 469. Further, while "an officer's knowledge of a suspect's criminal history alone is not sufficient to justify the initial stop of a suspect or . . . a frisk of a suspect once stopped, [that knowledge] in combination with other factors may lead to a reasonable suspicion that the suspect is armed and dangerous." Valentine, supra, 134 N.J. at 547; see also State v. Privott, 203 N.J. 16, 28-29 (2010).

However, even with probable cause to arrest or search one suspect, that suspect's presence "do[es] not confer broad authority on the police to subject those in the vicinity to the

indignity of searches because they happen to be there." State v. Rivera, 276 N.J. Super. 346, 351-52 (App. Div. 1994) (holding that, while "the police had an adequate basis upon which to stop [a suspect], to question him, and to subject him to a Terry search, that justification with respect to the [suspect] did not ripen into probable cause in respect of the others present"). The requirement for "probable cause particularized with respect to [one] person . . . cannot be undercut or avoided by simply pointing to the fact that coincidentally there exists probable cause to search or seize another" person in the suspect's vicinity. Id. at 352 (quoting Ybarra v. Illinois, 444 U.S. 85, 91, 100 S. Ct. 338, 342, 62 L. Ed. 2d 238, 245 (1979)).

If a detention is initially justified, the question is, at what point, if ever, does it transform into a warrantless arrest. "[T]here is [no] litmus-paper test for . . . determining when a seizure exceeds the bounds of an investigative stop." State v. Dickey, 152 N.J. 468, 476 (1998) (alterations in original) (quoting Florida v. Royer, 460 U.S. 491, 506, 103 S. Ct. 1319, 1329, 75 L. Ed. 2d 229, 242 (1983) (plurality opinion)). "Even a stop that lasts no longer than necessary to complete the investigation for which the stop was made may amount to an illegal arrest if the stop is more than 'minimally intrusive.'" Id. at 478. Simply put, an

investigative stop can cross the boundary and become a de facto arrest, thereby requiring the support of probable cause. Ibid. "[W]hen the duration of the detention is at issue, the proper question is 'whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant.'" Coles, supra, 218 N.J. at 344 (quoting Dickey, supra, 152 N.J. at 477).

> Although there are no "bright line" tests to guide us, courts have identified several factors to aid in the analysis.
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> > Time is an important factor in distinguishing between an investigative stop and a de facto arrest: There is "no rigid time limitation on Terry stops," United States v. Sharpe, 470 U.S. 675, 685, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605[, 615] (1985), but a stop may be too long if it involves "delay unnecessary to the legitimate investigation of the law enforcement officers," Id. at 687, 105 S. Ct. at 1576[, 84 L. Ed. 2d at 616].
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> [Dickey, supra, 152 N.J. at 478-79 (alterations in original) (quoting United States v. Bloomfield, 40 F.3d 910, 917 (8th Cir. 1994), cert. denied, 514 U.S. 1113, 115 S. Ct. 1970, 131 L. Ed. 2d 859 (1995)).]

"[T]he brevity of the invasion of the individual's Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be

justifiable on reasonable suspicion." United States v. Place, 462 U.S. 696, 709, 103 S. Ct. 2637, 2645, 77 L. Ed. 2d 110, 122 (1983). Other factors to be considered are the extent to which those who have been detained are placed in fear for their safety and the manner in which they are detained. Dickey, supra, 152 N.J. at 479. For example, courts have held that "transporting a suspect to another location or isolating him from others can create an arrest." Ibid. (quoting Bloomfield, supra, 40 F.3d at 917).

Guided by these principles, we examine the facts and circumstances presented in this case. Here, the trial court did not make any findings as to Shaw other than that he was in a car with Hanson, who had an outstanding warrant for her arrest and was the registered guest of a motel room where CDS was discovered. There was no finding by the court, and no testimony by Rademacher, that Shaw behaved in any way warranting his extended detention. While the stop of Hanson's vehicle was justified by the warrant for her arrest and the information provided by the motel owner, as compared to the officer's search of the motel room, there was no reason to continue to detain Shaw once it was established that there were no warrants for his arrest and without any reason to believe he was connected to the motel room. There was no "particularized and objective basis

for suspecting [Shaw] of criminal activity" to warrant his continued detention. Caldwell, supra, 158 N.J. at 464. Despite that lack of a basis, Shaw, like the others in the car, were confronted by a police officer who unholstered his weapon, ordered Shaw into the back of a vehicle after determining there was no reason to hold him, and left him there for at least thirty-five minutes — and possibly upwards of an hour — in order to secure a K-9 from somewhere so the police could search Hanson's vehicle.[12] It was only after Shaw was left in isolation for an extended period that he told an unidentified officer that he had marijuana in the Tahoe.

ii.

