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Although it is posted on the internet, this opinion is binding only on the
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1335-16T4

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

THURMAN THOMAS, a/k/a HERMAN
THOMAS and THOMAS THURMAN,

Defendant-Appellant.

Submitted January 17, 2018 – Decided February 6, 2018

Before Judges Gilson and Mayer.

On appeal from Superior Court of New Jersey,
Law Division, Essex County, Indictment No.
14-09-1509.

Joseph E. Krakora, Public Defender, attorney
for appellant (Joshua D. Sanders, Assistant
Deputy Public Defender, of counsel and on the
brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent (Emily R. Anderson, Deputy
Attorney General, of counsel and on the
brief).

PER CURIAM

Following the denial of his motion to suppress the seizure
of physical evidence, defendant Thurman Thomas pled guilty to

second-degree robbery, N.J.S.A. 2c:15-1. He now appeals, challenging only the denial of his motion to suppress. We affirm.

In February 2014, Jersey City Police Department Detective Brian Glasser was investigating a robbery in which defendant was a suspect. The detective learned that defendant's last known address was an apartment on Neptune Avenue in Jersey City, the same address as his sister.

On February 25, 2014, Glasser and two other detectives visited the sister's apartment. After the officers explained the nature of their investigation and identified the reason for being at her home, the sister allowed them to enter her apartment. The officers asked if defendant was in the apartment. The sister replied that defendant "doesn't live here. He just comes and changes, takes a shower and leaves." The sister advised the officers that she had seen defendant the previous day and approximated the time of day when defendant was last in her home.

The detectives asked the sister if they could search the apartment. The officers advised the sister that she had the right to be present while they searched the home and, further, that she could stop the search at any time. The sister then signed a consent-to-search form.

The sister told the officers that defendant kept his belongings "in the back bedroom office." She then led the police

to the back room and stated that defendant had changed his clothes the night before while he was at her house. In the room, the officers found an Oakland A's jacket and a knit hat, clothing that was worn by the robber as shown in a surveillance video taken at a gas station on the day of the robbery. The officers did not search any other rooms in the sister's residence.

Before they left the apartment, the officers showed the sister a police department flyer containing a picture taken from the gas station surveillance video. The sister confirmed that the person in the picture was her brother. She then signed and dated the bottom of the flyer. Defendant was arrested on February 26, 2014.

Prior to trial, defense counsel filed a motion to suppress the physical evidence seized at the sister's home. At the suppression hearing, the sister testified that she did not give consent to search the back room of her home until after one of the officers had already entered that room. She also testified that she had last seen defendant two or three days before the investigating officers visited her home. The sister concluded her testimony by stating, "I don't have anything to fear . . . I allowed them to come and I signed the paperwork so they can get that, so I can get that away from me, out of my life."

Detective Glasser testified during the suppression hearing that the sister gave both written and verbal consent to search her

home. According to the detective's testimony, the sister led the investigating team to a back room where defendant kept his "stuff." In addition to clothing found in the room, Glasser testified that the officers found mail and prescription medication with defendant's name on them.

At the conclusion of the evidentiary hearing on defendant's motion to suppress, the motion judge allowed counsel to make supporting legal arguments. Based upon the testimony and the arguments, the motion judge found that the sister was aware of her right to refuse consent to search her apartment and, with that knowledge, voluntarily signed the consent-to-search form. While the search of the sister's apartment was warrantless, the judge deemed the consent to search valid based upon the testimony proffered during the hearing. Additionally, the judge concluded that defendant "had no proper interest in that apartment in [the] area where the clothes were in. This was not a bedroom, but rather an office without a bed." The judge found that defendant lacked a reasonable expectation of privacy in the area searched. Based on these findings, the judge denied defendant's motion to suppress.

On September 23, 2016, defendant pleaded guilty to second-degree robbery, N.J.S.A. 2C:15-1, and was subsequently sentenced to a three-year prison term with an eighty-five percent parole

ineligibility period as prescribed by the No Early Release Act (NERA), N.J.S.A. 2C:43-7.2.