The fact that Shaw was unlawfully arrested by the time he made his statement does not necessarily require that it should have been suppressed. "[E]vidence is not subject to exclusion 'simply because it would not have come to light but for the illegal actions of the police.'" State v. Casimono, 250 N.J. Super. 173, 182 (App. Div. 1991) (quoting Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 417, 9 L. Ed. 2d 441,

[12] As noted, the court originally found that the occupants had been removed from the vehicle prior to the K-9 team's arrival, but then stated that some occupants remained in the vehicle at that time. We find no support for that conclusion. In any event, the court made no specific finding as to Shaw who, under Rademacher's orders, either remained in the Tahoe or in the back of a patrol car, or both, for an extended period.

455 (1963)), certif. denied, 127 N.J. 558 (1992). For example, "[s]tatements following an illegal arrest must be excluded from evidence only if they are causally related to the invasion of the suspect's rights." State v. Barry, 86 N.J. 80, 89, cert. denied, 454 U.S. 1017, 102 S. Ct. 553, 70 L. Ed. 2d 415 (1981). Thus, the determination of whether a confession is admissible is fact-sensitive. State v. Worlock, 117 N.J. 596, 622 (1990).

If causally related to an illegal arrest, a defendant's statement must be suppressed as the "fruit of the poisonous tree." That doctrine provides that evidence obtained directly or indirectly from a violation of a defendant's federal or state constitutional rights must be excluded from evidence unless the State can establish that it obtained the evidence from a source independent of the illegal conduct. State v. Johnson, 118 N.J. 639, 651-53 (1990). "[T]he issue is whether the [discovery of the evidence was] the product of the 'exploitation' of the unlawful stop and detention or of a 'means sufficiently distinguishable' from the constitutional violation such that the 'taint' of the violation was 'purged.'" Shaw, supra, 213 N.J. at 414 (quoting Hudson v. Michigan, 547 U.S. 586, 592, 126 S. Ct. 2159, 2164, 165 L. Ed. 2d 56, 65 (2006)). "[T]he exclusionary rule will not apply when the connection between the unconstitutional police action and the evidence becomes 'so

attenuated as to dissipate the taint' from the unlawful conduct." State v. Badessa, 185 N.J. 303, 311 (2005) (quoting Murray v. United States, 487 U.S. 533, 537, 108 S. Ct. 2529, 2532, 101 L. Ed. 2d 472, 480 (1988)). Under both federal and state law, "the critical determination is whether the authorities have obtained the evidence by means that are sufficiently independent to dissipate the taint of their illegal conduct." Johnson, supra, 118 N.J. at 653.

In evaluating whether evidence is sufficiently attenuated from the taint of a constitutional violation, we look to three factors: "(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct." Ibid.; accord Brown v. Illinois, 422 U.S. 590, 603-04, 95 S. Ct. 2254, 2261-62, 45 L. Ed. 2d 416, 427 (1975); see also Shaw, supra, 213 N.J. at 415.

The temporal proximity factor is "the least determinative" and often most ambiguous of the test. Worlock, supra, 117 N.J. at 622-23. This is so because both temporal proximity and the lack thereof between the unlawful act and the police obtaining the evidence may weigh in favor of suppression or admission. Ibid.

> Although a confession given shortly after an arrest may result from pressures generated

> by the shock of detention, it may also result from considerations unrelated to the arrest. . . . A long detention may cause a defendant to forget the shock of the initial arrest or it may compound the taint of the confession.
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> [Id. at 623.]

"The conditions of detention can be as important as the temporal proximity of the confession and arrest. A congenial atmosphere can neutralize the assumption that a confession given after a short period of detention is the product of an illegal arrest." Ibid.

The second factor, intervening events, "can be the most important factor in determining whether a confession is tainted" because intervening events are objective indications of whether the causal connection between the unlawful arrest and the evidence has been broken. Id. at 623-24. Yet, identifying intervening circumstances is sometimes difficult. Id. at 623. "In the face of egregious police conduct, the State should show some demonstrably effective break in the chain of events leading from the illegal arrest to the [evidence], such as actual consultation with counsel or the accused's presentation before a magistrate for a determination of probable cause." Johnson, supra, 118 N.J. at 656 (alteration in original) (quoting Worlock, supra, 117 N.J. at 623-24).

Intervening circumstances that constitute a purge of the illegal taint have been associated with a defendant's flight from police, see State v. Seymour, 289 N.J. Super. 80, 89 (App. Div. 1996), and resisting arrest, see Casimono, supra, 250 N.J. Super. at 184-88. For example, where the police attempt a pat down based on less than the constitutionally-required suspicion, the defendant's physical resistance is an intervening act that "marks 'the point at which the detrimental consequences of illegal police action become so attenuated that the deterrent effect of the exclusionary rule no longer justifies its cost.'" Id. at 185 (quoting United States v. Leon, 468 U.S. 897, 911, 104 S. Ct. 3405, 3414, 82 L. Ed. 2d 677, 691 (1984)); see also Kevin G. Byrnes, Arrest, Search & Seizure 875-76 (2016). "The point to all of those cases is that the law should deter and give no incentive to suspects who would endanger the police and themselves by not submitting to official authority." Williams, supra, 192 N.J. at 17 (emphasis in original).

Against the first two factors, the court considers the final factor, the flagrancy and purpose of the police misconduct, which "is 'particularly' relevant to determining whether a confession is the 'fruit' of [an unlawful] arrest." Worlock, supra, 117 N.J. at 624. The more egregious the police

conduct, the more likely a court will grant a motion to suppress. See ibid.

Considering the factors applicable to Shaw's circumstances, we conclude that his statement to police should have been suppressed. Shaw and the other occupants were initially confronted by Rademacher, with his weapon unholstered, and Shaw was then secured for an extended period of time in the back of a police vehicle without any articulable suspicion that he, as compared to Hanson, was involved in any criminal activity. There was no question that he was not free to leave the car even though he was not handcuffed until he made his statement, which occurred approximately thirty minutes after he was removed from Hanson's vehicle. During that time, he was not questioned by police and, evidently, was unaware that a K-9 sniff was about to occur. At all times, Shaw followed the officer's requests and directions and did nothing to cause his continued detention. There were no intervening events between the exploitation of Shaw's right to be free from detention for an extended period and his making the statement to the unidentified police officer.

iii.

We disagree with Shaw, however, that because he gave his statement while in unlawful detention, the evidence seized from the vehicle was fruit of the poisonous tree that must be

excluded. According to Shaw, but for his confession, Hanson would not have consented to the search. We find no merit to that argument. Although we find Hanson's consent was involuntary for other reasons, we also find there was no evidence that Shaw maintained a protected interest in the evidence seized from the tote bag as he never claimed ownership of the bag or its contents.

As with all exceptions to the warrant requirement, the onus is on the State to demonstrate that the consent search exception applies. See State v. Cushing, __ N.J. __, __ (2016) (slip op. at 12-14); Johnson, supra, 68 N.J. at 354. "[W]hether a consent to a search was in fact 'voluntary' or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances." Schneckloth v. Bustamonte, 412 U.S. 218, 227, 93 S. Ct. 2041, 2047-48, 36 L. Ed. 2d 854, 862-63 (1973).

"As articulated in our case law, to determine whether a person's consent was voluntarily given or coerced, the proper analytical framework is whether a person has knowingly waived his right to refuse to consent to the search." State v. Domicz, 188 N.J. 285, 308 (2006). Under our State Constitution, consent to search is invalid unless the consenting party was aware of

the right to withhold consent. See State v. Todd, 355 N.J. Super. 132, 139 (App. Div. 2002).

Because an analysis of consent is a fact-sensitive inquiry, the Court has identified factors to be considered in determining voluntariness or coercion. State v. King, 44 N.J. 346, 352-53 (1965). The factors that tend to show voluntariness of a consent include: "(1) that consent was given where the accused had reason to believe that the police would find no contraband; (2) that the defendant admitted his [or her] guilt before consent; [and] (3) that the defendant affirmatively assisted the police officers." Id. at 353 (citations omitted).