On appeal, defendant argues:

THE TRIAL COURT ERRED IN FINDING THAT THE STATE MET ITS BURDEN IN PROVING THAT THERE WAS REASONABLE RELIANCE TO SEARCH THE UNDESCRIBED LOCATION WHERE THE PERSONAL BELONGINGS WERE STORED. U.S. CONST. AMENDS. IV, XIV; N.J. CONST. ART. 1, PARA. 7.

In reviewing a motion to suppress evidence, we defer to the factual and credibility findings of the trial court "so long as those findings are supported by sufficient credible evidence in the record." State v. Handy, 206 N.J. 39, 44 (2011) (quoting State v. Elders, 192 N.J. 224, 243 (2007)). "[A]n appellate tribunal must defer to the factual findings of the trial court when that court has made its findings based on the testimonial and documentary evidence presented at an evidentiary hearing or trial." State v. Hubbard, 222 N.J. 249, 269 (2015). We accord deference to the trial court "because the 'findings of the trial judge . . . are substantially influenced by his opportunity to hear and see the witnesses and to have the "feel" of the case, which a reviewing court cannot enjoy.'" State v. Reece, 222 N.J. 154, 166 (2015) (quoting State v. Locurto, 157 N.J. 463, 471 (1999)) (alteration in original). We focus on "whether the motion to suppress was properly decided based on the evidence presented

at that time." State v. Gibson, 318 N.J. Super. 1, 9 (App. Div. 1999) (quoting State v. Jordan, 115 N.J. Super. 73, 76 (App. Div. 1971)).

A recognized exception to the warrant requirement is a party's consent to search. State v. Cushing, 226 N.J. 187, 199 (2016). A third party's ability to consent to a search "rests on his or her joint occupation of and common authority over the premises." Ibid. (quoting Fernandez v. California, 571 U.S. ___, 134 S. Ct. 1126, 1132-33 (2014); Illinois v. Rodriguez, 497 U.S. 177, 181 (1990)). Evidence seized during a search need not be suppressed "if the 'officer's belief that the third party had the authority to consent was objectively reasonable in view of the facts and circumstances known at the time of the search.'" Id. at 200 (quoting State v. Coles, 218 N.J. 322, 340 (2014)). Under the consent to search exception to the warrant requirement, the prosecution bears the burden of proving "the consent was voluntary and that the consenting party understood his or her right to refuse consent." State v. Maristany, 133 N.J. 299, 305 (1993).

In this case, the sister rented the apartment and, thus, had actual authority to consent to a search. The officers' belief that the sister had authority to consent to a search of her own apartment was reasonable. Detective Glasser informed the sister of her right to both refuse consent to search and to stop the

search at any time. The sister signed the consent form acknowledging that her rights regarding the search had been explained and that she was knowingly and voluntarily waiving those rights to allow a search of the area where defendant kept his belongings.

Defendant's reliance on the Court's decision in Cushing is misplaced. In Cushing, the police improperly relied on consent from a third party who did not live in or own the residence, and who did not generally access the defendant's bedroom. Cushing, 226 N.J. at 192, 198. Under those circumstances, the Court concluded that the police were obligated to ask additional questions to determine whether the third party had authority to consent to the search. Id. at 203-04.


Unlike the facts in Cushing, the sister lived in the apartment. The sister had full access to the back room where defendant stored his clothes and other personal items. After hearing the testimony, the judge properly ruled that defendant did not live in the back room because it was an office without a bed. Additionally, in this case, the police obtained knowing and voluntary consent from the sister, who had actual authority to consent to a search of her apartment.

Based on the foregoing, we find sufficient credible evidence in the record to support the judge's denial of defendant's motion

to suppress the physical evidence seized from the sister's
apartment.

Affirmed.

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


CLERK OF THE APPELLATE DIVISION