The factors that tend to show that consent was coerced include:

> (1) that consent was made by an individual already arrested; (2) that consent was obtained despite a denial of guilt; (3) that consent was obtained only after the accused had refused initial requests for consent to search; (4) that consent was given where the subsequent search resulted in a seizure of contraband which the accused must have known would be discovered; [and] (5) that consent was given while the defendant was handcuffed.
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> [Id. at 352-53 (citations omitted).]

Here, the trial court relied only upon State v. Chapman, 332 N.J. Super. 452 (App. Div. 2000),[13] and Hanson's signing of the consent form to determine that her consent was voluntary. The court did so without any analysis of the factors that should be considered by a court making that determination. Had the court done so, it would have found that Hanson's situation met the criteria for almost all of the factors tending to show her consent was involuntary: she was under arrest; she had initially

[13] We find the trial court's reliance on our decision in Chapman, supra, 332 N.J. Super. at 452, to be inapposite because, in that case, none of the factors tending to show the consent was coerced were present. In that case, based on a vehicle's slow and erratic path, the police stopped the car believing its driver was intoxicated or fatigued. Id. at 456. The defendant, who was driving, could not produce a driver's license, and his and the other passengers' answers to the officer's question aroused suspicion. Id. at 456-58. After indicating his intention to issue a summons for failure to have a valid license and a warning for careless driving, the officer sought the defendant's consent to search the car. Id. at 458-59. After the defendant executed the consent form, the officers searched the vehicle and found a large quantity of marijuana. Id. at 459. We "reject[ed] [the] defendants' contention that the detention ripened into an invalid, de facto arrest." Id. at 465. "We conclude[d] that [the] defendants' detention was supported by an articulable suspicion that criminal activity might be afoot, or at the very least, by the need to assure that allowing the defendants to proceed on their way would not pose a danger to the public." Id. at 465-66 (citation omitted). We also stated that "[w]e would [have] reach[ed] the same result even were we to find that the detention was unlawful. In that event, we would conclude that [the defendant's] consent to search was sufficiently an act of free will to purge the original taint emanating from the unlawful detention." Id. at 466. We then extensively considered whether "the causal chain between an unlawful detention and evidence discovered afterward [was] broken." Id. at 468.

refused to give consent; considering where the CDS was ultimately discovered in the vehicle, she must have known it would be discovered; and she was handcuffed. Under these circumstances, evidence of the signing and (incomplete) initialing of the consent form was not enough to demonstrate the voluntariness of Hanson's consent.

iv.

Having determined that Hanson's consent was not voluntary, we consider whether Shaw had a protected interest in the tote bag containing the CDS he was charged with possessing. Here, there was no evidence that Shaw or anyone else in the vehicle claimed ownership of the tote bag or objected to its search. As there was no evidence that Shaw owned the tote, he did not have a protected privacy interest in its contents. See State v. Suazo, 133 N.J. 315, 321-22 (1993); see also State v. Maristany, 133 N.J. 299, 306-07 (1993). "Absent a reasonable expectation of privacy in the place or thing searched, [Shaw was] not entitled to protection under either the Fourth Amendment or Article I, Paragraph 7 of the New Jersey Constitution," Taylor, supra, 440 N.J. Super. at 522, and the unlawful search of Hanson's vehicle did not warrant the suppression of the bag or its contents in Shaw's case.

III.

In summary, although we find that the officer's warrantless search of the motel room was illegal, the record does not permit us to determine whether Bolden maintained a protected privacy interest in that room. Accordingly, we vacate the denial of Bolden's suppression motion regarding the items seized from the motel room and remand to afford Bolden an opportunity to establish he maintained a protected privacy interest in the motel room at a new suppression hearing. If he meets his burden of proof, his suppression motion must be granted and he must be afforded an opportunity to withdraw his previously entered guilty plea. R. 3:9-3(f).

As to Shaw, we affirm the denial of his motion to suppress the contents of the tote bag found in Hanson's vehicle, but reverse the denial of his motion to suppress his statement made to police while in their custody. As a result, Shaw may seek to withdraw his plea and go to trial or accept his earlier conviction and sentence. See ibid.; see also State v. Cummings, 184 N.J. 84, 100 (2005).

Affirmed in part, reversed and remanded in part. We do not retain jurisdiction.

I hereby certify that the foregoing is a true copy of the original on file in my office.

CLERK OF THE APPELLATE DIVISION